

08-2347
LOCALLY ASSESSED PROPERTY
SIGNED 06-29-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. BOARD OF EQUALIZATION OF CACHE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 08-2347 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2008 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER 1, Property Owner
 PETITIONER 2, Property Owner
 For Respondent: RESPONDENT REP 1, Cache County Assessor
 RESPONDENT REP 2, Cache County Assessor's Office
 RESPONDENT REP 3, Cache County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on April 21, 2009. Cache County (the "County") submitted post-hearing information on April 23, 2009, while PETITIONER 1 & PETITIONER 2 (the "property owners") submitted a response to the County's post-hearing information on May 8, 2009.

At issue is the fair market value of the subject property as of the January 1, 2008 lien date. The subject property is a cabin and lot located in DEVELOPMENT in Cache County, Utah. The Cache County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject property was originally assessed for the 2008 tax year. The property owners ask the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-102(12) defines “fair market value” for assessment purposes, as follows:

(12) “Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

Utah Admin. Rule R884-24P-20 (“Rule 20”) provides guidance on determining “percent of completion” for residential properties, as follows in pertinent part:

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- c) The percent of the project completed as of the lien date.
 - (1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:
 - (a) 10 - Excavation-foundation
 - (b) 30 - Rough lumber, rough labor
 - (c) 50 - Roofing, rough plumbing, rough electrical, heating
 - (d) 65 - Insulation, drywall, exterior finish
 - (e) 75 - Finish lumber, finish labor, painting
 - (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical
 - (g) 100 - Floor covering, appliances, exterior concrete, misc.

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission. . . .
- (2) The auditor shall:
 - (a) file one notice with the commission;
 - (b) certify and transmit to the commission:
 - (i) the minutes of the proceedings of the county board of equalization for the matter appealed;

- (ii) all documentary evidence received in that proceeding; and
 - (iii) a transcript of any testimony taken at that proceeding that was preserved; and
 - (c) if the appeal is from a hearing where an exemption was granted or denied, certify and transmit to the commission the written decision of the board of equalization as required by Section 59-2-1102.
- (3) In reviewing the county board's decision, the Commission may:
- (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
- (a) the issue of equalization of property values is raised; and
 - (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is comprised of a 50.34-acre lot, a two-story log cabin and a separate garage. The property owners began building the cabin in 2002 and estimate that it was 90% complete as of the January 1, 2008 lien date. The cabin's first floor has 1,176 square feet of living space and a 919 square-foot covered deck that wraps around three sides of the cabin. The second floor also has 1,176 square feet of living

space. However, because of the slope of the roof, a portion of the second floor space has limited utility due to low ceiling heights. There are no vaulted ceilings in the cabin. The cabin also has an unfinished basement that is 1,176 square feet in size and a garage that is 720 square feet in size.

The property owners explained that the subject cabin is not finished as elaborately as several of the cabins in the same area. The subject cabin's kitchen has formica countertops and the bathtubs and showers are constructed of prefabricated plastic. As of the lien date, the subject cabin was complete except that the appliances had not been installed in the kitchen and the final plumbing had not been completed in the baths (i.e., hooking up sinks and toilets). Pursuant to the guidelines set forth in Rule 20(E)(2)(c)(1), the Commission finds that on the lien date, the subject cabin was somewhere between 90% and 100% complete.

The subject is located in the DEVELOPMENT, a recreational development where lot sizes generally range from 40 acres to 80 acres. The values at which the County assessed the subject property and other nearby cabins were derived with a cost approach (i.e., the County determined values for land and improvements separately, adding them together to arrive at total assessed value). The subject's current assessed value of \$\$\$\$\$ is allocated between improvements and land, as follows: 1) \$\$\$\$\$ to the cabin and other improvements; and 2) \$\$\$\$\$ to the 50.34-acre lot.

Fair market value and equalization information was proffered at the Initial Hearing. The property owners do not contest the subject's separate land value of \$\$\$\$\$. However, they believe that the subject's improvements value of \$\$\$\$\$ is too high. The Commission will address the fair market value of the subject property first, after which it will address whether the subject's value should be equalized to the values at which other properties are assessed.

1. Fair Market Value. The parties have submitted very little information concerning cabin sales near the subject property. The property owners explain that it is difficult to obtain sales comparables because very few improved parcels have sold in DEVELOPMENT in recent years. The County,

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however, provides one sale of a manufactured home in DEVELOPMENT that sold in November 2008 for \$\$\$\$\$. This comparable consists of a 61.66-acre lot and a 960 square-foot manufactured home that was built in 1996. Although this comparable has a barn, a corral and water storage, its residential structure is less than half the size of the subject cabin and it does not have a garage. Furthermore, the Commission would expect a buyer to pay more for a log cabin than a manufactured home. For these reasons, the Commission believes that the subject property's fair market value is substantially higher than the \$\$\$\$\$ value requested by the property owners. The County adjusted the manufactured home comparable to a price of \$\$\$\$\$ for the subject property, which is approximately 4% less than the subject's current value of \$\$\$\$\$.

The County also submitted two listings of log cabins for sale in DEVELOPMENT. The first one is listed for sale at \$\$\$\$\$ and appears superior to the subject property. This comparable has approximately 60% more above-grade square footage than the subject property, in addition to vaulted ceilings and higher-grade finishes. The second one is listed for sale for \$\$\$\$\$ and appears inferior to the subject property. This property has approximately 35% less above-grade square footage than the subject cabin, and it has no basement. The Commission recognizes that list prices are not necessarily reflective of fair market value. However, given that an inferior manufactured home sold for \$\$\$\$\$ and that a log cabin that appears inferior to the subject property is listed for sale at \$\$\$\$\$, the Commission is not convinced that the subject's current value of \$\$\$\$\$ is higher than its fair market value.

Furthermore, the subject's improvements are currently valued at \$\$\$\$\$. The County submits a Marshall & Swift calculation estimating the value of the completed improvements to be \$\$\$\$\$ which is approximately \$\$\$\$\$ more than the current assessed value of the improvements. The property owners proffer that the actual costs they have incurred for the improvements, since they began building them in 2002, are only \$\$\$\$\$. Nevertheless, the Commission is not convinced that the fair market value of the improvements is less than \$\$\$\$\$. First, there is no evidence to suggest that the cost of the appliances and

water hookups not in place as of the lien date would cost more than \$\$\$\$\$, the difference between the \$\$\$\$\$ value currently assessed to the improvements and the \$\$\$\$\$ cost estimate the County determined from Marshall & Swift information. Second, the property owners' actual costs include their own labor and do not include entrepreneurial profit. Third, the property owners estimate that the improvements were 40% complete before January 1, 2003, and the County states that building costs have increased significantly since 2002.

In summary, the Commission is not convinced that the subject's fair market value as of the lien date is less than the current value established by the County BOE.

2. Equalization. The Commission has found that the property owners have not shown that the subject's fair market value is less than its current value of \$\$\$\$\$. Nevertheless, the subject's value may be reduced if the evidence shows that subject's value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also (X). v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The property owners contend that the assessed value of the subject's improvements should be reduced from \$\$\$\$\$ to \$\$\$\$\$ to equalize it with the assessed values of improvements for other nearby cabin properties. The property owners ask the Commission to reduce the subject property's total value to \$\$\$\$\$, which is the total of the subject's current land value of \$\$\$\$\$ and the improvements value of \$117,000 that they propose for the subject.

At the Initial Hearing, RESPONDENT REP 2, the County appraiser directly responsible for assessing DEVELOPMENT properties, proffered that the subject's improvements value has been "redone" each year because the property owners have appealed its value every year. On the other hand, RESPONDENT

REP 2 indicated that many of the other cabins in DEVELOPMENT have not been “reappraised” since 2003, when costs tables were lower. For this reason, RESPONDENT REP 2 indicated that the values of improvements in DEVELOPMENT may not be on an “even keel.” Although the County indicated in its post-hearing documents that other cabins had been “reviewed” or “re-assessed” for 2008, there is no indication that completed cabins were revalued with the higher 2008 cost tables.

The parties proffered information about the improvements on seven recreational properties in the subject’s area. The assessed improvements value for each of these comparables is less than the \$\$\$\$\$ value at which the subject’s improvements are assessed. The Commission finds that three of these properties offer the best information to establish an equalized value for the subject property’s improvements. The cabins on two of these three properties (identified as DEVELOPMENT lots # (X) and # (X) have significantly more above-grade square footage than the subject cabin and appear to be finished more expensively than the subject. The improvements for these two properties are assessed at \$\$\$\$\$ and \$\$\$\$\$, respectively. The Commission notes that the comparable with an improvements value of \$\$\$\$\$ is the property listed for sale at \$\$\$\$\$, as discussed earlier. Based on these two comparables, it appears that the assessed value of the subject’s improvements at \$\$\$\$\$ is inequitably high.

The Commission notes that the next highest improvements value for a finished cabin in DEVELOPMENT is \$\$\$\$\$. The cabin assessed at this amount is on DEVELOPMENT lot # (X) and appears most similar in style to the subject property. However, it has half the above-grade living space of the subject property and no garage. From this information, it appears that a majority of the cabins that are completely or nearly finished are assessed at rates below that at which the subject’s improvements are assessed. It also appears that the subject’s improvements value should be equalized somewhere between \$\$\$\$\$, at which a similar but smaller cabin’s improvements were assessed, and \$\$\$\$\$, at which a larger and superior cabin’s improvements were assessed.

For purposes of equalization, the Commission finds that the \$\$\$\$ per square foot rate at which the improvements on Legacy Ranch lot #(X) were assessed should be applied to the subject's total square footage. The County shows the subject to have 4,248 total square feet of total improvements. Applying the \$\$\$\$ per square foot rate to the subject's 4,248 square feet results in an equalized improvements value of \$\$\$\$ for the subject property, if the subject property was complete. The Commission has already found that the subject property appears to be somewhere between 90% and 100% complete as of the lien date. If the \$\$\$\$ equalized value were reduced by 5% to account for the subject's condition on the lien date, the final equalized value is \$\$\$\$. On this basis, the subject's current value deviates significantly more than 5% from the values at which other properties are assessed. For these reasons and in accordance with Section 59-2-1006(4)(b), the Commission finds that the subject's improvements value should be reduced to \$\$\$\$ for equalization purposes.

The Commission finds this approach more convincing than the property owners' methodology, which consists of "adjusting" the assessed improvements values of three of the comparables. The adjustments used by the property owners would be more appropriate for properties assessed or valued at full value, not properties whose values are clearly, at least in some cases, assessed below fair market value. The Commission also finds this approach more convincing than the County's analysis of value per square foot based on total value (both land value and improvements value). The County's approach does not consider the improvements separately from the land. When the subject property and all comparables are assessed on a cost approach and a party separately challenges one portion of the assessment, the Commission finds that it should consider that portion of the assessment separately.

In summary, the Commission finds that the subject's current improvements value of \$\$\$\$ should be equalized to \$\$\$\$ for purposes of equalization. As a result, the subject property's current total value of \$\$\$\$ is reduced to \$\$\$\$ (\$\$\$\$ land value plus \$\$\$\$ improvements value).

DECISION AND ORDER

Based upon the foregoing, the Commission reduces the subject's total value for the 2008 tax year from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$. All of the reduction is to be reflected in the subject's improvements value. The subject's land value is to remain unchanged. The Cache County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the taxpayer's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2009.

Kerry R. Chapman
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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