

08-2535

LOCALLY ASSESSED PROPERTY

TAX YEAR: 2008

SIGNED: 09-10-2009

COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF
RURAL COUNTY,
UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-2535

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: R. B. Johnson

Presiding:

R. Bruce Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor
RESPONDENT REP. 2, from RURAL COUNTY
RESPONDENT REP. 2, from RURAL COUNTY

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 June 17, 2009.

At issue in this case is the fair market value, as of January 1, 2008, of a 2,994 square foot cabin on 0.60 acres of land in CITY 1, Utah. The value determined by the Board of Equalization and the value asserted by the Taxpayer are set forth below:

| | <u>Board of Equalization</u> | <u>Taxpayer</u> |
|--------------|----------------------------------|-----------------|
| Land | \$\$\$\$ | \$\$\$\$ |
| Improvements | \$\$\$\$ | \$\$\$\$ |

Total \$\$\$\$ \$\$\$\$

Taxpayer’s primary argument is that his property increased in value by about 1.5% over the prior year. He believes the market would indicate, however, that properties in the area are actually declining. He reviewed the assessments of several properties in the CITY 1 area and noted that the overall values had declined. (The land typically increased, but the value of the improvements went down from 14% to 23%.) He believes the County failed to make corresponding adjustments in the NEIGHBORHOODNEIGHBORHOOD. He also presented three listings for vacant land in his area that indicated asking prices of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. It is not clear when these properties were first listed, but the print-out date is August 9, 2008, more than seven months after the lien date.

The County presented an appraisal indicating a value of \$\$\$\$\$. The appraisal concluded a value of \$\$\$\$\$ under the cost approach, but gave most of its weight to the sales approach. The appraisal relied on three sales, all within 0.50 miles of the subject. The comparables sold in July or August of 2007 for \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The sales were adjusted to \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

The County testified that it was in the midst of a 5-year reappraisal program and acknowledged that the NEIGHBORHOOD Subdivision was not revalued in 2008. In fact, it is scheduled to be reappraised in 2011. The County further testified, however, that not all properties that were reappraised in 2008 went down. Some went up and others went down.

APPLICABLE LAW

A Taxpayer requesting a value different from that established by the County Board of Equalization has the burden of proof. To prevail, a Taxpayer must not only demonstrate that the value established by the County Board of Equalization contains error; but must also provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

Pursuant to Article XIII, Section 2, of the Utah Constitution, all taxable property in the state must be both assessed and taxed at a uniform and equal rate.

DECISION AND ORDER

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The Taxpayer has not carried his burden of showing that the fair market value of his property, as of January 1, 2008, is lower than the value set by the Board of Equalization. He argues that some of the comparables used by the County were superior in quality to his property. The appraisal, however, made adjustments for differences in quality. Furthermore, the value determined by the appraisal, \$\$\$\$\$, is more than \$\$\$\$\$ higher than the Board of Equalization value and the County is not requesting an increase to the appraisal value. Thus, even if the quality adjustments are conservative and more weight could have been placed on the cost approach, the appraisal still fully supports the Board of Equalization value.

The Taxpayer's equalization argument is more problematic. The Utah Supreme Court has declared that if fair market value and uniformity cannot both be obtained, that uniformity "is to be preferred as the just and ultimate purpose of the law." *Rio Algom v. San Juan County*, 681 P.2d 184 (1984). The Court has also granted relief to a taxpayer whose values were raised pursuant to a reappraisal, when other properties in the County were not reappraised (the reverse of Taxpayer's claim here.) In that case, however, the Court noted that "[w]hile it is realized that a program of re-evaluation will of necessity require considerable time and money in its completion, nevertheless, it is essential that a plan as envisaged by the legislature should be formulated and set in operation." *Harmer v. State Tax Commission*, 452 P.2d 876 (Utah 1969). In that case, however, the Court found that the Tax Commission did not have such a plan. In this case, on the other hand, the County testified that it does have such a plan and that NEIGHBORHOOD will be reappraised in 2011. No evidence was presented to suggest the County's plan does not meet the requirement of Utah Code Ann. § 59-2-303.1, requiring a five-year plan for cyclical reappraisals.

Section 59-2-303.1, however, also requires the assessor to annually update values "based on a systematic review of current market data." Thus, even though this property was not "reappraised" as part of the five-year cycle, the value should be reduced if 2007 market data indicates such a reduction is proper. The only 2007 market data we have before us, however, is presented in the County's appraisal. This evidence supports a value of at least \$\$\$\$\$. The equalization evidence presented by the Taxpayer documents a decrease in value in other properties, but does not purport to establish an equalized value for similar properties. In fact the "reduced" values for the other properties range from about \$\$\$\$\$ to over \$\$\$\$\$. Values per square foot range from \$\$\$\$\$ to \$\$\$\$\$. No testimony was presented as to the comparability of these properties. One of the County's comparables sold for \$\$\$\$\$ per square foot, one sold for \$\$\$\$\$ per square foot, and one sold for \$\$\$\$\$ per square foot. It is true that the subject property, valued at \$\$\$\$\$ per square foot, is higher than most of the properties identified, but its square foot values are well within the range for properties that the County

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testified were comparable. Accordingly, we see no clear pattern that would indicate a violation of equalization principles.

For the foregoing reasons, the decision of the Board of Equalization is sustained.

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 Petitioner'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.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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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