

09-1157
LOCALLY ASSESSED PROPERTY
SIGNED 09-03-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION FOR
SALT LAKE COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal Nos. 09-1157

Parcel Nos. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Appraiser
PETITIONER 1

For Respondent: RESPONDENT REP, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Salt Lake County Board of Equalization (“the County”). This matter was argued in an Initial Hearing on July 29, 2009. The Salt Lake County Assessor’s Office assessed the subject at \$\$\$\$ as of the January 1, 2008 lien date, which the Board of Equalization sustained. The County is requesting the Commission reduce the value to \$\$\$\$\$. The Taxpayer is requesting the Commission reduce the value of the subject to \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a

residential exemption allowed under Utah Constitution Article XIII, Section 2.

- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2008).

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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 Code Ann. §59-12-102(12) (2008).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.
- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2008).

Any party requesting a value different from the value established by the County Board of Equalization 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. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) 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).

DISCUSSION

The subject property is parcel no. #####, located behind the home located at ADDRESS 1 in CITY, Utah, which is also owned by Taxpayer. It is a 1.13-acre unimproved parcel. It is contiguous to a small parcel, also owned by Taxpayer. The small parcel is approximately 35 feet wide and 110 feet deep, and provides access to the subject from STREET 1.

The Taxpayer disputes the County's value and maintains that the subject property is landlocked. His appraiser argued that the subject should be valued on its own, without consideration given to the fact that the Taxpayer owns the home and small parcel adjacent to the subject, both of which provide access to the subject. Taxpayer argued that the home is on a private lane, with five other homes, and that there would be no access available off the private lane to develop the subject. For these reasons, the appraiser considered the property to be landlocked, and made a 50% adjustment to the comparables used in the appraisal.

The Taxpayer submitted a retrospective appraisal report, with an effective date of January 1, 2008. The appraiser determined a value of \$\$\$\$ for the subject using the following three comparable land sales:

- a. Taxpayer's first comparable is located at ADDRESS 2 in CITY, approximately .83 miles from the subject. It is a 1.73-acre parcel that was sold with a house on the property to be demolished. The appraiser made adjustments for location, lot size, the subject being landlocked, utilities, and the cost to demolish the house on the property. The property sold for \$\$\$\$ on May 31, 2007 and had an adjusted sales price of \$\$\$\$.
- b. Taxpayer's second comparable is located at ADDRESS 2 in CITY, approximately .89 miles from the subject. It is a .82-acre parcel. The appraiser made adjustments for the

location, lot size, the subject being landlocked, and utilities. The property sold for \$\$\$\$\$ on March 28, 2007 and had an adjusted sales price of \$\$\$\$\$.

- c. Taxpayer's third comparable is located at ADDRESS 4 in CITY, approximately 1.21 miles from the subject. It is a 1.17-acre parcel that had been subdivided into paper lots. The appraiser made adjustments for the paper lots, the subject being landlocked, and utilities. The property sold for \$\$\$\$\$ in June 20, 2007 and had an adjusted sales price of \$\$\$\$\$.

The County's representative prepared a retrospective appraisal report for the subject, treating it as a vacant residential lot. He determined a land value of \$\$\$\$\$ based on the following comparables:

- a. The County's first comparable is located at ADDRESS 5 in CITY, approximately .73 miles from the subject. It is a 1.07-acre unimproved parcel. The appraiser made adjustments for the date of sale and access. The property sold for \$\$\$\$\$ on July 9, 2007 and had an adjusted sales price of \$\$\$\$\$.
- b. The County's second comparable is located at ADDRESS 6 in CITY, approximately 0.41 miles from the subject. It is a 1.01-acre unimproved parcel that had been subdivided into two paper lots. The appraiser made adjustments for the date of sale, access, and lot size. The property sold for \$\$\$\$\$ on February 27, 2007 and has an adjusted sales price of \$\$\$\$\$.
- c. The County's third comparable is also the Taxpayer's first comparable. It is located at ADDRESS 2 in CITY, approximately 0.78 miles from the subject. It is a 1.73-acre parcel that was sold with a house on the property to be demolished. The appraiser made adjustments for the date of sale, access, lot size, and cost to remove the home. The property sold for \$\$\$\$\$ on May 31, 2007 and had an adjusted sales price of \$\$\$\$\$.
- d. The County's fourth comparable is located at ADDRESS 7, approximately .54 miles from the subject. It is a .82-acre parcel that has been subdivided into two paper lots. The appraiser made adjustments for the date of sale, access, and lot size. The property sold for \$\$\$\$\$ on March 28, 2007 and has an adjusted sales price of \$\$\$\$\$.
- e. The County's fifth comparable is also the Taxpayer's third comparable. It is located at ADDRESS 4 in CITY, approximately 1.30 miles from the subject. It is a 1.17-acre parcel that had been subdivided into three paper lots. The appraiser made adjustments for the date of sale, access, and paper lots. The property sold for \$\$\$\$\$ on June 20, 2007 and had an adjusted sales price of \$\$\$\$\$.

The County's representative stated that the subject property runs in a location that he believes STREET 2 and STREET 3 will connect, thus providing frontage to the subject. He stated that the highest and best use of the subject is as a residential lot, and that it is appropriate to consider the common ownership of the subject and the small parcel that provides access from STREET 1.

In response to the County's contention that the two streets will be connected and provide frontage to the subject, Taxpayer responded that it was unlikely since The Charter School was built on the parcel that abuts STREET 2. He stated that he spoke with the CITY Manager, who told him that the City had no intention of that road connection being made. In addition, Taxpayer argued that it may not be possible to connect to the sewer on STREET 1 because of the elevation of the road and the subject property.

In seeking a value other than that established by the board of equalization, a party has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Taxpayer has asked the Commission to reduce the value of the subject to \$\$\$\$\$. In support of that value, he submitted a retrospective appraisal report that made a 50% reduction in value to the sales prices of the comparables because he considered the property to be landlocked. The Commission finds that the subject property is not landlocked. "Landlocked" is defined in Black's Law Dictionary as, "[a]n expression applied to a piece of land belonging to one person and surrounded by land belonging to other persons, so that it cannot be approached except over their land." While the subject is not landlocked, the Commission is not convinced that the property should be valued as a residential lot with frontage. The County appraised the property as a residential lot with a slight adjustment for access through a common owner. The Commission finds that the subject property requires a larger adjustment than allowed by the County. As the County did not refute the Taxpayer's adjustment treating the property as landlocked, the Commission finds the value of the subject to be \$\$\$\$\$ as of the lien date.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that as of the January 1, 2008 lien date the value of the subject is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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.

DATED this ____ day of _____, 2009.

Jan Marshall
Administrative Law Judge

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

JM/09-1157.int