

09-1158
LOCALLY ASSESSED PROPERTY
SIGNED 07-14-09

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 No. 09-1158

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2, *Pro Se*

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 June 9, 2009. The Salt Lake County Assessor’s Office assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization reduced the value to \$\$\$\$\$, which the County is requesting the Commission sustain. The Taxpayer is requesting the value of the subject property be reduced 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 at ADDRESS 1 in CITY. It is a 1-acre lot improved with a cottage/bungalow that is more than 100 years old. The home has 1,125 square feet above grade, and no basement. The residence has a brick exterior and asphalt shingle roof. The County considers the improvements to be of fair grade and in fair condition.

Taxpayer stated that her taxes have more than doubled in the past year. She stated that the home is over 100 years old, lies in a flood plain, and that the new TRAX line will run along the backyard, lowering her property value. Taxpayer disputes the County's contention that the subject could be split into two half-acre parcels. She believes there would not be interest in the vacant half-acre because of the TRAX line going through.

In support of her requested value, the Taxpayer discussed two recent sales. The first is a .86 acre lot located at ADDRESS 2 in CITY. The home was built in 2004, and sold for \$\$\$\$ on May 12, 2009. The second is a .92 acre lot located at ADDRESS 3. The home was built in 1978, and sold for \$\$\$\$ on May 29, 2009.

The County's representative testified that the value of the subject was in the land, not the improvements. He stated that it is a 1 acre horse property that could be divided into two half-acre lots. He noted that building lots are selling for approximately \$\$\$\$ in the area. The County's representative provided information on the market changes in the subject zip code between the first quarters of 2006 and 2009. From 2006 to 2007, the average sales price increased 21.29%; from 2007 to 2008, the average sales price increased 1.02%; and from 2008 to 2009, the average sales price decreased 18.94%.

In support of the Board of Equalization value, the County's representative submitted MLS residential reports of four comparable properties:

- a. The County's first comparable is located at ADDRESS 4, in CITY. It is a 1.01-acre lot improved with a 33-year old brick Rambler. The home has 1,725 square feet above grade no basement. The residence has three bedrooms, one bathroom, and a fireplace. The MLS report indicates that the real value is in the land, that it is located across from the new subdivision, there is the possibility of dividing into two lots, and that the subject is horse property. The home sold for \$\$\$\$\$ on March 30, 2007.
- b. The County's second comparable is located at ADDRESS 5 in CITY. It is a 1.07 acre lot improved with a 58-year old Rambler with a siding exterior. The home has 864 square feet above grade, and a 864 square foot basement that is 15% finished. The residence has 3 bedrooms, one bathroom, and a two-car detached garage. The MLS report indicates that the lot has wide frontage, and is zoned for horses. The home sold for \$\$\$\$\$ on June 29, 2007.
- c. The County's third comparable is located at ADDRESS 6, in CITY. It is a 1-acre lot improved with a 48-year old stucco and clapboard Rambler. The home has 2,000 square feet above grade and a 2,500 square foot basement, that is 90% finished. The residence has seven bedrooms, two full and two three-quarter bathrooms, a patio, a deck, two fireplaces, and a two-car garage. The MLS report indicates that the home is being sold "as-is" and that the lot may be subdividable. The home sold for \$\$\$\$\$ on February 27, 2007.
- d. The County's fourth comparable is located at ADDRESS 7 in CITY. It is a 1.73-acre lot improved with a 111-year old brick and cinderblock cottage/bungalow. The home has 1,411 square feet above grade and no basement. The MLS report indicates there is little or no value in the home, the lot is on a private dirt lane, and is secluded with mature trees. The home sold for \$\$\$\$\$ on May 31, 2007.

In seeking a value lower than that established by the board of equalization, the Taxpayer 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 provided discussion on the condition of the subject, and the fact that the new TRAX line will run along the subject property. The Commission finds the Taxpayer has presented sufficient evidence to call into question the value established by the Board of Equalization.

Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller. The

Commission has reviewed the evidence presented by both parties. Though the Taxpayer raised the issue that the future TRAX line would impact her property value, she provided no testimony or other evidence as to what the dollar amount of that impact would be. The Taxpayer also discussed the recent sale of two properties that are slightly smaller than the subject. The Commission finds that these are not a reliable indication of value for the subject as of the January 1, 2008 lien date. Both of the properties discussed by Taxpayer sold in May of 2009, nearly a year and a half after the lien date at issue. The information from the County indicates that between the first quarters of 2008 and 2009, property values had decreased 18.94% in the area. Thus, the recent sales do not reflect the market as of the January 1, 2008. The Commission finds the Taxpayer has failed to meet her burden of proof to provide an evidentiary basis in support of her requested value.

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Board of Equalization value of \$\$\$\$\$. 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.

The agency 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

CONCURRENCE

I concur with my respected colleagues' decision that the Taxpayer has failed to meet her burden of proof to support a reduction in value. However, I believe there are other issues that should have been raised regarding the possibility of subdividing the subject property. First, though the County argued the property could be subdivided and sold, no reduction in value was made for the associated costs. Second, it is unknown whether the subject, being more than 100 years old, is in a historic district, and therefore could not be torn down or the lot subdivided.

D'Arcy Dixon Pignanelli
Commissioner