

09-1511
PROPERTY TAX
SIGNED 11-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER 1, & PETITIONER 2, Petitioners, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent. | INITIAL HEARING ORDER Appeal No. 09-1511 Parcel Nos. #####-1 #####-2 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, Taxpayer

For Respondent: RESPONDENT REP., from the Salt Lake 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 June 8, 2010, at which time the parties requested a continuance to give the Salt Lake County Assessor's Office an opportunity to inspect the subject properties. The Initial Hearing was rescheduled and held on November 1, 2010.

At issue is the fair market value of two subject properties as of January 1, 2008. The subject properties are both residential properties and are located adjacent to one another. The first subject property is identified as Parcel No. #####-1 ("Parcel 1"). It is located at ADDRESS 1 in CITY, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which Parcel 1 was assessed for the 2008 tax year. On the taxpayers' Request for Redetermination, they asked for Parcel 1's value to be reduced to \$\$\$\$\$. At the hearing, the taxpayers did not request a specific value for Parcel 1, but contend that

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the current value of \$\$\$\$ should be reduced. The County asks the Commission to reduce Parcel 1's value to \$\$\$\$.

The second subject property is identified as Parcel No. #####-2 ("Parcel 2"). It is located at ADDRESS 2 in CITY, Utah. The County BOE reduced the \$\$\$\$ value at which Parcel 2 was originally assessed for the 2008 tax year to \$\$\$\$. On the taxpayers' Request for Redetermination, they asked for Parcel 2's value to be reduced to \$\$\$\$. At the hearing, the taxpayers asked for Parcel 2's value to be reduced to \$\$\$\$. The County asks the Commission to reduce Parcel 2's value to \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that "[a]ll tangible taxable property 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."

UCA §59-2-1006(1) provides that "[a]ny 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"

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 contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 Comm'n*, 590 P.2d 332, (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

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Parcel 1. Parcel 1 consists of 0.69 acres of land and two houses. The first house is a two-story home that was built in 1963. This house has 1,890 square feet of living space on both the main and upper floors, for a total of 3,780 above-grade square feet. An indoor swimming pool is located on the home's main floor and occupies approximately 780 square feet of the main floor. The swimming pool has not been used for 15 years, and the taxpayers currently use the swimming pool area for storage. The first house does not have a basement, but has a two-car garage. The County has determined that the first house is in poor condition. The second house on Parcel 1 was built around 1947 and is approximately 820 square feet in size. It does not have a basement. The County states that it was not allowed to inspect the second house and, as a result, does not know its condition.

The taxpayers are concerned that taxes have increased so greatly since they first purchased the subject property in the 1940s. The taxpayers indicate that annual property taxes were \$\$\$\$ when they purchased the subject property and that their annual tax liability is now over \$\$\$\$\$. The taxpayers believe that the subject property has been overvalued for several reasons, but do not know what the value should be.

First, the taxpayers indicate that the subject property is "land-locked." The taxpayers use a "right-of-way" to access the subject property, which they have used for the 65 years they have owned the property. They do not believe that a buyer would pay as much for the subject property as they would for nearby properties that are not "land-locked." The County, however, does not believe that the property's value is significantly diminished for this reason, as a right-of way does exist. It is probable that the property may continue to be accessed by the right-of-way that has been in use for 65 years. Without evidence to suggest otherwise, the County's argument that this factor has little or no influence on value is persuasive.

The taxpayer also argues that the subject property is less valuable than other nearby properties due to its lot size. The subject property is 0.69 acres in size and is an area zoned for 1.00-acre lots. This factor also does not appear to have a significant impact on value, other than the difference in value because of the

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acreage difference. First, the subject property's use as a residential property is "grandfathered," even though it is smaller than allowed by current zoning. Second, the lots on the other side of the street from the subject are zoned for 0.50-acre lots.

RESPONDENT REP., a County appraiser, proffered an appraisal in which he estimated Parcel 1's value to be \$\$\$\$\$ as of the January 1, 2008 lien date. The County asks the Commission to reduce Parcel 1's current value of \$\$\$\$\$ to the \$\$\$\$\$ appraisal value. In the appraisal, RESPONDENT REP. compared the subject property to 6 comparables located between 3 and 14 blocks from the subject. The comparables sold for prices between \$\$\$\$\$ and \$\$\$\$\$.

Most of the comparables were clearly superior to the subject. The comparable most similar to the subject property sold for a price of \$\$\$\$\$. It, like the subject, was in need of remodeling. The County made a downward condition adjustments of \$\$\$\$\$ to account for this comparable being in "fair" condition and, thus, in superior condition to the subject. After adjustments, this comparable showed an adjusted sales price of \$\$\$\$\$. The Commission considers this value to be more in line with the subject's value than the adjusted sales prices shown by the other, clearly superior comparables.

The taxpayers object to the County including the 780 square-foot swimming pool area as living area when adjusting the square footages of the comparables. The County, however, states that the swimming pool is structurally integrated into the house and should be considered living space when adjusting the comparables. The Commission agrees with the taxpayers. In its appraisal, the County adjusted above-grade square footage at \$\$\$\$\$ per square foot and unimproved basement area at \$\$\$\$\$ per square foot. The Commission believes that the swimming pool area of the subject property, given that it is no longer used as a swimming pool, has a value more in line with unfinished basement area. The difference between above-grade area, at \$\$\$\$\$ per square foot, and unfinished basement area, at \$\$\$\$\$ per square foot, is \$\$\$\$\$ per square foot. The value of the 780 square-foot swimming pool area should be reduced by \$\$\$\$\$ per square foot, which

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equates to \$\$\$\$\$. Subtracting \$\$\$\$\$ from the \$\$\$\$\$ value discussed in the preceding paragraph leaves a value for Parcel 1 of approximately \$\$\$\$\$.

One of the adjustments in the County's appraisal is for the second house on Parcel 1. The County checked and found out that CITY allows a residential property to have a "guest house" on it. The County made an upward adjustment to the comparables to account for Parcel 1 having the second house. The County estimated that the second house contributed at least \$\$\$\$\$ in value to Parcel 1, based on a market rent of \$\$\$\$\$ per month and a gross rent multiplier of ##### (\$\$\$\$\$ x ##### = \$\$\$\$\$). The County's estimate of the contributory value for a second home would be more convincing were it based on paired sales analysis of homes with and without second houses. However, there is no evidence to refute this adjustment. Accordingly, it will be accepted and used to value the Parcel 1.

Based on the evidence submitted at the Initial Hearing, the Commission concludes that Parcel 1's value should be reduced to \$\$\$\$\$. The taxpayers have the burden to show that the subject's current value is incorrect and to provide evidence of a better value. The evidence submitted at the Initial Hearing does not show that Parcel 1's value is less than the \$\$\$\$\$. Accordingly, Parcel 1's value should be reduced to \$\$\$\$\$.

Parcel 2. Parcel 2 consists of a 0.25-acre lot and a one-story house that was built in 1947. The County has determined that this house is in "fair" condition. This house has 780 square feet of living space on the main floor and a basement that is 420 square feet in size (340 square feet of which are finished). This parcel does not have a garage.

The taxpayers believe that Parcel 2's value should be reduced to \$\$\$\$\$ because its lot is so small (0.25 acres) in comparison to nearby lots, because it is "land-locked" and is accessed by a right-of-way and because its water use is not on a separate meter (it is on the same meter as Parcel 1). However, the taxpayers provide no evidence to support their requested value.

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RESPONDENT REP. proffered an appraisal in which he estimated Parcel 2's value to be \$\$\$\$\$ as of the January 1, 2008 lien date. The County asks the Commission to reduce Parcel 2's current value of \$\$\$\$\$ to the \$\$\$\$\$ appraisal value. In the appraisal, RESPONDENT REP. compared the subject property to 4 comparables located between 5 and 9 blocks from the subject. The comparables sold for prices between \$\$\$\$\$ and \$\$\$\$\$.

The County contends that the comparables are located in neighborhoods with similar values. Without evidence to suggest otherwise, the County's adjustments do not appear unreasonable. The appraisal would be more convincing were the comparables closer in location to the subject and smaller in size than 1,000 square feet (most of the comparables were in between 1,068 and 1,218 square feet in size). In addition, it would be more convincing if the one-bedroom subject property had been compared to other one-bedroom homes. However, the County does not have the burden to show that the subject property is worth more than the \$\$\$\$\$ value proposed by the taxpayers at the hearing or the \$\$\$\$\$ value proposed on their petition. The taxpayers have the burden to show that the subject's current value is incorrect and to provide evidence of a better value. The evidence submitted at the Initial Hearing does not show that Parcel 2's value is less than the \$\$\$\$\$ value proposed by the County. Accordingly, Parcel 2's value should be reduced to \$\$\$\$\$.

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Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Parcel No. #####-1's (Parcel 1) current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2008 tax year. Parcel No. #####-2's (Parcel 2) current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2008 tax year. The Salt Lake 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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