

09-3088
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 01-27-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF
RURAL COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3088

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009

Judges: M. Johnson

R. Johnson

Presiding:

Marc B. Johnson, Commissioner

R. Bruce Johnson, Commission Chair

Appearances:

For Petitioner: PETITIONER, Owner

For Respondent: RESPONDENT REP. 1, RURAL County Assessor

RESPONDENT REP. 2, RURAL County Chief Deputy Assessor

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, 2010. The County Assessor originally valued the property at \$\$\$\$\$, which was sustained by the Board of Equalization ("BOE"). The Petitioner ("Owner") is requesting a value of \$\$\$\$\$. At the hearing the Owner also raised the issue of whether the property should receive a primary residential exemption.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

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.

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.

Tax Commission Administrative Rule R884-24P-52(6)(f) provides in relevant part for the application of the residential exemption to unoccupied property:

If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

Under the provisions of Utah Code Ann. §59-2-103.5, a county may pass an ordinance requiring the owner of a property to file a written statement in order to receive the residential exemption.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. § 59-2-1006(1).

Under Utah Code Ann. § 59-2-103.5 a county may pass an ordinance requiring an owner of residential property to file an affidavit with the County Board of Equalization in order for residential property to be allowed the residential exemption.

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 a single-family residence. The Owner made two arguments. First, she argues that a nearby property, which is larger than the subject property, was assessed at \$\$\$\$\$, with taxes around \$\$\$\$\$. She believes that her property should be assessed on a similar basis. She also stated that the property was currently listed below \$\$\$\$\$ and had been listed in June of 2009 for \$\$\$\$\$.

The RURAL County Assessor ("Assessor") testified that the valuation was based on the building permit, supporting the testimony with a copy of a signed application that showed a "Valuation" of \$\$\$\$\$. The Building Permit Application was dated 2-23-07. In response to the Owner's argument of a neighboring assessment of \$\$\$\$\$, the Assessor stated that the assessment may have been due to the primary residential exemption. The Owner argued that she lived in STATE 1, but that the subject property was not a second home. The Assessor testified that the Owner had not filed the primary residential affidavit permitted under

§ 59-2-103.5(1).

After considering the testimony and evidence presented at the hearing, we find that the Owner has not provided an estimate of value, as of the January 1 lien date, that is more accurate than the assessed value. At best, the Commission can only ascertain that the value may be at least \$\$\$\$\$, and probably more, given the established real estate market decline in general. The Owner did not provide any market evidence to show a value on or prior to the lien date. Although the assessment appears high in comparison with the stated listing prices, those prices were effective six months after the lien date according to the Owner's own testimony.

With respect to the comparable assessment, the Owner did not provide supporting documentation to show that the assessment on the other property was for the full market value or the taxable value after the residential exemption.

We do recognize the weakness in the assessment. It was based on an estimate that was made for building permit purposes, and was originally made two years prior to the lien date. We believe that the assessment has been called into question, but have no evidence before us to establish the fair market value as of January 1, 2009.

Regarding the residential exemption, after reviewing RURAL County's website and, through the Property Tax Division, requesting a copy of the ordinance required under §59-2-103, the Commission is unable to verify that such an ordinance is in place. The website does not identify or list any ordinances, and the County provided a copy of the affidavit, but a copy of the required ordinance. The Assessor did not contest that the property is intended to be used for residential purposes.

DECISION AND ORDER

Based on the foregoing the Commission finds that the fair market value for the property as of the January 1, 2009 lien date is \$\$\$\$\$. On the issue of fair market value, the decision of the Board of Equalization is sustained.

In the absence of an ordinance under the provisions of §59-2-103.5, the Commission finds that the property qualifies for the residential exemption. RURAL County is directed to adjust the assessment for the taxable value accordingly.¹

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:

¹ If an ordinance has been passed the County may consider requesting a formal hearing, as outlined below.

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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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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