

09-3089
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 10-07-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF
RURAL COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3089

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009

Judge: M. Johnson

Presiding:

Marc B. Johnson, Commissioner

R. Bruce Johnson, Commission Chair

Appearances:

For Petitioner: PETITIONER 1, Owner, appearing by phone

For Respondent: RESPONDENT REP. 1, RURAL County Assessor
RESPONDENT REP. 2, 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 original assessment for the subject property was \$\$\$\$\$, and was reduced by the Board of Equalization (BOE) to \$\$\$\$\$. The Petitioner ("Owner") is requesting a value of \$\$\$\$\$ 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.

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.

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 Lot 120, a vacant, unimproved 0.46-acre lot located in the SECTION 1 of SUBDIVISION. The Owner provided a \$\$\$\$ sale of Lot 160, which included site improvements of \$\$\$\$, and took place in June, 2009. He testified that according to a realtor that this was the only sale in the subdivision since 2007 because “SECTION 1 vacant lots have not been selling.” The Owner further provided in a written submission that the realtor had advised him “if you wanted to list your lot with us this summer and really wanted it to move expect an offer of no more than \$\$\$\$.” He also provided a current listing of three lots across the street from the subject property, lots 155, 156, and 157. The asking price is \$\$\$\$ total, or \$\$\$\$ per lot. Finally the Owner testified that a realtor for a comparable subdivision, SUBDIVISION 2, had sold for about \$\$\$\$. No date, size, or other characteristics, besides have water, but no pavement, were provided.

The county assessor, testifying for the BOE, provided one sale, Lot 179, which took place in 2006 for

\$\$\$\$; apparently the most recent sale prior in the subdivision to the January 1, 2009 lien date. The county also provided several current listings, ranging in price from \$\$\$\$\$, listed in March, 2009, to \$\$\$\$\$, which was listed in October, 2008. In addition, the county provided a map that identified 14 sales occurring in 2004 and 2005. These sales ranged from \$\$\$\$\$ to \$\$\$\$\$ for a gravel pit. According to the Owner, the gravel pit was later covered with topsoil to be used as a building lot. One of the sales, lot 155, was also one of the three lots listed together for \$\$\$\$\$ that were provided by the Owner. It sold in 2005 for \$\$\$\$\$ according to the assessor. The assessor made an additional argument that 3-lot listing that the lots had smaller than typical frontage and steep grade, both of which result in building problems. Nine of the fourteen sales were for amounts less than \$\$\$\$\$ and four were between \$\$\$\$\$ and \$\$\$\$\$. Eight transactions were in 2004, ranging from \$\$\$\$\$ to \$\$\$\$\$; with an average price of \$\$\$\$\$ and a median of \$\$\$\$\$. Four sales occurred in 2005, ranging from \$\$\$\$\$ to \$\$\$\$\$; with an average of \$\$\$\$\$ and a median of \$\$\$\$\$.

The Owner's primary argument is that his listings and the one sale, which apparently would adjust to \$\$\$\$\$ after accounting for site improvements, are closer to the January 1 lien date than are the sales provided by the county. However, the single sale took place six months after the lien date, and is insufficient in and of itself to establish market value. He also argued that values in 2005 and 2006 were higher than values as of the lien date. The realtor's hearsay testimony notwithstanding, the current listings from both parties only indicate that market values since June, 2009 may be as low as \$\$\$\$\$, and certainly less than \$\$\$\$\$. It is clear from the record that in 2004 and 2005, values typically were \$\$\$\$\$-\$\$\$\$\$, and had peaked by 2006. At that point the market dropped, with no sales activity at all until June, 2009.

Based on the totality of the evidence, the Commission finds that although there is no specific evidence to support the \$\$\$\$\$ assessment, neither is there sufficient evidence to support the Owner's requested value range. The sales provided by the County are not dispositive of fair market value for the subject property, because they took place 3 – 5 years prior to the lien date. Furthermore, the \$\$\$\$\$ sale is clearly an outlier; it is \$\$\$\$\$ higher than the next highest sale, which took place in 2004, and was the only sale between 2006 and 2009. At the same time the sale provided by the Owner took place after the lien date and was not known or knowable. Accordingly, it is not dispositive in and of itself.

However, given the complete lack of market sales for a 3-year period, the Commission believes some adjustment in addition to that made by the BOE is warranted. The evidence clearly shows that sometime during 2006, all sales of vacant lots in the subject subdivision ceased through at least the first half of 2009. The evidence also shows that, based on average sales prices, market prices declined from \$\$\$\$\$ in 2005 to \$\$\$\$\$ in June of 2009. For the lien year, the Commission finds that an additional \$\$\$\$\$ adjustment on top of the \$\$\$\$\$ value set by the BOE is appropriate.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009 is \$\$\$\$\$. The RURAL County Auditor is ordered to adjust its records in accordance with this decision.

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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner