

09-3232
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2009
DATE SIGNED: 6-23-2010
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-3232</p> <p>Parcel No. #####-S.P. Tax Type: Property Tax/Locally Assessed Tax Year: 2009</p> <p>Judge: Dixon Pignanelli</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER, Pro Se, by phone
REPRESENTATIVE FOR PETITIONER, Real Estate Broker, by
phone
For Respondent: RESPONDENT, Assessor, RURAL COUNTY

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the RURAL COUNTY Board of Equalization (BOE). The County Assessor set the value at \$\$\$\$ and the County BOE sustained the value.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an initial hearing was held on April 16, 2010 in the RURAL COUNTY Offices. The Property Owner requested the value be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested the value set by the County BOE of \$\$\$\$\$ be sustained.

APPLICABLE LAW

All 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. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(12).)

(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 value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

The subject property is parcel no. #####-S.P. and is located at ADDRESS, in RURAL COUNTY, Utah. It is a #####-acre, unimproved located approximately three miles east of CITY on the south side and a couple of miles in from the road in the DEVELOPMENT. It has a slight slope and no trees, water, power or septic system. The Property Owner said he saw DEVELOPMENT advertised in the (X) Times. He bought it sight unseen on January 3, 2006 for \$\$\$\$\$. He thought it would be a good investment. Since purchasing the lot it is his understanding there have been lawsuits and tax liens that he believes encumbers the property. In support his requested value of \$\$\$\$\$ he spoke with a local RURAL COUNTY real estate broker, REPRESENTATIVE FOR PETITIONER. The real estate agent had told him the market had been very bad over the last two years and the only lots that had sold were lots purchased by adjoining property owners to increase their lot size. The agent said no ##### acre lots had been listed. He had had a sale of a like property for just a little over \$\$\$\$\$ and across the street from his property ##### acres with power and water had sold for \$\$\$\$\$. He had asked

REPRESENTATIVE FOR PETITIONER to provide information by phone in support of his requested value.

REPRESENTATIVE FOR PETITIONER was reached by cell phone and connected to the hearing. He said it was his opinion the housing market started to drop in October 2008. He said the developers of DEVELOPMENT “were in trouble as everyone got scammed” and “most agents won’t touch” the area. In the last ##### years the majority of sales in the DEVELOPMENT are to adjoining properties. All sales are down and the dollar value of sales down. He testified he had not sold one lot for the amount asked. There were few sales of ##### acre lots in the last ##### years. He believed a ##### acre lot with sewer and water sold for \$\$\$\$\$ - \$\$\$\$\$ and that is it. The highest resale value he has seen is \$\$\$\$\$. It is his opinion it would cost \$\$\$\$\$ to \$\$\$\$\$ to add sewer and water to the subject property. REPRESENTATIVE FOR PETITIONER was only part of the hearing for five minutes to provide testimony. He was in the mountain canyons showing properties and the phone reception was inconsistent and kept dropping the call. He did not hear or rebut the Assessor’s opinion.

The Assessor speaking for the County said he agreed the value started to go down, but not until very end of 2009. He said there would most likely be a lower value for the January 1, 2010 lien date. Starting in 2005 the value of the lots was increasing right up through most of 2008. His office was seeing sales of #####, ##### and #####-acre lots selling between \$\$\$\$\$ and \$\$\$\$\$, including a lot adjacent to the Property Owner which sold in January 2008 for \$\$\$\$\$. In support of his value he provided the sales comparables he provided for the September 15, 2009 BOE hearing. These are below. The Assessor also stated the County gives a value of \$\$\$\$\$ for septic, \$\$\$\$\$ for water and \$\$\$\$\$ for power (\$\$\$\$\$ total) if available on a lot.

DEVELOPMENT SALES			
Acres	Sales Price	Sale Date	County ID Number
###- acres	\$\$\$\$\$	DATE	#####-1
###- acres	\$\$\$\$\$	DATE	#####-2
###- acres	\$\$\$\$\$	DATE	#####-3
###- acres	\$\$\$\$\$	DATE	#####-4
### -acres	\$\$\$\$\$	DATE	#####-5
### -acres	\$\$\$\$\$	DATE	#####-6 ¹
### -acres	\$\$\$\$\$	DATE	#####-7

¹ To the side was typed “not a NAME sale”. The Assessor stated the NAME were the developers of DEVELOPMENT. It was his opinion the sale may not have been an arms length transaction and this would account for the lower sales prices for a #####-acre lot.

###- acres	\$\$\$\$	DATE	#####-8
###- acres	\$\$\$\$	DATE	#####-9

In seeking a value lower than that established by the County BOE the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing. The property owner has provided his personal opinion and the opinion of a local real estate broker. The Commission holds the Property Owner has provided verbal information to call into question the value of the subject property. The Commission now considers the totality of the evidence.

Although the Property Owner had a real estate agent who was willing to take time to provide an opinion of the market and his personal observations and experience with sales in the area, neither the Property Owner or the real estate agent provided sales sheets to support an opinion of value, the declining market or the possible encumbrances on lot sales in the DEVELOPMENT. Of the sales of which the agent spoke there were no dates or exact location of the sales, or other specifics given. It was proffered it could cost up to \$\$\$\$ to get septic and power to the subject lot, but no bids or estimates by contractors was provided.

One of the County's comparables sold after the lien date of January 1, 2009, which is the moment in time the value, must be determined. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore "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. (Utah Code Ann. 59-2-102(12).)

The County's other comparables sold prior to the lien date. Three sold in 2007, but five sold between January 18 and November 24, 2008 and ranged from \$\$\$\$ to \$\$\$\$\$. The January 18, 2008 sale was a #####-acre lot adjacent to the subject property that sold for \$\$\$\$ (the comparable is #####-4; the subject property is #####-S.P.). It is assumed the topography would be the same or similar to the subject lot. Although it is not known if the property had power, water and septic, if a \$\$\$\$ value for sewer, water and power provided by the County were subtracted from the sales price of \$\$\$\$ it would indicate a value of \$\$\$\$\$. If the value of lots in

the DEVELOPMENT was declining by 1% a month in 2008², the value of \$\$\$\$ may have declined between January and December to around \$\$\$\$\$. If the same calculations were applied to the November 24, 2008 sale of \$\$\$\$ (less \$\$\$\$ for utilities, less 1% a month decline in value) giving an adjusted value of \$\$\$\$\$, both this and the \$\$\$\$ are well above the BOE value of \$\$\$\$ set for the subject property.

Reviewing the evidence presented, the Property Owner's testimony and that of the real estate agent are insufficient to demonstrate error in the value determined by the BOE or provide an evidentiary basis to support a new value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009, is \$\$\$\$\$. The County Auditor is hereby ordered to assure its records are in accordance with this decision. 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

² The Commission notes both the Assessor and the real estate agent stated the market did not start to decline until the end of 2008; the Assessor felt it was closer to the very end of 2008.

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