

09-3463
LOCALLY ASSESSED PROPERTY
SIGNED 07-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER 1 & PETITIONER 2</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF RICH COUNTY, UTAH,</p> <p>Respondent.</p> | <p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-3463</p> <p>Parcel No. #####</p> <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 2, Pro Se, by phone

For Respondent: RESPONDENT REP., Assessor, Rich County, by phone

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 Rich County Board of Equalization (BOE). The County Assessor set the value of Parcel ##### at \$\$\$\$\$. The County BOE reduced the value of the parcel to \$\$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an Initial Hearing was held on April 22, 2010 in the Commission Office in Salt Lake City with the Petitioner and Respondent participating by phone. The Property Owner requested the value of the subject parcel 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 Parcel #####, is a 0.30 acre (12,863 sq. ft.) unimproved lot in Rich County, Utah. It is located at ADDRESS 1 in the SUBDIVISION 1, in DEVELOPMENT. The lot is in a large recreational area used predominantly in the summer and near (PORTION REMOVED). The Property Owner said she has listed the subject lot for \$\$\$\$ since the spring of 2009 and has not received any offers. She said she has never personally seen the lot because she lives out of state. She purchased the subject lot from a family member several years ago and understood the lot to be more difficult than others to access, more sloping than others, and that some utilities were available, but none were stubbed to the property. She also believes her street and surrounding area have more vacant lots making the area less valuable. In support of a lower value the Property Owner provided three comparable sales (Comps). Comp 1 was a 0.29 acre lot in the SUBDIVISION 2 and the Multiple Listing Service (MLS) sheet printed 9/14/2009 showed the listing was still active with an asking price of \$\$\$\$\$. Comp 2 was a 0.54 acre lot, in the SUBDIVISION 3 that sold for \$\$\$\$\$, and Comp 3 was 0.11 acre lot in the SUBDIVISION 4 that

sold for \$\$\$\$; however the MLS sheets for Comps 2 and 3 did not give sales dates. The Assessor stated both sold in spring 2009. The Taxpayer did not dispute this. (The Assessor added that Comp 3 is not in the same development, but in a development called SUBDIVISION 4).

The Assessor provided an appraisal, which gave a statement of value as of the lien date January 1, 2009 of \$\$\$\$\$. The Appraisal stated the subject was a good view lot with sloping topography. The Assessor stated there was a power box on the property, and electricity and sewer were available, but not gas. She said there were two other homes on nearby STREET 1-- one was built in 2005 and the other in 2008.

The Assessor use used six comparable sales she said were similar in terms of size, location, good view, acreage, and sloping topography. The sales occurred within the SUBDIVISION 3 and SUBDIVISION 1 which the Assessor said are “all intertwined in the AREA.” It was the Assessor’s opinion for the fourth quarter of 2008 there were no trends of increasing or decreasing value and in fact she saw in other areas where smaller lots sold for more. The sales comparables from the Assessor’s appraisal are summarized below.

| Address | lot size | sale date | sale amount | other |
|---------------------|------------|-----------|-------------|------------------------------|
| Comp 1 ADDRESS 1 | 0.31 acres | 5/19/2008 | \$\$\$\$ | 1.5 mile north of subject |
| Comp 2 ADDRESS 2 | 0.43 acres | 4/15/2008 | \$\$\$\$ | .5 mile west of subject |
| Comp 3 ADDRESS 3 | 0.63 acres | 7/1/2008 | \$\$\$\$ | 1 mile southwest of subject |
| Comp 4 ADDRESS 4 | 0.30 acres | 9/1/2008 | \$\$\$\$ | 2 miles southwest of subject |
| Comp 5 ADDRESS 5 | 0.28 acres | 4/16/2008 | \$\$\$\$ | 1 mile north of subject |
| Comp 6 ADDRESS 6 | 0.31 acres | 6/6/2008 | \$\$\$\$ | 1 mile south of subject |

The same utilities are available to the comparables as to the subject property.

The Property Owner provided three comparable sales. Comp 1 appeared to still be listed for sale as of September 2009 based on the date on the MLS sheet, and Comps 2 and 3 sold in Spring 2009, which is after the lien date of January 1, 2009 and therefore between buyers at a different time in the market. 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).)

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. Reviewing the evidence presented, the Commission holds the Property Owner has not provided enough evidence to call into question the value of \$\$\$\$ set by the BOE for the subject property. The County’s Appraisal supports the BOE value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of Parcel No. ##### 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 must include the Petitioner's name, address, and appeal number and be mailed to the address listed below:

Appeals Division
Office of the Commission
Utah State Tax Commission
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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