

10-0298
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 08-17-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 10-0298 Parcel Nos. #####-1 #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Phan
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Presiding:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER SPOUSE
For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor
 RESPONDENT REP. 2, Appraisal Supervisor, RURAL COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al., on May 10, 2011. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") originally filed an appeal of the decision of the RURAL COUNTY Board of Equalization regarding the assessed values of the subject properties for the lien date January 1, 2009, and the matter eventually proceeded to this Formal Hearing before the State Tax Commission.
2. However, prior to the hearing the parties had reached an agreement as to the value for parcel no. #####-2 ("#####-2"). #####-2 had originally been valued by the RURAL COUNTY Assessor's Office at \$\$\$\$\$. The RURAL COUNTY Board of Equalization reduced the value to \$\$\$\$\$. The parties agreed that the value should remain at \$\$\$\$\$ for #####-2.

3. Parcel no. #####-1 (“Parcel #####-1”) had originally been valued by the County Assessor at \$\$\$\$ as of the January 1, 2009 lien date. The County Board of Equalization (the “County”) sustained the value. Included in this total value was a value for a water share, a value for the land and a value for the building. At the Formal Hearing the parties did not contest that the building value should be \$\$\$\$.

Additionally, the County no longer argued that a value should be added for the water share. At issue between the parties remained the land value. The Property Owner requested that the land value be lowered to \$\$\$\$.

The County asked that the land value be set at \$\$\$\$ and it is unclear what portion of the County Board of Equalization’s value had been for the land minus the water share.

4. Parcel #####-1 is a 0.09 acre lot located on STREET 1 in CITY 1, Utah. It is improved with a 105 year old cabin structure that was originally constructed in CITY 2, Utah and later moved to the site in CITY 1, where it was used for a time as an OFFICE. In 1937 the Taxpayer’s grandparents purchased the property and used it as their residence until 1948, after which it sat vacant for years. The Taxpayer purchased the property in 1973 and restored the building to some extent to maintain it for family and because of its historical significance. The Taxpayer indicates that the building is not habitable, has only one cold water sink and no other plumbing fixtures. The only heat is by wood stoves. He also indicates there is no insulation and large gaps around windows. Additionally, the front of the lot is steep and the cabin cannot be easily accessed in the front from the street on the Parcel #####-1. The Taxpayer purchased the neighboring parcel to obtain easier access to the cabin on Parcel #####-1.

5. The Taxpayer asked that the value of the land be lowered to \$\$\$\$.

He testified that he had spoken with a realtor who provided him information on all the sales that she could find in CITY 1, as well as had spoken with neighboring property owners. He explained that CITY 1 is the (WORDS REMOVED) in Utah and there were few sales of property. Many of the property owners use their property for weekends or vacation homes because of its mountainous setting. There are few full year residents in CITY 1. He also testified that CITY 1 generally had been divided up into lots that were 0.09 of an acre in size. He provided at the hearing all of the sales information he had been able to obtain. He provided a Multiple Listing Service (MLS) report for two 0.09 acre lots that had sold together for a total price of \$\$\$\$ on March 7, 2003, or \$\$\$\$ per lot. He provided the MLS report for lots totaling 0.71 acres in size had sold together in May 2002 with a water share for a total price of \$\$\$\$.

The Taxpayer subtracted \$\$\$\$ for the water share and estimates that this would indicate a price for the land of \$\$\$\$ per lot.

6. In addition to these two older sales which the real estate agent had been able to obtain, the Taxpayer provided evidence that he had purchased the neighboring lot (#####-2) for \$\$\$\$\$ in November 2005. This was a 0.09 acre lot like the subject. He purchased this parcel so that he could obtain easier access to the Parcel #####-1. He provided an affidavit from PERSON 1 who indicated that she had purchased lots together with a water share for a total of \$\$\$\$\$ in 2005. She estimated that the value of the water share was \$\$\$\$\$ and the amount of the purchase price attributable to the land of \$\$\$\$\$. The Taxpayer indicated that this had been a total of 0.81 acres, and the price attributable to the land would equate to \$\$\$\$\$ per each 0.09 acre lot. Additionally, the Taxpayer provided an affidavit from PERSON 2 that she had purchased three 0.09 acre lots for a total of \$\$\$\$\$ or \$\$\$\$\$ per lot in 2008. Also he provided an affidavit from PERSON 3 who indicated that she had purchased a total of five lots plus some additional land, a total of 0.5 acres, for \$\$\$\$\$ in 2007. The Taxpayer calculated this worked out to be 5.6 lots, and a price of \$\$\$\$\$ per lot.

7. The County argued the value of the lot was \$\$\$\$\$, which was the base price the County applied in CITY 1 to lots of 0.09 acres in size. The County's value was based on a reappraisal or Land Guide for the area that had been prepared for the County by an independent appraisal group. The County submitted as evidence a copy of portions of the study. When asked to explain how the value of \$\$\$\$\$ per lot had been derived, the County's representative indicated it was too complicated to explain and referred only to the study.

8. Therefore, upon review of the portions of the study that were submitted, which had been prepared by the APPRAISAL COMPANY, only two land sales in CITY 1 were specifically mentioned in the discussion and it was the APPRAISAL COMPANY'S conclusion stated in the discussion that these two sales indicated a value per lot of \$\$\$\$\$ or \$\$\$\$\$. However, based on the MLS print outs provided, the study significantly over calculated the per lot value. Page 15 of the study states, "Parcel #####-3 sold in May 2003 along with Parcel #####-4 for \$\$\$\$\$. If \$\$\$\$\$ is deducted for the water connection that leaves \$\$\$\$\$ attributable to the two lots or approximately \$\$\$\$\$ per lot." However the MLS full report of the sale, which was provided by the County, indicates something different. Parcel #####-3 had, in fact sold in May 2002, but the transaction, which had a total price of \$\$\$\$\$, included water and 0.71 acres of land. The MLS report states it was "7 Lots in beautiful CITY 1." If the purchase price minus the water share is divided by the 7 lots, it equals a value of \$\$\$\$\$ per lot.

9. Also at Page 15 of the study it states, "Parcel #####-5 sold in September 2005 for \$\$\$\$\$. This parcel is 0.27 acres in size (or the size of three 0.09 acre lots). This property sold for \$\$\$\$\$. If \$\$\$\$\$ is

deducted for water rights, that leaves \$\$\$\$ to the land or approximately \$\$\$\$ per 0.09 acre lot.” Again the MLS report contradicted this assertion. It indicated that #####-5 had sold in September 2005 with approximately 9 lots, or 0.81 acres in total, and a water share for \$\$. This purchase price after subtracting \$\$\$\$ for the water, works out to be \$\$\$\$ per lot. Additionally, this purchase is the subject of the PERSON 1 affidavit which confirms the MLS report as to the number of lots and acreage in this purchase.

10. After reviewing all the evidence submitted in this matter, there was not one sale that supports a value of \$\$\$\$ per 0.09 acre lot. The prices ranged from \$\$\$\$ to \$\$\$\$ per 0.09 acre lot using the Taxpayer’s calculation for the water share. Given these sales, the value of the subject land is clearly nearer to the \$\$\$\$ requested by the Taxpayer than the \$\$\$\$ requested by the County.

11. Evidence has been shown that the County’s value is in error and to support a value of \$\$\$\$ for the land of the subject property. With an \$\$\$\$ value for the land and a \$\$\$\$ value for the improvement, the total value of Parcel #####-1 is \$\$\$\$.

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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

“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. 59-2-102(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. . . . (Utah Code Ann. Sec. 59-2-1006(1).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment

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contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. Property tax is based on the fair market value of the property as of the lien date January 1 of the tax year at issue. Utah Code Sec. 59-2-103. Fair market value is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. In this case the Taxpayer has shown error in the value established by the County and provided a sound evidentiary basis to support the lower fair market value for the property that he had requested.

Considering the evidence and the applicable law in this matter, the value for Parcel #####-1 should be lowered to \$\$\$\$\$. The value for #####-2 should be reduced to \$\$\$\$\$ based on the stipulation of the parties.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market values of the subject properties as of January 1, 2009, are \$\$\$\$\$ for Parcel #####-1 and \$\$\$\$\$ for #####-2. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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