

10-0372
LOCALLY ASSESSED PROPERTY
SIGNED 07-08-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF
DAVIS COUNTY, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 10-0372

Parcel No. ##### - 1

Tax Type: Property Tax / Locally Assessed

Tax Year: 2009

Judge: Chapman

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer

For Respondent: RESPONDENT REP. 1, from the Davis County Assessor's Office
RESPONDENT REP. 2, from the Davis County Assessor's Office

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 May 24, 2010.

At issue is the fair market value of the subject property as of January 1, 2009. The subject property is a 0.56-acre, vacant residential lot located at ADDRESS in CITY 1, Utah. The Davis County Board of Equalization ("County BOE") reduced the \$\$\$\$ value at which the subject was originally assessed for the

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2009 tax year to \$\$\$\$\$. The taxpayers ask the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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. . . .

. . . .

(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.

. . . .

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *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, (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 0.56-acre lot in the SUBDIVISION. The taxpayer purchased the subject property for \$\$\$\$\$ in June 2007. Three pipelines cross the subject property. As a result, the taxpayers assert that improvements (i.e., a home and any other structures) can only be built on a relatively small portion of the lot. The County did not refute the taxpayers' assertions about the pipeline or the area on which improvements can be built.

The taxpayers submitted both valuation and equalization arguments to contest the subject's current assessed value of \$\$\$\$\$. The Commission will address the arguments separately.

Fair Market Value. The taxpayers claim that the subject's value for 2009 is less than the \$\$\$\$\$ price they paid for it in June 2007 because prices for lots in the area began to fall in late 2007 and continued to fall throughout 2008. However, no evidence was submitted to show that lot values fell between June 2007 and the January 1, 2009 lien date. The County did not admit that values fell in the subject property's area during this period.

The County proffers evidence to show the prices at which a number of other lots in the subject's subdivision sold in 2007. Although most of the other lots are smaller than the subject, they all sold for higher prices than the subject, which sold for \$\$\$\$\$. The other lots sold in 2007 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The taxpayers contend that the subject property was the last to sell and sold for a lesser value because it is one of the few lots in the subdivision affected by the three pipelines that cross it. Although the County implies that the subject may have sold for a value that was below its fair market value, the County admitted that the County BOE determined that the subject property needed an adjustment to reflect the negative influence of the pipelines that crossed it. The County BOE reduced the value of the subject property by approximately \$\$\$\$\$ to account for the pipelines (10% reduction of the lot's primary acre value).

The County proffered evidence to support its contention that the subject's current value of \$\$\$\$\$ correctly represents its "fair market value" as of January 1, 2009. First, the County submitted evidence to show that as of the lien date, the taxpayers were listing the subject property for sale at \$\$\$\$\$. Second, the County submitted lot sales that occurred throughout Davis County in 2008. These lots sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. No evidence was proffered to show whether any of the lots were in the same city as the subject property. These sales do not show whether the subject's current 2009 value of \$\$\$\$\$ is correct or not. In addition, the price at which a person lists a property does not, on its own, establish that property's fair market value at the time of listing. Furthermore, it is noted that the taxpayers significantly reduced the list price after the lien date and that it is currently listed for sale at \$\$\$\$\$.

Third, the County submitted an appraisal in which it estimated the subject's value to be \$\$\$\$\$ as of the lien date. The County did not ask the Commission to increase the subject's value based on the appraisal. In the appraisal, the subject is compared to two lots in CITY 1 and one lot in CITY 2 that sold in mid-2008. The three lots sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ and were adjusted to adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$. However, the appraiser did not adjust the comparables to account for the pipelines going through the subject property. If the same \$\$\$\$\$ adjustment made by the County BOE were made to the two lots in CITY 1, their revised adjusted sales prices would be \$\$\$\$\$ and \$\$\$\$\$. The subject's current value is in this range.

The taxpayers have the burden to show that the subject's value was less than \$\$\$\$\$ as of the lien date. The taxpayers have not provided comparable sales or other evidence to demonstrate what the value was on the lien date. The County's evidence does not show that the subject's fair market value as of the lien date is different than its current value of \$\$\$\$\$. As a result, the subject's fair market value as of the lien date is determined to be \$\$\$\$\$.

Equalization. The Commission has found that the taxpayers have not shown that the subject’s fair market value, as of January 1, 2009, is less than its current value of \$\$\$\$\$. Nevertheless, the subject’s value may be reduced if the evidence shows that subject’s value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property’s assessed value may properly represent its “fair market value,” the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The subject’s current value of \$\$\$\$\$ is slightly higher than the \$\$\$\$\$ price at which the subject property was purchased in June 2007. The taxpayers have submitted evidence to show that the 2009 assessed values of 10 other lots in its subdivision are less than their 2007 purchase prices. The taxpayers assert that the other lots are assessed for 2009 at values that are, on the average, 7.6% lower than their 2007 prices. As a result, the taxpayers believe it is inequitable to assess the subject property at a value that is greater than its 2007 purchase price when other lots in the same subdivision are assessed at values that are below their 2007 purchase prices. The taxpayers ask the Commission to reduce the subject’s current value by 7.6% to \$\$\$\$\$, to account for equalization.

The values at which the subject and the other lots in the subject’s subdivision were sold in 2007 and the values at which they are assessed for 2009 are shown on the following chart:

Parcel No.	Sales Date	2007 Sales Price	2009 Assessed Value	% Difference in Values
Subject	06/06/07	\$\$\$\$\$	\$\$\$\$\$	+0.5%
##### - 2	08/24/07	\$\$\$\$\$	\$\$\$\$\$	-6.7%
##### - 3	05/07/07	\$\$\$\$\$	\$\$\$\$\$	-2.0%
##### - 4	05/11/07	\$\$\$\$\$	\$\$\$\$\$	-4.3%
##### - 5	07/05/07	\$\$\$\$\$	\$\$\$\$\$	-1.8%

##### - 6	05/18/07	\$\$\$\$\$	\$\$\$\$\$	-2.4%
##### - 7	10/31/07	\$\$\$\$\$	\$\$\$\$\$	-18.4%
##### - 8	06/12/07	\$\$\$\$\$	\$\$\$\$\$	-3.0%
##### - 9	06/19/07	\$\$\$\$\$	\$\$\$\$\$	-16.8%
##### - 10	05/18/07	\$\$\$\$\$	\$\$\$\$\$	-3.7%
##### - 11	04/25/07	\$\$\$\$\$	\$\$\$\$\$	-13.6%

The above information does not clearly show that equalization is necessary. First, only 4 of the 10 comparables show a disparity of assessment of more than 5.0% when compared to the subject's assessment. Second, none of the lots that sold for less than \$\$\$\$\$, like the subject, show a disparity of assessment in excess of 5.0%. All of these lots, like the subject, were assessed in 2009 at values that are within 5.0% of their 2007 sales prices. Third, the evidence shows that three of the four more expensive lots in the subdivision (i.e., those that sold in excess of \$\$\$\$\$) were assessed in 2009 at significantly lower values than their 2007 sales prices. However, it is not known whether market conditions between 2007 and the 2009 lien date had a greater negative effect on more costly lots than on less costly ones. The information provided at the Initial Hearing does not show that an inequity of assessment occurred or that any inequity of assessment was so pervasive as to require equalization.

In conclusion, the taxpayers have not met their burden of proof to show that the subject property's current value of \$\$\$\$\$ is incorrect under either a fair market value or equalization argument.

Kerry R. Chapman
 Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject property's current value of \$\$\$\$\$ for the 2009 tax year. It is so ordered.

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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 taxpayer'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

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