

10-3049  
LOCALLY ASSESSED PEROPTY  
TAX YEAR: 2010  
SIGNED: 07-11-2010

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1 AND PETITIONER 2,  Petitioner,  vs.  BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 10-3049  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010  Judge: R. B. Johnson M. B. Johnson
---	--

**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:**

R. Bruce Johnson, Commission Chair  
Marc B. Johnson, Commissioner

**Appearances:**

For Petitioners: PETITIONER 1  
For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor  
RESPONDENT REP. 2, Deputy County Assessor

**STATEMENT OF THE CASE**

Petitioners ("Taxpayers") bring this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 8, 2011 in accordance with Utah Code Ann. §59-1-502.5. The issue in this case is the fair market value, as of January 1, 2010, of a 0.22 acre building lot in the SUBDIVISION 1. The Board of

Equalization valued the property at \$\$\$\$\$. The County seeks to sustain that value. The Taxpayer asks us to reduce the value to \$\$\$\$\$.

The Taxpayers' appeal is based on their purchase of the subject property for \$\$\$\$\$ in 2009. The Taxpayers had been looking for a building lot in the AREA 1 since the summer of 2008, with the assistance of a local realtor. The subject property had been listed for sale by its prior owner since June 9, 2009, with an asking price of \$\$\$\$\$. In November, 2009, the Taxpayers offered to purchase the lot for \$\$\$\$\$ in cash. The offer was accepted and the sale closed on December 30, 2009. The Taxpayers had no prior relationships with the seller or the real estate agent. They believe the sale was an arm's length transaction that established fair market value as of the lien date—two days after closing. They also note that the property is subject to an easement to provide access to a property situated behind the subject.

The County does not allege that there was any prior relationship between the buyer and the seller. They argue, however, that the sale was below fair market value. The MLS listing said the seller "must sell" and was "extremely motivated."

The County provided the following list of 2009 sales in developed subdivisions within the Brian Head city limits:

<u>Description</u>	<u>Acreage</u>	<u>Sale Date</u>	<u>Price</u>
Subject	0.22	06/10/2009	\$\$\$\$\$
ADDRESS 1	0.69	10/23/2009	\$\$\$\$\$
ADDRESS 2	0.20	05/01/2009	\$\$\$\$\$
ADDRESS 3	0.52	03/11/2009	\$\$\$\$\$
ADDRESS 4	0.34	11/24/2009	\$\$\$\$\$
ADDRESS 5	0.68	10/20/2009	\$\$\$\$\$

The sales fall into two groups. Three sales were of \$\$\$\$\$ or more. These were in the SUBDIVISION 2 and SUBDIVISION 3. The other three properties sold for \$\$\$\$\$ [the subject], \$\$\$\$\$ (0.69 acres) in the same subdivision as the subject, and \$\$\$\$\$ (0.68 acres). The County would disregard the last sale because it was a foreclosed property. The County also listed sales from 2008 and 2010. We have disregarded these sales because of significant changes in price levels over the last few years.

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.

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.

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.

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 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

Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a

willing buyer and seller, neither being under any compulsion to buy or sell. In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value.

We believe the best evidence of the value of the subject property is the sales price at which it was purchased two days before the lien date. Although the MLS indicated that the seller was highly motivated, the property was on the market for almost six months. Thus it had adequate exposure to the market and the Taxpayers' offer was apparently the highest one received. Although the MLS listing said the owner "must sell," this statement may have been more to attract buyers than to reflect any legal or economic compulsion. In the absence of more evidence, we cannot conclude that the seller was compelled to sell at this price.

The most comparable sale provided by the County, other than the sale of the subject itself, is the other 2009 SUBDIVISION 1 sale. It was over three times the size of the subject and closed two months earlier in a declining market. It sold for \$\$\$\$\$. We recognize that, other things being equal, the fair market value per square foot is generally smaller for a larger property than it is for a smaller one. It is also clear, however, that, other things being equal, a willing buyer of a cabin property would pay considerably more for a 0.69 acre lot than for a 0.22 acre lot. Thus, the other SUBDIVISION 1 sale relied on by the County supports a value considerably lower than \$\$\$\$\$ requested by the County.

Moreover, the subject is burdened by an easement. It does not appear that the County was aware of the easement. Although the Taxpayers did not attempt to quantify the exact effect of the easement, it is likely that it would reduce the value.

The evidence, taken as a whole, does not indicate that the sales price of the subject property, after almost six months on the market, was significantly below fair market value.

It may be that the Taxpayers got a good deal; but their sales price is the best evidence in the record of the fair market value of the subject property as of the lien date.

#### DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2010 lien date. The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

Appeal No. 10-3049

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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

ckl/10-3049.int