

11-158
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2010
SIGNED: 04-24-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 11-158 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010 Judge: Marshall
--	---

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Representative
 PETITIONER REP. 2, Appraiser
For Respondent: RESPONDENT REP., Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the Salt Lake County Board of Equalization (“the County”). This matter was argued in an Initial Hearing on April 21, 2011 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2010 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. The County is asking the Commission to reduce the value to \$\$\$\$\$. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

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). See also Utah Code Ann. §59-1-1417 which provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in CITY 1. It is a 0.91-acre parcel improved with a seventy year-old rambler with a brick exterior. The home has 1,326 square feet above grade and a 1,238 square foot basement that is 75% finished. It has two bedrooms, one bathroom, a fireplace, and a two-car carport.

The Taxpayer’s representative stated that he grew up on the property and is familiar with the area. He stated the home was built in 1940, has lathe and plaster interior, masonry brick

exterior, and there has been some updating. He stated that he does some real estate development and does not see a lot of value in the land. Taxpayer’s representative explained there is a cistern on the land which provides water for four homes; he stated that it also has two irrigation ditches that run down the property, making development more difficult.

The Taxpayer’s representative argued that the backage piece is essentially land-locked. The subject property is eighty-one feet wide, and that to be developed the irrigation ditches would need to be moved. He testified that he spoke with the county regarding development and learned there are issues with ingress and egress. He stated he was told there needs to be a roadway large enough for snow removal equipment to turn around. Taxpayer’s representative stated that to the east of the subject there is a private road, and that it was expensive to put in because the owner had to run all utilities down that road. He expected that if they were to use that road to access the backage of the subject property, they would have to pay the owner 20% to 25% of the development costs at a minimum.

The Taxpayer’s representative stated that within three-hundred feet to the South of the subject there is a quarter acre lot with approximately 75-ft of frontage, that has been on the market for over a year. He does not know what the asking price was. He further testified that he was unaware of any new growth in the area, and does not understand how the County arrived at their appraised value.

PETITIONER REP. 2 testified that he was hired in March 2010 to perform an appraisal for the purpose of determining value for the sale of the property to a related party. The Taxpayer submitted an appraisal report that determined a value of \$\$\$\$\$ for the subject property as of March 1, 2010. Following are the comparable sales used in the Taxpayer’s appraisal:

	Address	Lot Size	Square Feet	Bsmt	Garage	Sales Date	Sales Price	Adjusted Sales Price
Subject	ADDRESS 1	0.91	1,326	1,238	Carport			
Sale #1	ADDRESS 2	0.24	1,174	1,174	2-car	10/3/09	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS 3	0.69	1,310	1,086	2-car	10/2/09	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS 4	0.20	1,331	1,309	2-car	11/3/09	\$\$\$\$\$	\$\$\$\$\$
Sale #4	ADDRESS 5	0.18	1,255	1,269	2-car	7/22/09	\$\$\$\$\$	\$\$\$\$\$
Sale #5	ADDRESS 6	0.24	1,466	1,466	2-car	6/30/09	\$\$\$\$\$	\$\$\$\$\$

He stated that his appraisal addressed the cistern in the back of property, and included a photograph. He stated that the cistern is quite large, estimated it was twenty feet by 14 feet, it holds 10,000 gallons of water, and sits almost in the middle of the property. In his opinion, the cistern creates a significant deterrent to developing the subject property.

PETITIONER REP. 2 testified the he looked for homes that had sold and were built between 1940 and 1960s, in the neighborhood, and of similar size. He believes his \$\$\$\$\$

determination of value is the upper end of the value range. PETITIONER REP. 2 stated that his price per square foot analysis also supports this contention. He stated that the value per square foot, using total square footage rather than gross living area, comes out to \$\$\$\$\$. PETITIONER REP. 2 testified he found twenty-four neighboring homes that ranged in value from \$\$\$\$\$ to \$\$\$\$\$ per square foot. PETITIONER REP. 2 made lot size adjustments at \$\$\$\$\$ per acre.

The County’s representative submitted a retrospective appraisal that determined a value of \$\$\$\$\$ for the subject property as of January 1, 2010. Following are the comparable sales used in the County’s appraisal:

	Address	Lot Size	Square Feet	Bsmt	Garage	Sales Date	Sales Price	Adjusted Sales Price
Subject	ADDRESS 1	0.91	1,326	1,238	Carport			
Sale #1	ADDRESS 7	0.29	1,316	1,316	1-car	10/9/09	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS 8	0.48	1,076	1,076	2-car	9/8/09	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS 9	0.25	1,459	700	2-car	10/16/09	\$\$\$\$\$	\$\$\$\$\$
Sale #4	ADDRESS 10	0.21	1,546	1,321	Carport	12/10/09	\$\$\$\$\$	\$\$\$\$\$
Sale #5	ADDRESS 11	0.22	1,414	848	Carport	10/28/09	\$\$\$\$\$	\$\$\$\$\$
Sale #6	ADDRESS 12	0.23	1,304	1,304	1-car	6/23/09	\$\$\$\$\$	\$\$\$\$\$

The County’s representative noted that he determined 0.36-acres for the existing improvements and the potential lot development would be 0.55-acres. He stated that land sales were scarce, but he was able to find sales in CITY 1 and CITY 2, east of STREET 1. He had five comparable sales to support the land value for the backage parcel that sold between April and September of 2009, and ranged in size from 0.21 to 1.16-acres.

The County’s representative provided an aerial photograph that shows the location of the subject, the cistern, and the irrigation ditches. He stated that the cistern is not located in the center of the parcel, and argued that there is no reason that the parcel could not be divided. He stated that with the private lane located to the east, which already has utilities taken down it, the costs to develop would be minimized. He spoke with two different excavators who work in the area, and got bids for \$\$\$\$\$ and \$\$\$\$\$ per linear foot to move the irrigation ditches. He came up with an estimate of \$\$\$\$\$ per linear foot, and noted there were roughly 400 feet of irrigation ditch to move. He stated that the cost estimates are at the high-end, and are for closed pipe irrigation ditches. The County’s representative testified that he would not have suggested that the highest and best use of the subject property is to develop it further unless the property had met all requirements. He stated that he spoke with Planning and Development and was told that developing the back of the parcel into a separate building lot was legally permissible.

With regard to the Taxpayer’s appraisal, the County’s representative stated that the comparable sales occurred prior to the January 1, 2010 lien date. But he noted that they are all

significantly smaller than the subject property, ranging from 0.18-acres to 0.69-acres. He noted that the Taxpayer's appraiser has not bracketed acreage on the high-end. And argued that he could not determine an appropriate adjustment amount if he does not have lots on the upper range of acreage. He noted further that the Taxpayer's appraisal makes no mention of the possibility of subdividing the property, and considers the current use to be the highest and best use of the property. Finally, the County's representative argued that the Taxpayer's price per square foot is not the best way to determine the value of the subject. He stated that if the appraiser is looking only at value per square foot, the homes are not being compared for all characteristics, and the appraiser does not have the full picture.

In rebuttal, the Taxpayer's representative stated that only one of the County's comparables was within a half-mile of the subject¹, and the rest were located in CITY 2, which is more desirable. In addition, he argued that the development costs would be extensive to develop the back of the lot; he stated that a cul-de-sac would be required, that electricity would have to be buried, and the nearest sewer connection is above the grade of the property. The Taxpayer's appraiser stated that he considers the back of the subject property to be excess land, not land that can or should be developed. He stated that if the existing structures were removed, then the property would be open for development. He stated that he valued the subject property in its current as-is usage, not looking at future development.

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. 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.

The issue before the Commission is straightforward. The Taxpayer argues that the excess² land cannot be sold separately "as is;" and made adjustments in its appraisal to account for the differences in land size between the subject property and the comparable residential sales. The County argues that the excess land can be separated, and then sold under what is defined in the appraisal report as a "hypothetical condition." A hypothetical condition is a term of art used

¹ The County's land comparables were all specified as being located 5.69 miles from the subject property. A cursory review of the addresses showed this not to be the case; the comparable sales were, in fact, located from 0.5 miles north to 4 miles south of the subject property.

² Both appraisers use the term "excess land." According to terminology used by the Appraisal Institute, "excess land" can be sold separately from the land parcel, while "surplus land" cannot be separated. *The Appraisal of Real Estate*, 13th ed., p. 214.

in the real estate appraisal business, and is generally defined as a situation contrary to fact, but which is assumed to be true for the purpose of analysis or the appraisal.³ The hypothetical condition in this case is that the excess land would be developed separated from the rest of the land, and sold as a separate parcel. Based on this, the County valued the excess land separately from the residence and underlying land.

There does not appear to be any significant difference between the values of the residence and the associated land that supports the residential use. The County expressly values the residence and 0.36 acres at \$\$\$\$\$. The Taxpayer range of adjusted sales prices can be recalculated by removing the specific adjustments for lot size. Those adjustments ranged from \$\$\$\$\$ for 0.22-acre difference in land size to \$\$\$\$\$ for a 0.73 acre difference. After removing these adjustments, the range of adjusted selling prices is \$\$\$\$\$ to \$\$\$\$\$. Accordingly, this decision will focus on the value of the additional land, with particular attention to the County's hypothetical condition analysis. The critical factors to be considered are that the excess land is undeveloped, is encumbered by a cistern and irrigation ditches that service four homes, and lacks frontage and public access unless a flag lot is created.⁴

The Taxpayer assumes that a buyer would continue to use the entire property as a single family residence. The County ostensibly assumes that only part of the property would be used as a single family residence, but does not explain what would be done with the additional vacant land. This is a question of first, highest and best use, and second, the applicability of a hypothetical condition. In the first instance, the County expressly stated that highest and best use would be considered as the basis of the excess land value. The County's appraiser, however, failed to fully address this issue when he testified that the highest and best use of the subject property is to develop it further based only on the condition of it being legally permissible according to "Planning and Development". He then appraised the excess land without addressing any other elements of highest and best use (physically possible, financially feasible, and maximally productive)⁵. Furthermore, regarding the second question, the Commission is concerned in general with establishing fair market value based on a hypothetical condition because the assumptions, by definition, are contrary to known facts. In this case even the assumptions behind the hypothetical condition are questionable.

While a buyer might approach a potential purchase in the same general manner as suggested by the County, i.e., considering the value of the excess land apart from the residence, it

³ Id., p. 135. See also *Uniform Standards of Professional Appraisal Practice*, 2012 -2013 Ed., p. U3.

⁴ The back part of the parcel borders on a private road.

⁵ See *The Appraisal of Real Estate*, 13th ed

is in no way clear that the same analysis or market data would be used. The fundamental issue is the concept of the willing and knowledgeable buyer. A knowledgeable buyer would dispose one or the other. Rather than discussing how separate and distinct property types will be used, the County assumes a single transaction without any consideration of the ultimate disposition of the property. There is no basis to determine the fair market value of the additional land, without an explanation of how that land, as well as the existing residence, will be used by the buyer.

The County's appraisal report and analysis raises additional concerns. To begin, from the available sales information and immediate neighborhood information, it would appear the older residential improvements in the neighborhood may contribute little or no value to the land. It does appear clearly from an aerial photograph provided by the County that more recent development and construction has taken place in the immediate neighborhood. The County, however, has failed to provide any analysis of the immediate market conditions as they relate to the value of the excess land.

The report also states "[t]he County requires the contingency for this parcel that the backage parcel/parcels meet the requirements of a flag lot." (Emphasis added.) However there is no indication of how the flag lot would be configured, nor is there an indication that any of the comparable land sales was a flag lot. It is also clear that the excess land has no public access. While the County's analysis does not state expressly that a flag lot is the appropriate development, there is no other indication of what the additional lot configuration should be. Nor is there any other indication how access would be provided. From the aerial photograph it is clear that there is no room to provide access from the street on which the subject property fronts, and from which a flag lot could be created. The residence and site improvements cover most of the width of the lot, which is relatively narrow. There appears to be no space to provide a driveway to the rear of the lot without encroaching on the residence. At the same time adding a driveway for the hypothetical flag lot would have a significant impact on the frontage. Even were the development of a flag lot possible, the County failed to either include a flag lot as a comparable, or to even recognize and consider the market effect of a flag lot.

Another concern arises in examining the aerial photograph with respect to the County's adjustment for lot size. The new construction in the immediate neighborhood appears to be for homes that are quite a bit larger than the subject residence, although the parcels are clearly on smaller than the subject excess land. The subject property appears to be too narrow to accommodate homes the size of the more recent construction. Accordingly, the dimensions of the proposed lot are at least as important, if not more important, than the acreage. Not only this (and

related to the issue of the flag lot), the County failed to identify the exact configuration of the excess land. On this basis alone, the hypothetical condition fails; there is simply no indication of what property would be sold.

In addition, the Taxpayer testified that the cistern creates a potential cloud on the title to the land. The County failed to address the effect of the cistern and the irrigation ditches, other than to estimate the cost to move them to another part of the land. Even that adjustment, however, presupposes that investors would pay the same price for the excess land as they would for a property that was not encumbered by the cistern and drainage ditches.

Finally, as discussed previously, the County's hypothetical sale of the excess land supposes that a single knowledgeable buyer would purchase two distinct property types at full market value in a simultaneous transaction. In this specific case, a single owner cannot use these two properties at the same time unless one is an investment property. If either one is an investment property, a knowledgeable buyer would expect a return on the investment. The Commission is not persuaded that a knowledgeable buyer would pay full market value that would be re-sold at that same price as the total investment under a hypothetical condition. For example, assume that the buyer wants to occupy the existing residence, and sell off the excess land. The land would be sold at full market value for \$\$\$\$\$ after putting in the additional development costs. The buyer would have invested \$\$\$\$\$ and received \$\$\$\$\$. That is a return of the investment, but there would be no return on the investment.

To summarize in closing, the Taxpayer has provided an appraisal dated two months after the lien date. All of the comparable sales, however, were prior to the lien date, and the appraiser made no time adjustment between the appraisal date. Accordingly, the Commission finds that the value estimated by the appraiser to be sufficient for purposes of the assessment. The excess land value adjustment was \$\$\$\$\$ per acre, which was not supported by direct market evidence. The appraiser concluded that the excess land cannot be sold off separately. Nonetheless, the size of the subject lot should be given weight. The Taxpayer's comparable # 2 has a lot size of 0.69 acres and represents the largest of the lots for any of the comparable residential sales submitted by either party. The residence was superior to the subject. The selling price was \$\$\$\$\$ and the adjusted selling price was \$\$\$\$\$. Although the difference in lot sizes was 0.22 acres, the comparative difference is sufficient to at least partially mitigate the effect of any land adjustment.

The County estimated the subject property under a hypothetical condition that land could be segregated, developed, and sold separately from the existing parcel. Using a hypothetical condition is questionable at best because it assumes conditions that are contrary to known facts.

Furthermore, the County failed to substantiate the hypothetical condition. And, in applying the hypothetical condition, the County ignored facts that would affect the estimate of value.

The County did not refute the Taxpayer's lot size adjustment of \$\$\$\$ for the excess undeveloped land as-is, nor has it provided a reasonable alternative estimate of value. The County has failed to establish that the excess land could be separated and sold off from the parcel in an as-is condition. Based on the evidence provided by both parties, the Taxpayer's comparable #2 represents the most reliable estimate of fair market value for the subject property. Accordingly, the Commission finds the value of the subject property is \$\$\$\$.

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 Salt Lake County Auditor is hereby ordered to adjust its records accordingly.

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner