

11-439
LOCALLY ASSESSED PROPERTY - COMMERCIAL
TAX YEAR: 2010
SIGNED: 09-20-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 11-439 Parcel No. #####-1 Tax Type: Property Tax / Locally Assessed Tax Year: 2010 Judge: Chapman
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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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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, Taxpayer
For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor
 RESPONDENT REP. 2, from the RURAL 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 August 16, 2011.

At issue is the fair market value of a vacant residential lot as of January 1, 2010. The subject property is located at ADDRESS in CITY 1, Utah. The RURAL COUNTY Board of Equalization (“County BOE”) reduced the \$\$\$\$ value at which the subject was originally assessed for the 2010 tax year to \$\$\$\$\$. The taxpayer asks 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(1) provides that “[a]ny 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”

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 lot is 0.53 acres in size and is located in the SUBDIVISION. Homes have been built in the SUBDIVISION for more than 20 years, and there are only a few lots in the subdivision (including the subject lot) that have not yet been developed. The subject lot sits at the end of a ridge and has an unobstructed

view of the VALLEY. The subject lot is steep and is rocky, which would require some of the rock to be removed in order for a home to be built. However, development is possible, as the lots on either side of the subject lot had similar rocky conditions and now have homes with basements on them.

Taxpayer's Information. The taxpayer states that there have been no recent sales of lots in the subject's subdivision, but was able to proffer 2 listings of vacant lots in the subdivision. One is a 0.32-acre lot that was listed for sale at \$\$\$\$\$ in March 2009, while the second is a 0.29-acre lot that was listed for sale at \$\$\$\$\$ in March 2010. Both lots are smaller than the subject lot. The listings for both of these lots indicate that they also have good views. However, neither of the lots appear to have a view that is as good as the subject's.

In addition, the taxpayer proffered 13 comparables sales of lots in other subdivisions.¹ Two of the comparable sales occurred in 2009 (before the lien date), while the other 11 sales occurred between February 2010 and April 2011 (after the lien date). The taxpayer divided his comparable sales into two groups, one for lots in "older" subdivisions, like the subject's subdivision, and one for lots in "newer" subdivisions. The taxpayer claims that the subject's value should be determined with lot sales in older subdivisions and not with lot sales in newer subdivisions.

The taxpayer determined that 6 of his sales were for lots in older subdivisions. Because these 6 lots sold for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$, the taxpayer estimated the subject's value to be \$\$\$\$\$. Based on these comparables, the taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$.

1 The taxpayer provided 12 Multiple Listing Service ("MLS") reports and a summary sheet with information about 12 sales, 11 of which had a MLS report to support them. However, the taxpayer's Comparable #10, as shown on the summary sheet, did not have a corresponding MLS report to support it. The taxpayer included, however, a MLS report for a comparable that sold for \$\$\$\$\$ in November 2009, which the taxpayer did not list on his summary sheet and which will be considered the taxpayer's 13th comparable sale.

However, the taxpayer's proposed value of \$\$\$\$\$ as of January 1, 2010 is not convincing based on these comparables. First, a lot in the subject's subdivision that is significantly smaller than the subject and that does not appear to have as good a view as the subject was listed for sale at \$\$\$\$\$ as of the lien date. Second, of the taxpayer's 6 comparables that he determined to be in older subdivisions, 4 of them sold together in a bulk sale for \$\$\$\$\$ per lot. It is possible that these 4 lots sold at a discount because they were subject to a bulk sale. Third, the lot that sold for \$\$\$\$\$ is one-third the size of the subject and does not have a view. It also appears to be located in the middle of CITY 1 and may not be in a subdivision. Fourth, the County contends that the subject's subdivision is an "exclusive" subdivision and that the 6 lots that the taxpayer provided from older subdivisions are in less desirable areas than the subject's subdivision. Fifth, of the taxpayer's 6 comparables in older subdivisions, the one that sold for \$\$\$\$\$ is nearly the same size as the subject. For these reasons, the 6 comparables that the taxpayer provided from older subdivisions suggest that the subject's value was at least \$\$\$\$\$ as of the lien date and not \$\$\$\$\$, as he contends.

Furthermore, the taxpayer provided 7 comparables from newer subdivisions that sold for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The \$\$\$\$\$ lot sold in November 2009 near the lien date, while the other 6 comparables sold between May 2010 and April 2011. This suggests that prices may have fallen between the lien date and later sales dates in 2010 and 2011. Furthermore, the \$\$\$\$\$ comparable sale was sold at auction. Because this comparable sold for a price that is so much lower than any other sales price, it appears either to be an anomaly or to have sold below its fair market value due to its being sold at auction. In any case, the comparable that sold for \$\$\$\$\$ will be given less weight than other comparables. Of the taxpayer's 6 remaining sales from newer subdivisions, the ones that sold for \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ in 2010 and 2011 were bank-owned or short sales, while the two comparables that sold for \$\$\$\$\$ and \$\$\$\$\$ in 2009 and 2010 do not appear to be bank-owned or short sales. There is no information about the \$\$\$\$\$ sale to see if it was a bank-owned or short sale.

From this information, it appears that lots were generally selling for higher prices in late 2009 and early 2010 than later in 2010 and 2011. Also, while it appears that bank-owned properties and short sales may have been influencing market prices in mid-2010 and later, there is little or no evidence to suggest that such sales were influencing the market in late 2009 or as the lien date. The taxpayer's evidence includes a lot in a subdivision that sold in November 2009 for \$\$\$\$\$ and another in May 2010 for \$\$\$\$\$. These sales prices are near to or are in excess of the subject's current value of \$\$\$\$\$. The taxpayer's comparables do not support his contention that the subject's value was \$\$\$\$\$ as of the lien date. Nevertheless, the County's comparables should also be considered to see if they show that the subject's value is lower than \$\$\$\$\$.

County's Information. The County proffered 4 additional lot sales. These lots sold between February 2009 and July 2009 for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The lot that sold for \$\$\$\$\$ was part of a 3-lot purchase. As explained earlier, this sales price may have been discounted because of the bulk sale. Accordingly, this comparable will be given relatively little weight. The remaining 3 lots sold for prices of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$, and all of these lots are smaller than the subject property. While the lots that sold for \$\$\$\$\$ and \$\$\$\$\$ are less than half the size of the subject, the lot that sold for \$\$\$\$\$ is closer in size to the subject. The County states that the lot that sold for \$\$\$\$\$ is in the SUBDIVISION 2, which it describes as an "extension" of the subject's subdivision.

Unfortunately, none of the County's comparables are near the lien date, and it is unclear from the comparables submitted whether prices fell throughout 2009. However, when the information proffered by both parties is considered, it appears that values did not fall significantly until after the lien date. As a result, the County's information does not show that the subject's current value of \$\$\$\$\$ is incorrect. It also appears that bank-owned and short sales may have been influencing or setting the market in 2010 and 2011. However, there is little or no evidence of such sales influencing the market prior to the lien date. Sales existed throughout 2009, including late 2009, and as late as May 2010 that show a number of lots selling at \$\$\$\$\$ or

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more. There is no information of the cost that the taxpayer would have to incur to remove the rock on the subject lot to make it buildable. Nor is there evidence of the additional value attributable to the subject lot because of its location on a ridge and its excellent view. As a result, it is difficult to determine if the subject's value is higher or lower than the non-bulk sales that occurred in 2009 and early 2010 at prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Given this information available at the Initial Hearing, the taxpayer has not met his burden of proof to show that the subject's current value is incorrect or that his proposed value of \$\$\$\$\$ is a better estimate of the subject's value. Accordingly, the subject's current value of \$\$\$\$\$ should be sustained.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be sustained for the 2010 tax year. It is so ordered.

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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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