

11-442
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 1 & PETITIONER 2, Petitioners, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 11-442 Parcel Nos. #####-1; #####-2 #####-3 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 1, Taxpayer
 PETITIONER 2, 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 15, 2011.

At issue is the fair market value of three subject properties as of January 1, 2010. The three parcels are a cabin property and two nearby parcels of vacant land. The cabin property is identified as Parcel No. #####-2

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(“#####-2”) and is located at ADDRESS 1 near CITY 1, Utah. The RURAL COUNTY Board of Equalization (“County BOE”) reduced the \$\$\$\$ value at which #####-2 was originally assessed for the 2010 tax year to \$\$\$\$\$. The taxpayers ask the Commission to reduce #####-2’s value to \$\$\$\$\$. The County asks the Commission to sustain #####-2’s current value of \$\$\$\$.

One of the vacant land parcels is adjacent to the cabin property and is identified as Parcel No. #####-1 (“#####-1”). It is located at ADDRESS 2 near CITY 1, Utah. The RURAL COUNTY Board of Equalization (“County BOE”) reduced the \$\$\$\$ value at which #####-1 was originally assessed for the 2010 tax year to \$\$\$\$\$. The taxpayers ask the Commission to reduce #####-1’s value to \$\$\$\$\$. The County asks the Commission to sustain #####-1’s current value of \$\$\$\$.

The second vacant land parcel is not adjacent to either of the first two parcels described above, but is located several lots away from them. It is identified as Parcel No. #####-3 (“#####-3”) and is located at ADDRESS 3 near CITY 1, Utah. The RURAL COUNTY Board of Equalization (“County BOE”) reduced the \$\$\$\$ value at which #####-3 was originally assessed for the 2010 tax year to \$\$\$\$\$. The taxpayers ask the Commission to reduce #####-3’s value to \$\$\$\$\$. The County asks the Commission to sustain #####-3’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

All three subject properties are located in the SUBDIVISION, a large recreational subdivision to the east of CITY 1, Utah. #####-1 is a 1.2 -acre parcel of vacant land. #####-3 is a 1.3-acre parcel of vacant land. #####-2 is comprised of 1.4 acres of land and a 1½-story cabin that was built in 1994. The cabin has 1,744 square feet of "above-grade" space and a basement that is 1,082 square feet in size. All three properties were assessed on the cost basis. The taxpayers are only contesting the land value for each parcel. The taxpayers are not contesting the \$\$\$\$ value that has been assessed to #####-2's improvements.

The land values currently assessed to the subject parcels are \$\$\$\$ for the 1.2-acre #####-1, \$\$\$\$ for the 1.3-acre #####-3, and \$\$\$\$ for the 1.4-acre #####-2. The taxpayers ask the Commission to reduce the land value for each parcel to \$\$\$\$ for the following reasons. First, the taxpayers assert that two lots adjacent to the subject lots have each been listed for sale for \$\$\$\$ for the past five or six years without selling. The

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taxpayers state that the lots have been listed at this price through REALTOR. This information would be more convincing if the taxpayers had obtained a Multiple Listing Service (“MLS”) listing history for the two comparables to confirm that they were listed for sale for \$\$\$\$ each as of the January 1, 2010 lien date. When properties have been listed for sale for a number of years, often the listing price has decreased over time.

Second, the taxpayers submit a number of comparable sales that they contend are similar to the subject property. The taxpayers explain that the SUBDIVISION has a number of “higher” lots (in altitude) that have quaking aspen or pine trees on them and a number of “lower” lots that do not have trees, but instead have oak brush. Although the subject lots are located near the lots that have trees, the subject lots do not have trees. Instead, the subject lots have oak brush on them, like other lower lots. The taxpayers contend that the lots with trees typically sell for a higher price than lots that have oak brush, but no trees.

The taxpayers proffer seven comparable sales of lots in the subject subdivision that sold between October 2009 and August 2010 for prices ranging between \$\$\$\$ and \$\$\$\$\$. Six of these comparables, like the subject lots, have scrub oak, but no trees, on them. Two of these six comparables sold in October 2009 (prior to the lien date) for prices of \$\$\$\$\$ and \$\$\$\$\$. The seventh comparable, which sold for \$\$\$\$ in August 2010, has trees on it, but is located in a “slide” area that requires geological testing before a building permit can be obtained.

The County believes that the taxpayers’ comparables are insufficient to warrant a reduction in the subject lots’ values. First, the County states that four of the taxpayers’ seven comparables are bank-owned properties that should not be used as comparables. The Commission, however, believes that bank-owned comparables may constitute convincing evidence to determine fair market value if it appears that such sales are so pervasive that they establish the market for all similar properties. Second, the County asserts that lower lots near the “bottom” of the subdivision, like most of the taxpayers’ comparables, typically sell for lesser values

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than lots, like the subject, that are higher in the subdivision. Third, the three subject lots are located on a hill and have a view.

Fourth, the County submits four comparable sales of lots that are closer to the subject lots than most of the taxpayers' comparables. The County's four comparables sold between May 2009 and December 2009 for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. All of these lots, unlike the subject lots, have trees on them. The County adjusted its four comparables for access, view, location, and size and derived adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$ for the subject lots. As a result, the County asserts that these comparables support the subject lots' current land values, which range between \$\$\$\$\$ and \$\$\$\$\$.

When the parties' comparables are looked at as a whole, they show that lots without trees typically sell for prices of \$\$\$\$\$ or less and that lots with trees typically sell for prices in excess of \$\$\$\$\$. The subject lots do not have trees on them. Accordingly, it would seem that they would sell near the lower range of values. When the County made adjustments to its comparables, it determined that lots with views, like the subject lots, were worth \$\$\$\$\$ more than lots without views. If a \$\$\$\$\$ view adjustment is added to the highest value at which a lot without trees sold (\$\$\$\$\$), the resulting value for a lot without trees, but with a view, would be \$\$\$\$\$. This value appears to support the \$\$\$\$\$ value that the taxpayers have proposed for each of the subject lots. For these reasons, the land value for each of the subject lots should be reduced to \$\$\$\$\$. This would result in the values for PARCEL #####-1 and PARCEL #####-3 (the two vacant lots) being reduced to \$\$\$\$\$ and the value for #####-2 being reduced to \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements).

The County had another objection to lowering the "total value" of #####-2, which is the subject property improved with a cabin. #####-2's current value is \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements). The County proffers six sales of cabins in the subject subdivision that sold in 2009 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Three of the comparables sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$, while the other three sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. However, it is difficult to tell

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from this information what #####-2's fair market value is from this information without adjustments for the various differences in size and features. Furthermore, even if #####-2's current value of \$\$\$\$ is a reasonable estimate of its fair market value, there may be an equalization issue that would, nevertheless, require an adjustment to #####-2's total value or to its improvements value. First, 4 of the County's 6 comparables have 2010 assessed values that are 20 to 45% below their fair market values, as represented by their sales prices adjusted for time (the County stated that prices fell ½% per month during 2009). In addition, #####-2's "assessed building/sq. ft." rate of \$\$\$\$ per square foot is higher than the same assessment rate for 5 of the County's 6 comparables and significantly higher than 4 of the comparables. For these reasons, there may independently exist an equalization argument to reduce #####-2's value to the \$\$\$\$ value determined earlier or perhaps even lower. However, the taxpayers have not requested a value lower than \$\$\$\$ for #####-2. Given the totality of the circumstances, the \$\$\$\$ value determined earlier for #####-2 does not appear to be unreasonable.

In conclusion, the values of #####-1 and #####-3 should be reduced to \$\$\$\$\$. In addition, the land value of #####-2 should be reduced to \$\$\$\$\$, which results in total value of \$\$\$\$\$ for #####-2.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that values of Parcel No. #####-1 and Parcel No. #####-3 should each be reduced to \$\$\$\$\$. In addition, the value of Parcel No. #####-2 should be reduced to \$\$\$\$\$, with all of the reduction applied to the land value. The RURAL COUNTY Auditor is ordered to adjust its records in accordance with this decision. 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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