

12-806
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 3-5-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 & PETITIONER-2, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-806 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1

For Respondent: RESPONDENT, Certified Residential Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on November 19, 2012, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2011 lien date. The County Board of Equalization (“the County”) sustained the value. The Property Owner requested at the hearing a reduction to \$\$\$\$\$. The County is asking that the value remain as set by the County Board, although the County did submit an appraisal that is supporting a higher value.

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

The subject property is located at ADDRESS in CITY, Utah. The property is a ##### acre lot improved with a rambler style residence. The residence was constructed in YEAR. It has ##### square feet above grade and a finished basement of ##### square feet. There is also an attached two-car garage. The property is located in area zoned for horses and larger farm animals. It is, however, near in location to AN INTERSTATE and NAME OF STREET, and the Property Owner felt that it is negatively impacted by traffic noise. An unfenced canal runs along the back

of the lot, which the Property Owner stated was a hazard. There is a municipal culinary water system to this property, but there is not a municipal secondary water system for irrigation.

The Property Owner purchased the subject property on May 6, 2010 for \$\$\$\$\$ minus some concessions. It had been listed for sale on the Multiple Listing Service in October 2009, so it was listed for some time before the purchase by the Property Owner. It had been listed for \$\$\$\$\$ at the time of the purchase. It was the Property Owner's contention that the concession was a \$\$\$\$\$ home warranty and his purchase price for the subject property, plus some additional water rights was \$\$\$\$\$. He explained that one of the reasons he had purchased this property was the water rights that it came with. He stated that he had grown up in a rural area and he recognized the value of the water. He said that when he purchased the property he considered that he was paying \$\$\$\$\$ for the house and land and \$\$\$\$\$ for the water rights.

There were two different water rights that he acquired with the property. He explained that there was no municipal secondary water to this property and pointed out that watering more than 1 acre of land using the culinary water would be expensive. He stated that included in the purchase of the residence was a water share in the canal, so that he could irrigate this land using the canal water. He stated that the value of this share was \$\$\$\$\$. Also included in the purchase was some heavy duty pumping and sprinkling system to irrigate the subject land. He explained that he could sell the canal share independently of the subject property, that it was not tied to the subject property. The second water right was underground rights with a functioning well that had been drilled on the property. The Property Owner indicated that they were able to use the well for drinking water, although municipal culinary water was also available to the residence. It was his contention that the water rights and the personal property including the pumps, well equipment and irrigation equipment were worth approximately \$\$\$\$\$ and should be subtracted from his purchase price. The Property Owner acknowledged that there was only a small subset of buyers that would be concerned with these types of water rights.

After the Property Owner had purchased the property in May 2010, he made a number of renovations to the residence because it was an older home. The residence had single pane windows and the Property Owner replaced them. He replaced the water heater, the water softener, the garage door, some of the soffits, some shingles, put in fencing and landscaping. He said after he had these repairs made to the property it was appraised in September 2012 for financing purposes. It was the appraiser's conclusion that the value of the subject property as of September 5, 2012, was \$\$\$\$\$. The appraiser did not consider the purchase of the subject property. He looked at six sales and two active listings to reach this conclusion regarding the value. In this

appraisal the well and irrigation equipment on the subject were not included and there were appraisal adjustments or consideration for this type of equipment, therefore, no value was added to the subject for this equipment.

The County submitted an appraisal prepared by RESPONDENT, Certified General Appraiser, in this matter which indicated that the value of the subject property was \$\$\$\$\$ as of January 1, 2011. In the appraisal, the County did not add the well, canal water share or any of the pumping and irrigation equipment. The County's appraisal was based on five comparable sales, including the Property Owner's purchase of the subject property, and it did not appear that the subject property had sold for more because of the water rights. The sales relied on by the County were residences on larger parcels, all but one being more than 1 acre. The subject property had sold for \$\$\$\$\$ in May 2010. The other comparables had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. After making appraisal adjustments it was RESPONDENT conclusion that the indicated value range for the subject property was from \$\$\$\$\$ to \$\$\$\$\$.

In the appraisal, RESPONDENT did not include the well, pump and other irrigation equipment on the subject or note whether the comparables had any of these assets. He indicated generally the County does not include this type of equipment in its assessments. He also indicated that when looking at something like a well on a property, it would not be the cost involved to drill the well, but instead how much that well would attribute to the market value.

The representative for the County explained that values had continued to decline from the lien date at issue until into 2012 when the Property Owner's appraisal had been prepared.

In seeking a value other than that established by the County 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. In this case the Property Owner had purchased the subject property in May 2010 for \$\$\$\$\$ minus concessions. Included in the purchase was a water share that could be sold separately from the property. The Property Owner is correct in that this share should not be included in the assessed value as it is an intangible. However, it does not appear that this was included in the value. The County's value for this property of \$\$\$\$\$ was lower than the purchase price of \$\$\$\$\$. Because the appraisal value from both the County and the later appraisal from the Property Owner are deriving a value from properties without a well and other heavy pumping and irrigation equipment, these items are not included in the appraisal value. The sales also do not support that these items would contribute \$\$\$\$\$ in value in the market in general. These items may have strong appeal for the Property Owner, but having a well on a property that was already hooked up

to a culinary municipal water system may not be seen much of a benefit to many buyers. The fact that the appraisal from the Property Owner, which was performed 21 months after the lien date at issue, came in \$\$\$\$\$ is not inconsistent with the County's value of \$\$\$\$\$ as of January 1, 2011. Market values had declined in general over this period. However, the Property Owner had made some improvements to the subject property that would have offset some of the general decline.

Based on the evidence the value should remain as set by the County Board at \$\$\$\$\$. This value is lower than the Property Owner's purchase price so that the water share and any other personal property items do not appear to have been valued in this assessment. It is also lower than the County's appraisal value.

At the hearing, there was a concession made by the County upon reviewing the record. Most of the assessed value had been attributed to the land and then the land value was further divided in the primary acreage and secondary acreage. The Property Owner receives the primary residential exemption on the home and ##### acre of the land. The remaining ##### of an acre is designated as secondary and does not receive the exemption. The County conceded that the value attributed to the secondary land, of \$\$\$\$\$ was high. He indicated that the secondary land value should be \$\$\$\$\$ and the difference of \$\$\$\$\$ in value added to the residence.

After reviewing the evidence submitted by the parties the value should remain as set by the County Board of Equalization in total. However, how that value is allocated between the primary land, the secondary land and the residence should be adjusted as indicated by the County's representative.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ in total as of the January 1, 2011 lien date, which is the value set by the County Board of Equalization. However, the value for the secondary acre should be reduced to \$\$\$\$\$ and \$\$\$\$\$ should be added to the value of the residence. The total value will remain the same, but this will change the portion of the value that receives the primary residential exemption. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

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

Appeal No. 12-806

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner