

12-1223
TAX TYPE: PROPERTY TAX- LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 4-12-13
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 and PETITIONER-2, Petitioners, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1223</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1

For Respondent: RESPONDENT, 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 59-1-1006. This matter was argued in an Initial Hearing on February 7, 2013 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. At the hearing the Property Owner asked for a reduction to \$\$\$\$ and the County asked the Commission to uphold the County’s value at \$\$\$\$.

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 parcel is a vacant land parcel ##### acres in size and is located in a residential neighborhood. The parcel is irregular in shape and is not developable for a residence. It is located behind the back yards of several residences, although it does have some frontage on STREET. The subject parcel is located behind the residence of the Property Owners and they use part of this property as their yard with a picnic table and volley ball court. However, part of this land is steep and heavily wooded, and is used as open space, a retention area as well as a creek bed during the spring runoff.

The Property Owner requested that the value be lowered to \$\$\$\$\$ which was what this property had been assessed at for prior years. He did not have any sales of similar undevelopable

properties but he argued that it was not fair or right that the value of this property would double or triple in one year's time. The Property Owner argued that the market generally had not increased over this period of time. He also pointed out that there were a very limited number of persons that might want to buy this parcel and that would only be the few neighbors in the surrounding houses who might want to extend their own backyards, because the property could not be used for the construction of a residence.

The County's representative requested that the value remain as set by the County Board of Equalization at \$\$\$\$\$, which he indicated was \$\$\$\$\$ per acre. He stated that the County had valued this property as undevelopable land because the County understood that a residence could not be built on this parcel, that portions were steep, heavily wooded and contained a retention area. The County representative did state that it would have some value providing backyard space and open space. It was his contention that the County Board of Equalization's value was supported by sales of undevelopable land. There was a 0.08 acre piece of undevelopable land on ADDRESS-1 that had sold for \$\$\$\$\$. This was a rate of approximately \$\$\$\$\$ per acre. There were five purchases made by the Open Space Trust Fund of land that was purchased to be maintained as open spaces. These properties had sold for prices per acre ranging from \$\$\$\$\$ per acre to \$\$\$\$\$. He also provided a number of additional land sales which had all sold for more than the \$\$\$\$\$ per acre placed on the subject, but there was some question as to whether they could be developed and if so what would be the additional costs because of slope and terrain.

The Property Owner did argue that some of the County's comparables were superior to the subject because there was a possibility of development while the subject was undevelopable. Further, he argued that there were only a very small number of prospective buyers for the subject parcel, just those with residences right around the parcel.

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, but also provide an evidentiary basis to support a new value. Property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code §59-2-103. There is not a basis in the statute to limit the value to a prior year's value. As with this case, if the County had not reassessed or revalued the property for a number of years, the prior year's value may have been substantially incorrect. The law requires that when the County and Commission consider the value they determine the fair market value as of January 1 of the tax year at issue. Utah Code §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. Properties of this type are

difficult to value because there are not many sales of similar properties. In this case the County did provide some evidence of market value, while the Property Owner did not provide any market value evidence, just the argument that the value should not have increased so much over one year's time. Because there is not a provision in law providing the limitation requested by the Property Owner, the Property Owner has not met the burden of proof and this value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$, as of the January 1, 2011 lien date. 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 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

Robert P. Pero
Commissioner