

11-1777
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2010
DATE SIGNED: 10-25-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 11-1777 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010</p> <p>Judge: Phan</p>
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Presiding:

R. Bruce Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Attorney at Law
PETITIONER
For Respondent: RESPONDENT, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et seq., on August 23, 2012. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Property Owner") is appealing the assessed value of the subject property for the lien date January 1, 2010.
2. For the lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization (the "County") had reduced the value to \$\$\$\$\$. At the hearing, the Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing the County submitted an appraisal that indicated a value for the subject property of \$\$\$\$\$, but requested that the value remain as set by the County Board of Equalization.

3. The property at issue is Parcel No. #####, located at SUBJECT ADDRESS, CITY-1 Utah.

4. The property consists of ##### of an acre of land improved with a residence that was 5 years old on the lien date. The residence has been classified as a two-story style frame residence with no basement by appraisers for both parties. However, what is considered to be the main level is partially below grade. The main level walks out to ground level on two sides and a third side has been excavated around so that it also walks out at ground level. The fourth side is below grade. The kitchen and living spaces are on the main level and its finishes are of good grade and consistent with above grade finishes. The level considered the second story contains the bedrooms. The residence has a total of ##### square feet including both these levels. The appraisers for both parties considered all this square footage to be above grade. There is no garage or covered parking area on this property. The residence has a fireplace and there is a patio and two small decks.

5. The subject property has some income potential to be leased out for nightly rentals.

6. The subject property is near the CITY-1 Ski Resort. The parties were in dispute about the extent of the access to the ski resort slopes from the property. The witness for the Property Owner, NAME-1, who is a Certified Residential Appraiser, testified that one would more likely hike or drive to the resort. The County's witness, RESPONDENT, Certified General Appraiser, provided evidence¹ that the Property Owner does have limited access to cross over another owner's land to get to the ski slopes and also that the Property Owner has listed the property for sale as a ski in, ski out property. He provided a copy of a flyer advertising the property which stated this.² RESPONDENT did acknowledge that to use this easement to get to the ski slope one would "have to maneuver some to get over the snow."

7. From the information provided regarding the location near the ski resort, this property may not be directly ski in or ski out from the door of the residence, but one could get to the ski resort from this property by crossing over an adjacent parcel on foot with some climb involved.

8. The views from the subject are limited to mountains and wooded areas. There are no valley views from the subject residence.

9. The Property Owner submitted an appraisal of the subject property that had been prepared by NAME-1. It was NAME-1 conclusion that as of January 1, 2010 the value of the subject property was \$\$\$\$\$.³ He also provided the Multiple Listing Full Reports for the comparable sales which he used which included a

1 Respondent's Exhibit 1 Limited Access Easement.

2 Included as part of Respondent's Exhibit 2.

photograph of the properties.⁴ He relied on the market sales approach in the appraisal and considered six properties that had sold in CITY-1, Utah. However, none of his comparables were near a ski resort like the subject. Additionally most of his comparable residences were much older than the subject residence.

10. NAME-1 comparable no. 1 was located at ADDRESS-1, CITY-1, Utah, 1.07 miles from the subject. It had sold for \$\$\$\$ in September 2011. This property was on a .35 acre lot. It was a 19 year old residence with 2,419 square feet above grade and an unfinished basement of 493 square feet. Like the subject there was no covered parking. NAME-1 did not make a location adjustment although this property was not near a ski resort as was the subject. Further he did not make an adjustment for condition or grade. He did consider that this property had a better view than the subject, because there was a valley view and he made a negative \$\$\$\$ view adjustment. It was his conclusion that this sale indicated a value for the subject of \$\$\$\$.

11. The witness for the County, RESPONDENT, testified that this comparable was located in an area that had limited winter access and was far from the ski resorts. He also testified that there was an inferior water system and the residence was of an inferior quality. He also provided the Multiple Listing Service Report for this property, which contained a photograph of this comparable.⁵ Comparing this to the photographs submitted of the subject⁶ does, in fact, support RESPONDENT contention that the grade of this comparable was inferior.

12. NAME-1 comparable no. 2 was located at ADDRESS-2, 2.64 miles from the subject. This property had sold for \$\$\$\$ in October 2009. It was .66 acres of land improved with a 45 year old cabin property. This cabin had 1,568 square feet above grade and no basement. It had been sold furnished and with a Kubota, for which NAME-1 subtracted \$\$\$\$ from the purchase price. This property had a 2 car garage and NAME-1 made a negative \$\$\$\$ adjustment for that as the subject has no garage. This adjustment was consistent with adjustments for garage space made by RESPONDENT in his appraisal. NAME-1 did not make an adjustment for the fact that this property was not walking distance to a ski resort, nor did he adjust for the fact that this was a much older cabin. In the appraisal he gave this cabin the same grade and condition as the subject.

13. RESPONDENT testified that this property was located in SALT LAKE AREA. It was his

3 Petitioner's Exhibit 4.

4 Petitioner's Exhibit 5.

5 Respondent's Exhibit 3.

6 Petitioner's Exhibit 1.

opinion that this was an inferior area which was far from the ski resorts. He also testified that this was an inferior cabin compared to the subject cabin. The MLS Report photograph for this property supported his contention that this was an inferior grade.

14. NAME-1 comparable no. 3 was located at ADDRESS-3, 2.66 miles from the subject. This property had sold for \$\$\$\$\$ in August 2009. This was a 49 year old cabin with 1,343 square feet above grade and an unfinished basement of 250 square feet. Like the subject there was no garage. It was NAME-1 conclusion that this sale indicated a value for the subject of \$\$\$\$\$. He made no adjustment for the fact that this property was not near a ski resort, nor did he adjust for the age, grade or condition of the residence on this comparable.

15. RESPONDENT testified that NAME-1 comparable no. 3 was located far from ski resorts and was only a fair to average grade of construction as well as being significantly older than the subject.

16. NAME-1 comparable no. 4 was located at ADDRESS-4, 3.27 miles from the subject. This property had sold for \$\$\$\$\$ in September 2010. This property had 2120 square feet above grade and no basement. This property was 18 years old. It had a 2 car garage. It was NAME-1 conclusion that this property indicated a value for the subject of \$\$\$\$\$.

17. RESPONDENT testified that NAME-1 comparable no. 4 was an estate sale and located away from the ski resorts in an inferior neighborhood. He also indicated that the water system was inferior.

18. NAME-1 comparable 5 was located at ADDRESS-5, 1.05 miles from the subject. It had sold for \$\$\$\$\$ in October 2011. This was on .51 acres of land and improved with a 34 year old cabin. The cabin has 2,959 square feet above grade and an unfinished basement of 221 square feet. NAME-1 did consider this comparable residence to be in inferior condition and made an adjustment of \$\$\$\$\$ for this difference. It was his conclusion that this sale indicated a value for the subject of \$\$\$\$\$.

19. RESPONDENT testified in regard to NAME-1 comparable no. 5, that it was in an inferior location that was far from the ski resorts and had limited winter access. He also stated that the comparable residence on this property was inferior in quality of construction.

20. NAME-1 comparable 6 was located at ADDRESS-6. This was 0.75 or 1.04 miles from the subject. This had sold for \$\$\$\$\$ in August 2008. This property had 2,674 square feet above grade with no basement and was a newer home like the subject. There was no garage. NAME-1 had made a significant time adjustment, \$\$\$\$\$, for the date of sale of this property which he stated had occurred near the market peak.

21. RESPONDENT testified that NAME-1 comparable 6 was far from ski resorts, had limited winter time access and an inferior water system.

22. The Property Owner also made an argument for adjustment to the value based on equalization. NAME-1 had prepared an analysis of eleven properties based on the assessed value as determined by the County.⁷ For this analysis he did not choose the properties nearest in location to the subject but they appeared to be distributed throughout the general area. Although only some of these properties had basements, NAME-1 totaled the basement square footage together in the gross living area to make his comparison. These properties had been valued by the County in a range from \$\$\$\$\$ to \$\$\$\$\$. The Property Owner provided photographs of these properties. They were of varying ages, grade of construction and size. NAME-1 made appraisal adjustments to the assessed values of these properties based on the differences between these equalization comparables and the subject property. For instance, for three of these equalization comparables, comparables 2, 6 and 9, he made a negative \$\$\$\$\$ adjustments saying that these properties were of better quality of construction from the subject. It was his conclusion that using this method of adjustment that they indicated a range for the subject from \$\$\$\$\$ to \$\$\$\$\$.

23. The County argued that the equalization comparables submitted by NAME-1 did not support an equalization adjustment, noting that most of these comparables had a portion of their square footage that was actually in the basement. He provided information showing the grades, the above grade and basement square footage of each of these equalization comparables.⁸ It was his contention that comparables 2, 6, and 9, for which \$\$\$\$\$ quality of construction adjustments had been made, were really of the same grade as the subject. Regardless, the subject had been assessed within the range of these equalization comparables, and is not out of line.

24. The Property Owner submitted a sales ratio study which considered two of the County's comparables which had sold in late 2008 and the 2009 for the County assessed value. As well as two of the Property Owner's comparables which had sold late in 2009 and the 2010 for the County assessed values. It was the Property Owner's conclusion that the 2009 assessments had been on average 88.56% of the actual sale price and the 2010 assessments at 77.15% of the sales price.⁹

25. The County's representative pointed out that it was his conclusion that the market value of the

⁷ Petitioner's Exhibits 6 & 7.

⁸ Respondent's Exhibit 4.

subject was the \$\$\$\$ as indicated in his appraisal and yet the assessed value was only \$\$\$\$\$. If an adjustment was to be made based on this sales ratio study, he pointed out it should be made to the appraisal value and not the assessed value.

26. The County submitted an appraisal which had been prepared by RESPONDENT. It was RESPONDENT conclusion that as of January 1, 2010, the fair market value of the subject property was \$\$\$\$\$, although he stated that the County was not requesting an increase in value to the appraisal value. Although RESPONDENT did include five sales in his appraisal, as noted by the Property Owner's representatives, RESPONDENT comparables had sold years prior to the lien date with one of the sales occurring in December 2003. The sale nearest to the lien date had been a sale occurring in August 2008, and was, in fact, comparable no. 6 in NAME-1 appraisal. RESPONDENT indicated that he was looking for newer, good grade properties that were located near the ski resort. He placed more emphasis on these factors than trying to find sales near the lien date. The comparables which he used met his criteria and he was not able to find sales of this type of property that had occurred nearer to the lien date.

27. RESPONDENT comparable no. 1 was located at ADDRESS-7, 0.5 miles from the subject. This had sold for \$\$\$\$\$ in November 2005. This was a 10 year old residence of good quality of construction. It had 2,776 square feet above grade and a basement of 1,920 square feet that was mostly finished. Like the subject there was no garage. RESPONDENT made a date of sale adjustment of \$\$\$\$\$ and other adjustments for size. He also indicated that although this comparable was near a ski resort the access to get to the ski resort was a little farther than the subject and he made an adjustment of \$\$\$\$\$ for this difference. He concluded that this comparable indicated a value for the subject of \$\$\$\$\$.

28. The Property Owner's witness, NAME-1, testified that the County had used the most expensive comparables in the canyon. He provided photographs of the County's comparables.¹⁰ He pointed out that the County's comparable no. 1 was much larger than the subject and he argued it was of a better grade with butterfly trusses and larger decks and all of the above grade square footage was truly above grade.

29. The second comparable in RESPONDENT appraisal was located at ADDRESS-8, 0.40 miles from the subject. It had sold for \$\$\$\$\$ in July 2007. RESPONDENT made no date of sale adjustment. He considered the location of this sale to be equal to the subject as far as ski resort access. He did consider that this

9 Petitioner's Exhibit 3.

10 Petitioner's Exhibit 10.

property was of a better quality of construction making an adjustment of \$\$\$\$ for this difference. It was also substantially larger, having 3,503 square feet above grade and a finished basement of 2,594 square feet. In addition this property had a three car garage. After adjustments, including adjustments for the larger size of the residence and the garages it was RESPONDENT conclusion that this comparable indicated a value for the subject of \$\$\$\$.

30. NAME-1 pointed out that this comparable was located in NAME OF DEVELOPMENT, which in his opinion was the nicest development in the Canyon and a better location than the subject as far as access to ski resorts. RESPONDENT considered the location to be equal with the subject.

31. RESPONDENT comparable no. 3 was located at ADDRESS-9, immediately to the south of the subject property. Of the comparables this was the nearest in location to the subject and had the most similar ski resort access. It had sold years prior to the lien date at issue in this appeal, in December 2003, for a price of \$\$\$\$\$. RESPONDENT made a substantial time adjustment in the amount of \$\$\$\$\$. This comparable had a 5 year old residence, the same age as the subject. The residence has 3,420 square feet above grade, a basement of 888 square feet and a 3-car garage. RESPONDENT also considered this property to be of a superior quality of construction to the subject. He had considered the subject to be in good grade and this comparable of very good grade. The adjustment for this difference was \$\$\$\$\$. His conclusion was that this sale supported a value for the subject of \$\$\$\$.

32. The Property Owner had provided photographs of this comparable. NAME-1 testified that it was of a superior grade, and pointed out that this property had large covered decks.

33. RESPONDENT comparable no. 4 was located at ADDRESS-10, 0.90 miles north of the subject. It had sold for \$\$\$\$\$ in January 2007. This property was not near a ski resort and for this inferior location, the County made an adjustment in the amount of \$\$\$\$\$. This property had 2,560 square feet above grade and a finished basement of 2,120 square feet. It also had a two-car garage. RESPONDENT conclusion from this comparable was that it indicated a value for the subject of \$\$\$\$.

34. NAME-1 pointed out that this property had a premium valley view with large decks and an oversized three car garage.

35. RESPONDENT comparable no. 5 was located at ADDRESS-6 and was also NAME-1 comparable no. 6. This had sold for \$\$\$\$\$ in August 2008. RESPONDENT considered this to be in an inferior location compared to the subject because it was not near a ski resort. He made an adjustment of \$\$\$\$\$

for the inferior location. This property had 1,650 square feet above grade and a finished basement of 1,024 square feet. It was the same age as the subject. It had no garage like the subject. RESPONDENT considered this property to be of the same grade and condition as the subject. This property had sold with some \$\$\$\$ concessions and RESPONDENT acknowledged an error in that he had added this amount instead of subtracting it. Making this correction, his indicated value for the subject from this sale is \$\$\$\$.

36. NAME-1 also pointed out that this property had valley views.

37. RESPONDENT stated that he has used the higher priced sales in his appraisal because they were the properties that sold near the ski resorts and the newer residences. It was his contention that the newer residence sold for more than the older ones. Additionally, that there was a premium for location on a ski resort, which he stated was supported even by unimproved land sales.¹¹

38. After weighing all the evidence submitted in this matter, it is difficult to determine a value for the subject, due to lack of truly comparable properties that sold near the lien date. The Commission, and likely as well as the appraisers who prepared the appraisals, would prefer to have as comparables properties that were newer construction, near the ski resort, similar in size and had sold near the lien date. However, there were apparently no comparables like this. The Property Owner's criticisms of the County's comparables are not unfounded, several were much larger residences and some of a higher grade than the subject. They had sold years prior to the lien date. The County's appraiser did try to make appraisal adjustments for these differences where he found them to be warranted, although the large location adjustments and time adjustments from a sale occurring in 2003 are subjective. The Property Owner's sales, although nearer to the lien date, were less similar properties. They were older residences, far from the ski resort and often of lesser grade. The Commission agrees with the County that location next to the ski resort is a major factor in the value of these canyon properties and needs to be considered in an appraisal. However, NAME-1 made no adjustment for this difference. The Property Owner's market comparables were all inferior to the subject and the Property Owner's appraiser did not make adjustments for these differences in his market value appraisal either. He did adjust in his equalization appraisal for those properties that were of a superior grade in the amount of \$\$\$\$\$, which would have been in favor of lowering the value, but did not make this same adjustment to the inferior grade sales comparables in his market value appraisal. He also did not make an age adjustment. The Property Owner's market appraisal indicated a value for the subject of \$\$\$\$ without taking into consideration location

11 Respondent's Exhibit 2.

next to the ski resort. The County had applied an adjustment of \$\$\$\$\$ for this difference in its appraisal. This alone supports the value set by the County Board of Equalization at \$\$\$\$\$. Additional adjustments for age and grade should have been made in the Property Owner's appraisal which would also have increased the value. The County submitted an appraisal indicating a value of \$\$\$\$\$. However, the County recommended the value remain as set at \$\$\$\$\$. Although the Commission is required by law to place the value at fair market value based on the evidence before it, the Commission should not raise the value to that determined by the County in its appraisal, because the sales information is so significantly prior to the lien date it makes the appraisal conclusion rather speculative.

39. The Property Owner has not made his case for reduction based on equalization or his sales ratio study. The equalization information shows that there is a range of assessed values and the subject's assessed value was well within the range. He has not provided properties that are truly similar to the subject that have been assessed at a lower value. Additionally the sales ratio study contains too few sales to give an overall picture of the canyon properties, the adjustment, if any, would need to be taken from the fair market value of the subject, not the assessed value as argued by the Property Owner.

APPLICABLE LAW

All 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

“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. (Utah Code Ann. 59-2-102(12).)

(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. . . (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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. Property tax is based on its "fair market value" pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. There are properties that are more difficult to value because of the lack of comparable sales. In this case the sales were either inferior properties which sold nearer to the lien date, or properties that were more similar as far as age and location that sold years prior to the lien date, but were superior in size and in some cases grade. Considering this information a conclusion of \$\$\$\$\$, which is in the middle of the appraisal conclusions is warranted.

2. The Property Owner also argued an adjustment based on equalization. Utah Code Sec. 59-2-1006(4) provides that, "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." The value of the subject property deviated plus or minus 5% from many properties provided by the Property Owner, some were higher and some were lower, but there was not a showing that it deviated plus or minus 5% from comparable properties. This statute does not mean that all properties in an area should be assessed at the same value regardless of their differences in age, size and location and other factors that affect market value. The Court has held, "Intentional and systematic undervaluation or property may violate the equal protection and due process rights of property owners not granted preferential treatment . . ." (Citations Omitted) "The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be fairly described as a

statutory mechanism to implement the constitutional guarantee of uniform taxation.” *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004). Under this interpretation, when a property owner is arguing for a reduction based on equalization of property values, it is insufficient to show that there are some other properties in the County that are valued lower. A property owner must show that comparable properties are valued lower and that there are multiple unfairly advantaged properties. In this case the Property Owner has not shown the properties that were valued lower than the subject were actually comparable.

Considering the evidence and the applicable law in this matter, the value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2010, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.