

04-0036
Locally Assessed Property Tax
Signed 06/09/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal No. 04-0036
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel No #####
DAVIS COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	Judge: Phan
Respondent.)	

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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 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 order, 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:
 Jane Phan, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER
 For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Deputy Attorney
 RESPONDENT REPRESENTATIVE 2, Davis County Assessor
 RESPONDENT REPRESENTATIVE 3, Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 4, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the market value of the subject property as determined by Respondent for property tax purposes.

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2. The lien date at issue is January 1, 2003.

3. The subject property is parcel no. ##### and is located at ADDRESS CITY, Utah. The subject property is a .29 acre residential lot improved with a rambler style residence. The residence was constructed in 2002. The residence is a brick rambler with 1,695 square feet on the main and 1,782 square feet in the basement. The basement is unfinished except for 1 full bathroom. Petitioner explained that when he had the residence constructed he kept construction cost low by keeping the exterior of the residence plain. The residence is rectangular in shape with a single roofline that does not have the hips and valleys typical in homes of the size and age of the subject property. The windows are standard and uniform in size. There are no bay windows or “bump-outs” because, according to Petitioner, that would have increased the costs. The result is a plain exterior that is not typical of other new homes built in the area of similar size. In addition there is a two-car garage. Costs were also considered in finishing the interior. There are no vaulted ceilings in the interior and the ceiling is 8 foot though out. Petitioner also indicates he used laminate for all the counters throughout the house.

4. For the lien date at issue the County Assessor had valued the property at \$\$\$\$\$. Petitioner requests that the value be reduced to \$\$\$\$\$ or less. At the hearing, Respondent submitted an appraisal that indicated the value for the subject property was \$\$\$\$\$.

5. Petitioner’s value request was based mostly on his cost to purchase the subject property. He had entered into a purchase contract in May 2002 and closed on the purchase of the property in October 2002, paying a total amount for the land and the residence of \$\$\$\$\$. Petitioner provided the sales contract and his own testimony as evidence in this matter. Petitioner’s contract was with the builder of the residence and Petitioner had determined the design of the exterior and floor plan taking measures to specifically keep costs down. Petitioner also submitted evidence that COMPANY A and COMPANY B were selling new residences similar in size to the subject for a price similar to Petitioner’s purchase price and within a mile of the subject

property.

6. Respondent provided an appraisal prepared by APPRAISER supporting a value of \$\$\$\$ for the subject property. In the appraisal six comparables were considered, all had sold after the lien date, although two had occurred within a couple months of the lien date and would be good comparables. The rest occurred six months or later after the lien date. The Commission would prefer sales that occurred near the lien date either before or shortly after the lien date, but would prefer not to have sales six months or more after the lien date, unless there were no other sales. There was nothing to indicate there were insufficient sales that occurred prior to the lien date at issue in this appeal for use in the appraisal.

7. All comparables relied on by APPRAISER were the more typical new house construction that includes use of hips and valleys in roofline which allow some raised or vaulted ceiling space in the interior as his comparables also had bay windows or “bump-outs,” a half oval window over the main living room window and more ornamentation on the exterior. APPRAISER did not make an adjustment for this style difference. He indicated on his appraisal that the reason he did not was the subject had more front facing windows and more basement windows front and back than the comparables. He indicated that the cost of the extra windows would about make up for the costs of the hips and valleys. He did find that one of his comparables was inferior to the subject property as it had vinyl siding on the sides and back. Four of the comparables were residences with three car garages, although an adjustment of \$\$\$\$ was made for that difference.

8. In reviewing the evidence presented in this matter the Commission notes that a purchase of the subject property in an arms length sale near the lien date is generally considered to be prima facie evidence of market value. The question, however, when it is purchased from a builder, is whether there were some other items that affected the sales price in the transaction, for example if the purchaser were to supply some of the labor or do some of the finish work him or herself, or if the price of the lot was not included. In this case Petitioner presented evidence in the form of the purchase contract as well as testimony concerning the sale.

Although the contract was not particularly clear about the whether the lot was included in the price paid, Petitioner's testimony was clear on this point. Also the information from other homebuilders provided by Petitioner indicated that the price was not out of line with what other builders were charging for that size of home.

9. The Commission does not find adequate consideration was given by the appraiser for the style and appearance, as well as costs of the subject property. APPRAISER was not present to explain his comments about the number of windows off-setting the costs of the hips and valleys. The number of windows across the front may have more to do with the length of the subject property verses the length of the comparables. The windows of the subject are plain and not particularly large. There is clearly a style difference between the comparables and the subject that may affect marketability. This weighs in favor of relying on the purchase price just prior to the lien date for the subject property.

APPLICABLE LAW

1. 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 provide 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.)

2. "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).)

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

CONCLUSIONS OF LAW

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this matter Petitioner has met its burden of proof to indicate a lower value for the subject property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2003, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2005.

Jane Phan
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
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 Ann. §63-46b-13. 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 Ann. §§59-1-601 and 63-46b-13 et. seq.

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