

04-0605
LOCALLY ASSESSED PROPERTY
SIGNED 02-22-2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	FINDINGS OF FACT, CONCLUSIONS
Petitioner,)	OF LAW, AND FINAL DECISION
)	
v.)	Appeal No. 04-0605
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel No #####
SALT LAKE COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	Judge: Phan
Respondent.)	

Presiding:
 Jane Phan, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER
 For Respondent: RESONDENT REP, Deputy Salt Lake County District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 24, 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 as set by Respondent for the subject property for tax year 2003.
2. The lien date at issue is January 1, 2003.
3. The subject property is parcel no.#####, and is located at ADDRESS, CITY, Utah.
4. The County Assessor had originally valued the subject property for the lien date at issue at

Appeal No. 04-0605

\$\$\$\$\$. The County Board of Equalization raised the value slightly to \$\$\$\$\$. At the hearing Respondent submitted an appraisal of which the value conclusion was \$\$\$\$\$.

5. The subject property consists of a 1-acre parcel of land that is improved with a two-story split-level style residence. The residence was 7 years old. It has 2,315 above grade square feet and an unfinished basement of 1488 square feet. It has a stucco finish with some rock trim. There is also a detached 952 square foot garage. The property is in a naturally wooded area with matures trees, and a portion of the property, about .40 of an acre drops down into a steep ravine.

6. The general area around the subject property is a desirable residential location. However, the immediate neighborhood, including the subject property is located within the SITE. The Environmental Protection Agency has determined that the subject property as well as other residential properties within the site need to be cleaned to remove lead and arsenic contamination. As the property is on the (X) list it appears that this will eventually occur at no cost to the owner and, in fact, six of the twenty residential properties within the site have already been remediated and relandscaped by the EPA. However, there has not yet been sufficient funding to remediate the subject property and this is not likely to occur in 2005, but is likely to occur some time in the future.

7. Petitioner provided the information from the EPA that indicated when they remediated the subject property they intended to remove the top 18 inches of soil. The EPA report also lists 26 trees and 51 shrubs on the subject property. It was Petitioner's representation that the EPA planned on removing this number of trees and shrubs from the subject property. Petitioner did not know how many trees there were on the subject property. He argues that although the six properties that have already been remediated have as good or better landscaping after the remediation, they are more typical subdivision lots. Petitioner points out his property is a naturally wooded property with many mature trees. He feels that the EPA will tear out the mature trees and replace them with young trees. Based on this he feels the remediation will negatively impact

the subject property and that it would be many years before his property would look the same. Respondent had supplied photographs of the six properties that had already been remediated by the EPA in the (X) site. They had been re-landscaped and several mature trees remained on the properties after the remediation.

8. Petitioner argued the value of the subject property should be reduced to \$\$\$\$\$. He presented several arguments for this value. He felt that if the subject property had no contamination, the market value of the subject property would be \$\$\$\$\$. Then to this value he felt an adjustment of \$\$\$\$\$ should be made for the contamination. He thought the \$\$\$\$\$ was an adjustment that the County made for contamination. In addition Petitioner considered one comparable sale and the County's assessed value for two other properties that he felt were similar to the subject.

9. The comparable sale offered by Petitioner was a twenty-year old rambler with a similar lot size and comparable location. It was also contaminated like the subject property. It was located at ADDRESS 2 and had sold for \$\$\$\$\$ on February 26, 2004. The rambler had a wood and stone finish. Information supplied at the hearing indicated that at the time of the sale the "exterior had deteriorated & needs work." This comparable had 2026 above grade and 2002 finished below grade square feet. Petitioner, who acknowledged he is not an appraiser made some appraisal like adjustments and concluded that this sale indicated a value for the subject property of \$\$\$\$\$.

10. Petitioner also provided the county property tax valuations for two properties, which he felt were comparable to the subject and from which he determined the subject's value should be lower. He pointed out that the County had lowered the value for one of these properties, despite the fact that it was one of the ones that had already been cleaned up by the EPA.

11. Respondent submitted an appraisal in this matter prepared by APPRAISER, Sate Certified Appraiser. It was APPRAISER's position that the value of the subject property as of the lien date at issue was \$\$\$\$\$. In her appraisal she considered three sales all fairly close to the subject property. One of the

Appeal No. 04-0605

comparables, like the subject property, was contaminated and would be cleaned up as part of the (X) Site. The other two comparables were located near the subject but were not contaminated properties. The properties had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$.

12. The comparable that was also contaminated was located at ADDRESS 3 and had sold for \$\$\$\$\$. The land was only .30 acres in size. The residence was older than the subject, being 17 years old and in good condition as apposed to the very good condition of the subject. The comparable residence was larger in above grade square foot, had a similar basement and similar basement finish. APPRAISER made an adjustment of \$\$\$\$\$ for the difference in location between this comparable and the subject, concluding that the subject property was in a superior location. An adjustment of \$\$\$\$\$ was made for lot size as the comparable was only .30 acre while the subject was 1 acre. The Respondent had considered the subject lot, which was 1 acre in size to have only .60-acre as the primary lot and the remaining .40-acre as residual due to its steep grade. Although this property was considered to be contaminated by APPRAISER, she made a minus adjustment of \$\$\$\$\$ for contamination as her adjustment was based on the size of the property. Interestingly the same minus \$\$\$\$\$ adjustment was made on the other comparable that was .30 acre in size, which was not contaminated. She explained that it was a \$\$\$\$\$ per acre contamination adjustment based on size.

13. The two comparables that were not contaminated properties had sold for \$\$\$\$\$ and \$\$\$\$\$. APPRAISER made adjustments for the differences including size and location adjustments. The comparable that sold for \$\$\$\$\$ she considered to be the most similar as she did not find it needed a location adjustment and it had .58 of an acre which was a more similar lot size. This property was located at ADDRESS 3. To this property she made a minus adjustment of \$\$\$\$\$ for the difference in that the subject was contaminated and the comparable was not. The value indicated for the subject property from this comparable was \$\$\$\$\$.

14. WITNESS submitted a sales study on behalf of Respondent, from which he concluded that the fact that there was contamination made no difference as to the value of the properties in the (X) Site area.

He indicated that the county had been involved in valuing properties located within other (X) areas. It was his opinion that designation as a (X) site did not adversely impact the values and that the adjustment for contamination made by APPRAISER was not be necessary.

15. In weighing the evidence presented in this matter, there are only two contaminated property sales within the (X) site, the property considered in APPRAISER's appraisal which had sold for \$\$\$\$\$ and the property presented by Petitioner which had sold for \$\$\$\$\$. The County's comparable had sold in June of 2003, six months after the lien date at issue. The Commission does concur that this property indicates a value for the subject property at least as high as the assessed value or the appraisal value. The sale offered by Petitioner, which had sold for \$\$\$\$\$ occurred in February 2004. This is more than one year after the lien date and for that reason is less relevant to the value as of the lien date. It is also less relevant as it was a rambler, which typically is not compared to two-story properties. Petitioner's comparable did appear to be more similar to the subject as far as lot size and topography. However, not only was the residence older, the wood exterior was in disrepair at the time of sale. The County record rated this comparable as in only "fair" exterior condition. It graded the residence as "high" maintenance. These facts would tend to indicate that Petitioner's home would sell for more than this comparable. It is clear from these sales and the other sales submitted that the value for the subject would be higher than the \$\$\$\$\$ requested by Petitioner.

16. The County's appraisal value of \$\$\$\$\$ is within five percent of the value set by the County Board of Equalization of \$\$\$\$\$ and for that reason the Commission considers it to support the Board of Equalization value, rather than the higher value in this matter.

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).)

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. . . (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).)

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 not met his burden of proof.

Appeal No. 04-0605

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 \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2005.

Jane Phan
Administrative Law Judge

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.

04-0605.fof.doc