

04-1263
Locally Assessed Property Tax
Signed 04/22/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	Initial Hearing Decision and Order	
)		
Petitioner,)	Appeal No.	04-1263
)		
v.)	Parcel No.	#####
)		
Board of Equalization of Sanpete)	Tax Type	Property Tax
County, Utah,)		
)	Tax Year	2004
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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER, Property Owner

For Respondent: RESPONDENT REPRESENTATIVE, County Assessor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 17, 2005. The issue in this proceeding is the fair market value of the subject property as of January 1, 2004. Subject property is a 1,566 sq. ft. house located in CITY, Utah. It sits on 0.63 acres of land and is 98 years old, according to the assessment records. The Sanpete County Assessor had assessed the property at \$\$\$\$\$, which was sustained by the Board of Equalization (BOE). The Taxpayer, PETITIONER, is requesting a valuation of \$\$\$\$\$. The Assessor recommends that the assessment be sustained.

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 provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(11).)

(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.)

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).

DISCUSSION

The Taxpayer purchased the property in March of 2004 for \$\$\$\$\$. The property had been listed for \$\$\$\$\$ in January, and was foreclosed on previously in November of 2003. The Assessor testified that a Notice of Default had been issued for the property in July 2003, with an outstanding lien of \$\$\$\$\$. PETITIONER testified that he purchased the property for restoration. Subsequent to the purchase the property was partially demolished. He described it as having two rooms “cobbed on.”

The Assessor presented an appraisal that indicated a value of \$\$\$\$\$. It was prepared on a Uniform Residential Appraisal Report (URAR) form, and the appraiser, APPRAISER, and the Supervisory Appraiser, RESPONDENT REPRESENTATIVE, affixed their state appraisal license and certification numbers respectively. The assessment had removed the primary residential exemption since “no one was in the house” as of the lien date.

We deal first with the primary exemption, and then the valuation. Administrative Rule R884-24P-52 (“Rule 52”) specifies the Tax Commission’s criteria for determining primary residence. Section F.6. provides that “[i]f the county assessor determines that an unoccupied property will qualify as a

primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.” The Assessor made no representation that the house would not qualify as a primary residence in the future, only that it was not occupied on the lien date. Therefore the Commission finds that the property qualifies for the primary residential exemption.

Regarding the valuation, we are faced with two opposing, but compelling positions. First, although occurring subsequent to the lien date, are the listing and negotiated sales prices. We believe these are sufficiently close to the lien date to have been knowable. Although the sale was from a foreclosure, there is no evidence on this basis alone to establish that the purchase price was below market value. Thus the Petitioner has met his burdens of calling the assessed value into question and establishing an alternative value.

The second position is the appraisal report prepared by the assessor’s office. The report indicated that the sales price was low due to the foreclosure. The property was appraised at \$\$\$\$\$ or \$\$\$\$\$ per square foot. The value conclusion was based on three comparable sales. All three sales were foreclosures. Two of the sales, Comparables 2 and 3, were of more recent construction than the subject by forty and thirty years respectively. They sold for \$\$\$\$\$ and \$\$\$\$\$, or on a square foot basis of \$\$\$\$\$ and \$\$\$\$\$. Comparable No. 1 sold for \$\$\$\$\$ or \$\$\$\$\$ per square foot. After adjusting the sales prices, the indicated selling price of the subject property on a square foot basis for each of the three comparables was \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. Upon reviewing the appraisal, we believe the appraiser may have given too much weight to Comparables 2 and 3. It appears that Comparable No. 1 is most indicative of the value of the subject property, and that the other two tend more to set an upper limit of value rather than to establish it. Comparable No. 1 is roughly the same age as the subject, is 150 square feet larger, has a slightly larger lot, and has no covered parking, whereas the subject property has a single car carport. Based on this sale the Commission believes a more reasonable estimate of value, absent the actual sale and based primarily on the single comparable sale analysis alone, would be in the range of \$\$\$\$\$ to \$\$\$\$\$. This range is considerably higher than both the listing price of \$\$\$\$\$ and the \$\$\$\$\$ purchase price.

Nonetheless, we must determine which of the figures is more representative of value. We conclude that either the subject property was in much worse shape and condition than the comparable sales, or else that it might not have been marketed appropriately. Although the Assessor testified that he was familiar with both the subject and the comparables, there was no testimony by either party of the exact condition of the property. Even though the improvements have been razed, there is no other indication that this is due to the property being in worse condition than typical for the market. The appraisal report did not address the condition of the property, but rather stated that it, as well as the comparables, were “foreclosed vacant.” The property owner testified that the property was in poor

condition, but provided no evidence. In the absence of detailed descriptions of the physical condition of the subject and Comparable No. 1, we cannot reach any specific conclusion as to relative physical condition of the properties.

We next consider the market conditions. According to a letter written by the real estate agent who listed the property, it was listed at the beginning of January 2004, and negotiations were entered into with the Taxpayer at the end February, a period of at least 1½ months. Negotiations continued for another month before the transaction was settled. The total time between the listing and the closing was almost three months. If the property was worth the amount indicated in the appraisal, or even the lower value indicated by Comparable Sale No. 1 in the low \$\$\$\$ range, we wonder why there was not even an offer of at least the listed price of \$\$\$\$ during the listing period.

A foreclosure, while indicating possible concerns, is not in and of itself a non-bona fide sale. There was nothing presented at the hearing to indicate duress or any other non-physical problems. Furthermore, consistent with standard assessment administration and practice, this Commission typically gives considerable weight and deference to an actual purchase price of a property.¹

In summary, the Commission observes that this property was listed for three months at a price 25% below a purported market value that was based on other foreclosure sales and 25% below the outstanding lien. It was even listed for almost 20% less than its closest comparable, also a foreclosure. We believe a price this far below other indicia of market value can only be for two reasons, 1) the property was priced for a quick sale, 2) deterioration or physical problems were present, or a combination. Although the appraisal report states that both Comparable No. 1 and the subject “. . . had offers very quickly when on market ,” there is absolutely no evidence that the property sold within an unusually short marketing period. It is uncontroverted that the subject property was razed immediately after the purchase. There is some indication that the property may have been in poor condition. We are persuaded that the differential between the selling price and other market indicators was more likely due to problems inherent in the property itself. Thus we conclude that the selling price is the best evidence of market value.

Had there been evidence presented of a typical listing period being considerably longer than three months, or any other circumstances besides foreclosure that would distinguish this sale from the normal market, we might have viewed this transaction differently.

DECISION AND ORDER

¹ ‘In assessment litigation, under the “rules of evidence” a bona fide sale of the subject property is considered the best evidence of market value.’ *Property Appraisal and Assessment Administration* (International Association of Assessing Officers, 1990), 153.

On the evidence and testimony presented, the Commission finds the fair market value of the subject property to be \$\$\$\$\$ as of January 1, 2004. The Commission also finds that the subject property should be classified as a primary residence for assessment purposes.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 _____, 2004.

BY ORDER OF THE COMMISSION:

Marc B. Johnson
Commissioner

The undersigned Commissioners have reviewed this matter and concur in this decision.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

NOTICE OF APPEAL RIGHTS: This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become final unless a party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. The written request must include the appeal number and the above captioned case name, and it must be delivered to the Tax Commission Appeals Unit, 210 North 1950 West, Salt Lake City, Utah 84134. Failure to timely request a Formal Hearing will preclude any further appeal rights in this matter.

