

05-0299 & 05-0300
Locally Assessed Property Tax
Signed 04/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal Nos. 05-0299 & 0300
)	
v.)	Parcel Nos. #####-1 & #####-2
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION)	
OF SALT LAKE COUNTY,)	
STATE OF UTAH,)	Tax Year: 2004
)	
Respondent.)	Judge: Robinson

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:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner appealed the decision of the Salt Lake County Board of Equalization (BOE) valuing the above noted parcels. The parties participated in an Initial Hearing, pursuant to the provisions of Utah Code Ann. §59-2-501.5 on July 7, 2005.

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. (Utah Code 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 Sec. 59-2-102(12).)

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 Sec. 59-2-1006(1).)

Per the Utah Supreme Court, Petitioner's burden under Utah Power & Light Co. v. Utah State Tax Commission, 590 P.2d 332 (Utah 1979), is in two parts. "Where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the assessment but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation." The Court reaffirmed this standard in Nelson v. Board of Equalization, 943 P.2d 1354 (Utah 1997).

The presumption of correctness for the original valuation does not arise “unless and until available evidence supporting the original property valuation is submitted to the Commission.” Utah Railway Company, v. Utah State Tax Commission, P.3d 652 (Utah 2000).

DISCUSSION

The subject properties are duplexes located in CITY, Utah. The properties are on adjacent parcels. The duplex on parcel #####-1 (“#####-1”) has 2,192 sq. ft. of living area. Each unit has three bedrooms and one bathroom. It sits on .25 acres. It was built in 1982. A Multiple Listing Service report indicated that the property was listed on September 16, 2002 for \$\$\$\$\$, and sold on December 12, 2002 for \$\$\$\$\$. It was sold in a foreclosure sale by the bank.

The duplex on parcel #####-2 (“#####-2”) has 2,336 sq. ft. of living area. Each unit has three bedrooms and one bathroom. It sits on .23 acres. It was built in 1982. Petitioner purchased it in February of 2003 for \$\$\$\$\$. A title search showed a notice of default in January of 2002. It was listed on February 6, 2002 and sold on February 18, 2003. According to the listing report, the price was reduced by \$\$\$\$\$. The original listing price was \$\$\$\$\$.

The Board of Equalization lowered the values from \$\$\$\$\$ to \$\$\$\$\$ for #####-1 and from \$\$\$\$\$ to \$\$\$\$\$ for #####-2. Petitioner appealed those values, asserting the correct value for each is the purchase price.

At the Initial Hearing, Petitioner reasserted his position that the purchase price for each property was the market value as defined in §59-2-102 (12).

Although neither of the purchases were made under ordinary circumstances, the purchase price of the properties is sufficient to initially meet the two requirements of demonstrating error and providing evidence of a better estimate of value.

Respondent submitted appraisals on both properties. RESPONDENT REPRESENTATIVE, a certified appraiser, prepared both. The first property, #####-1, appraised at \$\$\$\$\$. The second, #####-2, appraised at \$\$\$\$\$. In this case, the Respondent

has abandoned the decision of the BOE, opting for lower values on both parcels. Respondent thus has an equal burden to demonstrate the correctness of its appraisal in light of the actual selling price.

This Commission has held, and it is a fundamental appraisal tenant, that an actual sales price is the best evidence of market value. ‘[i]n assessment litigation, under the “rules of evidence” a bona fide sale of the subject property is considered the best evidence of market value. In the absence of a sale of the subject, sales prices of comparable properties are usually considered the best evidence of market value.’¹ Accordingly, in this case the viability of both the actual sales prices and the appraisals requires more analysis before fair market value can be established.

The first question is whether a sale out of foreclosure renders the sale price invalid. The Commission believes that a while a foreclosure may raise a question, there is nothing in appraisal literature that says a foreclosure sale is inherently below fair market value. The subject property was listed on the open market. Comparable sales submitted at the BOE, including comparable No. 1 from the appraisal, clearly show listing, contract, and closing dates of the subject property to be in line with those for other duplexes, including comparable no. 1 from Respondent’s appraisal. This corroborates that the property was neither listed nor sold at a price lower than its fair market value. Respondent’s appraisal infers that the property is worth more than a price at which it could not sell after a normal listing period on the market. Although parcel #####-1 sold one year prior to the lien date, Respondent’s comparable sales ranged from eight months prior to ten months after the lien date. In addition, the listing report showed that the property was list “as is.” This suggests that the property may have been in poor condition or had damage. Nothing in the record

¹ *Property Appraisal and Assessment Administration* (Chicago: International Association of Assessing Officers, 1990) 153.

showed that the date of sale had a significant impact on value or that the condition of the property had changed subsequent to the sale.

Parcel #####-1 sold for \$\$\$\$\$ or \$\$\$\$\$ per square foot. The comparable sales ranged from \$\$\$\$\$ to \$\$\$\$\$ and \$\$\$\$\$ to \$\$\$\$\$ per square foot. Thus the subject property is in the low end of the range of gross sales price, and the middle of the range on a price per square foot basis. According to Respondent's appraisal, the subject property should be in the middle of the range of selling price (\$\$\$\$\$) and the high end of the price per unit range (\$\$\$\$\$).

The subject property is inferior to all of the comparables in a number of aspects. It has fewer total rooms (although more bedrooms per unit) and more critically fewer bathrooms. It has one bath per unit, whereas all of the others have at least one and one-half. The subject property was superior to all of the comparables in terms of enclosed parking. It had double garages for each unit, whereas comparable 1 had a single carport and garage, and 3 had single car garages. In total, Respondent found the subject property to be inferior to the three comparable sales in the appraisal.

The county's appraiser disregarded comparable sale number 2 as being too far away. It sold for \$\$\$\$\$, with an adjusted sales price of \$\$\$\$\$. The other comparables sold for \$\$\$\$\$ and \$\$\$\$\$, with adjusted prices of \$\$\$\$\$ and \$\$\$\$\$ respectively. The appraiser chose the latter as the best indication because it was "the closest in proximity to the subject," although comparable 1 had "the fewest net adjustments." If anything, the appraisal corroborates rather than refutes the actual purchase price. In fact, comparable 1 has an adjusted sales price within 1% of the actual price of the subject. The Commission notes further, that the comparables were a minimum of fifteen blocks away from the subject property.

Respondent's appraisal was competent and professional, with no substantive problems. In the absence of any evidence to the contrary, Respondent's appraisal, at \$\$\$\$\$ would be the best indication of market value. Likewise, the sales price, \$\$\$\$\$, would be the best evidence of fair market value if it were the only evidence. From the totality of the evidence, however, the Commission concludes that there is no evidence that the property is worth more than the actual selling price. The Commission believes that the differences between the comparable sales and the subject, particularly, the distance and room count, lead to the conclusion that the appraisal supports the sales price of the subject property, rather than refuting it. Therefore, the Commission finds that parcel #####-1 should be valued at its sales price.

Parcel #####-2 presents a more complex problem. Neither the original listing price of \$\$\$\$\$, the price reduction to \$\$\$\$\$, nor the \$\$\$\$\$ selling price appear to be determinative. It has the same room count problems as parcel #####-1, and has double carports. However, the sales price is far below the range of other duplex sales, including parcel #####-1. In addition, the various listing, contract, and closing dates were completely different than other duplex sales. It may be that parcel #####-2 was in extremely poor condition at the time of sale. However, there is no indication in the record that this was the case. Even had the property sold in poor condition, Respondent's appraisal showed average condition as of the lien date. Finally, the listing agreement indicated that offers were subject to "lien holder(s) approval," suggesting a possible distressed sale. These factors raise serious concerns as to whether the selling price was at fair market value.

The Commission concludes that the fair market value of #####-2 is less than that of #####-1. This is the result reached in Respondent's appraisals, which found the value of #####-2 to be \$\$\$\$\$ or 1% less than #####-1. The comparable properties were the same for both appraisals. Adjusting the selling price \$\$\$\$\$ for parcel #####-1 by the amount or

percentage of change between Respondent's two appraisals results in an estimated value of \$\$\$\$\$. In the appraisal, Respondent derived an adjusted sales price for comparable no. 1 at \$\$\$\$\$, which corroborates the adjustment by the Commission. The Commission finds the fair market value of parcel #####-2 to be \$\$\$\$\$.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of #####-1 is \$\$\$\$\$, and the value of #####-2 is \$\$\$\$\$. The Salt Lake County Auditor is hereby ordered to adjust its value in accordance with this decision. 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 _____, 2006.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Appeal No. 05-0299 and 0300

Palmer DePaulis
Commissioner

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Marc B. Johnson
Commissioner