

05-0531
Locally Assessed Property Tax
Signed 01/17/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-0531
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
SALT LAKE COUNTY,)	Tax Year: 2004
UTAH,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing on November 9, 2005. Petitioner is appealing the assessed value for the subject property as established by Respondent for the tax year 2004. The lien date at issue is January 1, 2004. The subject property is parcel no. ##### and is located at ADDRESS 1.

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

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

Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes. The Salt Lake County Board of Equalization had originally set the value of the subject property, as of the lien date, at \$\$\$\$ and the County Board of Equalization reduced the value to \$\$\$\$\$. Petitioner requested that the value be reduced to \$\$\$\$\$, based on the recent purchase price. At the hearing Respondent submitted an appraisal, which concluded that as of the lien date the value was \$\$\$\$\$.

The subject property consists of a .65-acre lot improved with a two-story modern style residence. The residence has 5,870 square feet above grade and 4,756 square feet in the fully finished basement. There is a seven-car garage with a 700 square foot loft. The residence was constructed in 2000. Respondent considers the property to be of very good quality of construction. However, when Petitioner purchased the property shortly after the lien date at issue there were some major issues with the condition of the property.

Petitioner's representative indicated that when they purchased the subject property it was from a foreclosure sale and there had been damage and items that were not properly constructed. Petitioner had to replace the boiler for the furnace and the two air-conditioning units and there were other issues with the residence. Additionally there was a problem with the roof that would cost, according to Petitioner's representative, \$\$\$\$\$ to repair. There was also a problem with the sprinkling system that did not work and had to be dug up and replaced. According to Petitioner's representative \$\$\$\$\$ was spent repairing or finishing the landscaping.

When Petitioner purchased the subject in August 2004 it had been listed across the Multiple Listing Service ("MLS") as "bank owned." It had been listed on June 24, 2004 for \$\$\$\$\$. Petitioner made his offer for \$\$\$\$\$ and it went under contract for that amount on July 6, 2004 and Petitioner closed on August 3, 2004. Additionally, the MLS report indicates that the property "sold "as-is" no warranties."

Petitioner's representative relied on the purchase price arguing that the price was the value of the property for the lien date. Additionally, Petitioner's representative submitted one comparable. She indicated that they had looked at other properties in the neighborhood prior to purchasing the subject and the other properties sold from the \$\$\$\$\$ to \$\$\$\$\$ range. The comparable she submitted was a home on the same street as the subject. It was located at ADDRESS 2 and had sold for \$\$\$\$\$. She indicates that they had looked at this comparable property before purchasing the subject and the comparable was in much better condition than the subject. She indicates that the yard was immaculate and everything worked in this comparable residence. Additionally there was a seven to ten car heated garage with this comparable. This comparable was smaller than the subject at 6130 total square feet for the residence and a .43-acre lot.

Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE, a State Certified Appraiser. It was RESPONDENT REPRESENTATIVE'S conclusion that the value of the subject property as of the lien date at issue was \$\$\$\$\$. RESPONDENT REPRESENTATIVE considered four comparable sales. The first three were sales had sold near the lien date and where within three blocks of the subject. All three of these comparables were smaller than the subject as far as residence size and two had smaller lots. These properties sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. Because these properties were smaller, RESPONDENT REPRESENTATIVE made large size adjustments. The Commission has concerns that because there were no comparables submitted that were as large as the subject in the subject neighborhood indicating the subject property may be somewhat overbuilt. If the property is overbuilt and significantly larger than any comparable the straight \$\$\$\$\$ per square foot size adjustment may not be appropriate, because the additional square footage may not add that much to the value.

RESPONDENT REPRESENTATIVE also included a fourth comparable with his appraisal. He indicates that he used this comparable because it was next door to the property, even though it was a sale that occurred approximately one and a-half years prior to the lien date. This property had sold for \$\$\$\$\$ and was the only comparable submitted that sold for a \$\$\$\$\$ or more. It was located at ADDRESS 3 and had a significantly smaller residence with a slightly larger lot. The comparable was nearly new at the time of the sale.

Respondent had submitted the MLS reports for all his comparables. None indicated the "as is" "no warranties" condition that was indicated on the MLS for the subject. In fact his comparable no. 3 was a newly constructed property when it sold and all his comparables were likely in very good condition as he indicated on his appraisal. However, he also appraised the subject as if it were in "very good" condition. Based on the information proffered by Petitioner and the MLS the subject was likely not in "very good" condition on the lien date.

Upon review of all the evidence submitted and arguments made in this matter by the parties, it is the Commission's position that when the property owner provides a recent arms length sale of the subject party this raises a presumption that the sale price is the market value. In this case Petitioner's purchase was an arms length purchase because it was between two non-related parties and the sale was listed on the MLS. The Commission does not reject a sale merely because it was a bank owned property, because the bank will generally try to obtain a commercially reasonable price for the property in an expedient manner.

The one thing that does put the purchase into question is that it had been listed for \$\$\$\$\$ and went under contract for sale for \$\$\$\$\$ only 12 days later. This calls into question whether the sale price was at market value. Certainly an appraisal with good comparable sales could offset the presumption that the purchase price was the market value under the specific facts of the sale. However, in this matter all comparables offered by both parties were significantly smaller than the subject, generally in the 6,000 to 7,000 square foot range, while the subject has over 10,000 square feet. This indicates that the subject is overbuilt for the neighborhood and the comparables do not bracket the sale. The additional square foot would add some value but not necessary at the same per square foot rate. For these reasons, the Commission has issues with both the Respondent's and Petitioner's evidence.

All comparables and the subject had sold in a range from \$\$\$\$\$ to \$\$\$\$\$. The subject was larger than all the comparables, but there were some issues as to the condition.

The value set by the County Board of Equalization has the presumption of being correct and, in this case, the value set by the Board of Equalization falls within the range of comparable sales prices.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2004 is \$\$\$\$\$.

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.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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

DATED this ____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner