

05-0811
Property Tax
Signed 06/02/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioners,)		
	)	Appeal No.	05-0811
v.	)	Parcel No.	#####-1
)		
BOARD OF EQUALIZATION,	)	Tax Type:	Property Tax
SALT LAKE COUNTY,)		
STATE OF UTAH,	)	Tax Year:	2004
)		
Respondent.	)	Judge:	Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, *pro se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Chief Deputy Assessor,
Salt Lake County Assessor's Office

STATEMENT OF THE CASE

Pursuant to the provisions of Utah Code Ann. §59-1-502.5, this matter came before the Commission for an Initial Hearing on November 14, 2005. Petitioner is appealing the Salt Lake County Board of Equalization value for the above noted parcel.

At the beginning of the hearing, the parties discussed a possible settlement. No settlement was reached. At that point, Petitioner moved to withdraw his appeal. Respondent objected, stating it had filed documents and wished to present its case. Petitioner's motion was taken under advisement. Petitioner submitted his case on an appraisal prepared by APPRAISER, a Certified Residential Appraiser. The Respondent then presented its evidence. This included photographs of the subject, information on land sales, and SIGMA data. In the appeal file was also the evidence and decision of the Board of Equalization.

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).)

Upon receipt of the appeal, the County Auditor is required to certify and transmit to the Commission the minutes of the proceeding before the board of equalization, all documentary evidence received by the board, and a transcript of the testimony taken, if one was preserved. (Utah Code Sec. 59-2-1006(2). This information becomes part of the appeal.

In reviewing the board’s decision, the Commission may admit additional evidence, issue just and proper orders, and make corrections or changes in the assessment or order of the board. (Utah Code Sec. 59-2-1006(3). The authority to admit additional evidence implies the Commission already has, as evidence, the record transmitted by the County Auditor. Thus, it is not necessary for a party to move for its admission in order for the Commission to consider it.

Per the Utah Supreme Court, Petitioners' 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

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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).

In Utah Railway Co. v. Utah State Tax Commission, 2000 Utah 49, the Utah Supreme Court said,

Where a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Once that is done, the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment," and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation." Utah Power & Light Co., 590 P.2d at 335.

DISCUSSION

The property is located at ADDRESS 1, CITY, Utah. The lot is .26 acres in size. The building has 4,730 square feet of gross living area and a basement of 1,694 square feet, which is 90 percent finished. It has eight bedrooms and six bathrooms. It also has four kitchens. It is located across the road from the (X).

The building was ten years old when APPRAISER appraised it in October of 2004. It was constructed as a bed and breakfast. Lack of year-round water rights has prevented Petitioner from licensing it as such. In 2002, Petitioner also sought and obtained approval to operate it as a facility for persons with disabilities, contingent on the availability of a year-round water supply. It does not have a year-round water supply.

Petitioner's appraisal lists five comparable properties. Two of the comparable properties are near the subject. The other three are not in CANYON, nor are they located near a (X). Comparable number two is located 3.3 miles from the subject. It sold in 1999 for \$\$\$\$\$. APPRAISER made a time adjustment of \$\$\$\$\$ for the time of the sale.

Comparable number two is approximately the same age as the subject. It is 4,500 square feet in area above grade. It has no basement. The subject has 4,730 square feet in above grade area, with

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a basement of 1,694 square feet, 90 percent of which is finished. The subject has 14 rooms above grade, with 8 bedrooms and six bathrooms. Comparable number two has eight rooms above grade, with four bedrooms and 3 bathrooms. APPRAISER made an adjustment of \$\$\$\$ for the rooms, and \$\$\$\$ for the difference in area.

The subject sits on .26 acres. Comparable number two sits on 1.66 acres. APPRAISER made no adjustment for lot size. The subject's location is described as average. Comparable number two has an average location with a stream. APPRAISER made a (\$\$\$\$) adjustment to comparable number two for the stream. Both have good mountain views. Both are described as being in good condition.

The subject has a carport with space for four cars. Comparable number two has a four-car garage. APPRAISER made an adjustment of (\$\$\$\$) to comparable number two for this difference.

The subject has five decks/patios and seven fireplaces. Comparable number two has two decks/patios and two fireplaces. APPRAISER made an adjustment of \$\$\$\$ for this difference.

Neither property has landscaping. The subject has a hot tub. Comparable number two has a pool. APPRAISER made an adjustment of (\$\$\$\$) for this difference.

APPRAISER'S total net adjustments to comparable number two result in an adjusted value of \$\$\$\$.

Comparable number five sold in December of 2003 for \$\$. It is located .41 miles from the subject. APPRAISER listed the subject's location as average. He listed comparable number five's location as good, with ski-in/ski-out as a feature. For this difference, he made a (\$\$\$\$) adjustment. RESPONDENT REPRESENTATIVE disputed this adjustment as excessive, but did not suggest an alternative adjustment. It is his position that both properties are ski-in/ski-out.

Petitioner has advertised his property as ski-in/ski-out. It is located across (X) and the parking lot from the nearest ski lift. Petitioner said Ski Utah objects to him characterizing the property as

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ski-in/ski-out, as it interprets this to mean the building is on a ski slope. The Commission finds the subject is not ski-in/ski-out. Comparable number five is ski-in/ski-out.

The subject is .26 acres. Comparable number five is 1.65 acres. APPRAISER made a (\$\$\$\$\$) adjustment for the difference in lot size.

APPRAISER rated the quality of construction of the subject as average. He rated the quality of construction of comparable number five as excellent and made an adjustment of (\$\$\$\$\$).

Comparable number five was constructed eight years after the subject. For the time difference, APPRAISER made an adjustment to comparable number five of (\$\$\$\$\$). This adjustment should have been a (\$\$\$\$\$).

APPRAISER rated the condition of the subject as average/good. He rated the condition of comparable number five as excellent/superior. For this difference, APPRAISER made a (\$\$\$\$\$) adjustment to comparable number five.

Comparable number five has four fewer total rooms, three fewer bedrooms, and 2.5 fewer bathrooms than the subject. APPRAISER made an adjustment of (\$\$\$\$\$) to comparable number five.

Comparable number five has a four-car garage. The subject has a four-car carport. APPRAISER made an adjustment of (\$\$\$\$\$) to comparable number five.

The subject has five decks and seven fireplaces. Comparable number five has two decks and two fireplaces. For this difference, APPRAISER made a (\$\$\$\$\$) adjustment to comparable number five.

APPRAISER'S total net adjustment to comparable number five was (\$\$\$\$\$). This brought his value for comparable number five to (\$\$\$\$\$). When the adjustment for age is corrected, the net adjustment is (\$\$\$\$\$). The adjusted value is (\$\$\$\$\$).

APPRAISER used three other comparables. However, as noted above, they are not in CANYON and are not near a (X). The two comparables reviewed above are the best indicators in Petitioner's appraisal of the subject's value using a sales comparison approach. For this property, the sales comparison approach is a better indicator of value.

APPRAISER also did a cost approach. He valued the lot at \$\$\$\$\$. He said the cost of replacement new for the improvements was \$\$\$\$\$. After depreciating the improvements and making an "as is" adjustment, APPRAISER opined the subject's value by cost approach was \$\$\$\$\$. The Respondent argued APPRAISER undervalued the land.

The Respondent produced evidence of land sales near the subject. The lot directly across from the subject (#####-2) sold in August of 1996 for \$\$\$\$\$. It sold again in March of 2004 for \$\$\$\$\$. Petitioner's appraisal contains a plat map showing this parcel is .76 acres in size. Respondent's evidence lists the lot size as .19 acres when it sold in 1996. If it were .19 acres in size, the price per acre would have been \$\$\$\$\$. Respondent's evidence of the 2004 sale does not list a lot size.

If parcel #####-2 is .76 acres in size, its approximate price per acre when it sold in March of 2004 was approximately \$\$\$\$\$. At that price per acre, the market value of the subject's land, without any adjustments, would be approximately \$\$\$\$\$. If parcel #####-2 were .19 acres in size, as is indicated in Respondent's evidence for the August 1996 sale, the price per acre for the March 2004 sale would be approximately \$\$\$\$\$. The market value of the subject lot would be approximately \$\$\$\$\$. This is more than double the SIGMA value Respondent's evidence assigns to the subject's lot. It appears the .19-acre size listed in connection with the August 1996 sale of parcel #####-2 is in error.

Respondent's evidence also shows the sale of a lot (#####-3) adjacent to #####-2, the one directly across from the subject. That lot is .45 acres in size, according to Respondent's evidence, or .49 acres in size, as indicated on the plat map included in Petitioner's appraisal. It sold in April of 2003

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for \$\$\$\$\$, with permits. At .49 acres for \$\$\$\$\$, the price per acre would be approximately \$\$\$\$\$. At that price per acre, the price for the subject's lot would be approximately \$\$\$\$\$.

Respondent's SIGMA evidence lists the value of the subject's lot at \$\$\$\$\$. This value is \$\$\$\$\$ more than that suggested by the March 2004 sale of parcel #####-2 when corrected for size, and \$\$\$\$\$ less than that suggested by the sale of parcel #####-3.

Neither party attempted to value the property based on the income approach. Respondent apparently changed its valuation after determining Petitioner was using the subject as a rental property. However, there is no evidence in the record of revenue produced by the property.

Respondent offered several comparables, one of which is similar in some respects to the subject. It is a 4,800 square foot single level home located on the slopes of the (X). It does not have a basement. It has eight bedrooms, one full bath, three ¾ baths, and two ½ baths. It has three fireplaces. It is ski-in/ski-out. It was built in 1973 and sits on .25 acres. It sold for \$\$\$\$\$ in November of 1998.

Above grade square footage is essentially the same. No adjustment is needed. The same is true for lot size, as the difference is .01. Adjusting for time of sale at 2.5% per year produces an upward adjustment of \$\$\$\$\$. The absence of a basement results in an upward adjustment of \$\$\$\$\$.

It is not possible to compare view, design and appeal, or quality of construction. The MLS information is silent on those aspects of the property. The same is true of condition.

The comparable was 31 years old on the lien date. This warrants an upward adjustment for age in the amount of \$\$\$\$\$. The absence of a carport or garage results in an upward adjustment of \$\$\$\$\$. The difference in deck and fireplaces should be adjusted \$\$\$\$\$.

The adjusted value of this comparable, based on available information, is \$\$\$\$\$. Petitioner's appraisal report notes the property has been listed for 18 months as for-sale-by-owner at \$\$\$\$\$. Apparently, this is not market value. The two most similar comparables in Petitioner's appraisal,

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comparable number two and comparable number five, have respective adjusted values of \$\$\$\$ and \$\$\$\$.

Respondent argued Petitioner's adjustment for ski-in/ski-out to Petitioner's comparable number five is inappropriate. Because Respondent took the position the subject is also ski-in/ski-out, Respondent did not suggest a different adjustment. The Respondent's comparable at the (X) suggests a different adjustment may be appropriate. A \$\$\$\$ difference brings Petitioner's comparable number five closer to the (X's) property's value. This makes comparable number five's adjusted value \$\$\$\$.

Neither party addressed the effect the lack of a year-round water share has on the value of the property. The water issue prevents the subject from being used as a bed and breakfast, or as a facility for persons with disabilities. This would seem to reduce its market value.

DECISION AND ORDER

Based on the foregoing, the Commission finds that, while both parties presented evidence suggesting the Board of Equalization value was in error, neither party has established a value other than that set by the Board of Equalization. Therefore, the Commission sustains the Board of Equalization value of \$\$\$\$\$. It is so ordered.

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.

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DATED this _____ day of _____, 2006.

R. Spencer Robinson
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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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