

05-0884
Locally Assessed Property Tax
Signed 07/18/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
Petitioner,)	Appeal No. 05-0884
)	
v.)	Parcel No. #####
)	Tax Type: Property Tax/Locally
BOARD OF EQUALIZATION)	Assessed
OF SALT LAKE COUNTY,)	
STATE OF UTAH,)	Tax Year: 2004
)	
Respondent.)	Judge: Robinson

Presiding:

Marc B. Johnson, Commissioner
R. Spencer Robinson, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

The Board of Equalization determined the fair market value of the subject property, identified above, to be \$\$\$\$\$. Petitioner appealed that decision to the Tax Commission, asking the Commission to find the value was \$\$\$\$\$. The parties participated in a Formal Hearing on October 27, 2005. Petitioner presented evidence in support of a value of \$\$\$\$\$. Respondent presented evidence in support of the Board of Equalization's value, and asked that value be sustained. Based on the evidence and testimony presented at the hearing, the Commission makes its:

FINDINGS OF FACT

1. The tax in issue is the ad valorem property tax, locally assessed by the Salt Lake County Assessor.

2. The tax year in question is 2004, with a lien date of January 1, 2004.
3. The property in question is a condominium located in Salt Lake County at ADDRESS 1, #####-1 CITY, Utah. The parcel number is #####.
4. Petitioner purchased the property on July 17, 2001 for \$\$\$\$\$. Petitioner stated the price included \$\$\$\$\$ to cover the real estate agent's commission and a down payment. It is 1,739 square feet in size, with two bedrooms and 1.75 bathrooms. It has a total of six rooms.
5. Petitioner introduced evidence of a post lien date sale. According to a MLS listing, unit number #####-2, in the same condominium complex as the subject, sold on April 22, 2005, for \$\$\$\$\$. The MLS listing states it is 1900 square feet in size (\$\$\$\$\$/sq.ft.). However, on the engineer's drawing submitted by Respondent, it appears to be the same size as the subject property, 1,739 square feet (\$\$\$\$\$/sq.ft.). It has three bedrooms, two full bathrooms, a family room or den, a kitchen, a kitchen dining area, a semi-formal dining area, and a laundry room. The unit was listed for five days before it was under contract. The MLS listing states the listing price was \$\$\$\$\$.
6. Petitioner said his unit was in the same condition as unit number #####-2. RESPONDENT REPRESENTATIVE, Respondent's representative at the hearing, said she could not enter the subject as part of doing an appraisal. Respondent stated a realtor said unit number #####-2 needed significant work. On cross-examination, Petitioner acknowledged #####-2 had been gutted.
7. Respondent submitted an appraisal with three comparable condominiums. All three are in the same building. Two are on the same floor. The appraisal's comparables indicated a value of \$\$\$\$\$. However, the appraisal states it supports to Board of Equalization value of \$\$\$\$\$.
8. Respondent's comparable number one is unit number #####-3. It is 1,523 square feet in size. It has a total of eight rooms. It has three bedrooms and 1.75 bathrooms. It

sold for \$\$\$\$ on September 17, 2003 (\$\$/sq.ft.). Respondent adjusted the price of this comparable to \$\$\$\$.

9. Respondent's comparable number two, unit number #####-4, is on the fifth floor. It has eight rooms, three bedrooms, and 1.75 bathrooms. It is 1,550 square feet in size. It sold on May 21, 2003 for \$\$\$\$ (\$\$/sq.ft.). Respondent adjusted the price of this comparable to \$\$\$\$.

10. Respondent's comparable number three, unit number #####-5, is on the fourth floor. It has eight rooms, two bedrooms and 1.75 bathrooms. It is 1,465 square feet in size. It sold on July 26, 2002, for \$\$\$\$ (\$\$/sq.ft.). Respondent's adjusted the price of this comparable to \$\$\$\$.

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)).

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 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 AND CONCLUSIONS OF LAW

The Board of Equalization value is presumed to be correct. The Petitioner has the burden of showing substantial error and providing a sound basis for a lower value.

Petitioner offered two pieces of evidence in support of his position. First, he argued the purchase price he paid for the unit in 2001 exceeded the fair market value by \$\$\$\$\$. Petitioner states the price was inflated to pay the real estate commission and make a down payment. He asks the Commission to treat the purchase price as \$\$\$\$\$, not \$\$\$\$\$.

Realtor commissions are part of what one pays to acquire real property whenever a realtor is involved. The circumstances are analogous to when one purchases a motor vehicle from a dealer. The sales person is paid a commission from the proceeds of the sale. The money

paid to the sales person is part of the purchase price when sales tax is assessed. Similarly, real estate commissions are part of purchase price.

Down payments are part of the purchase price. Again, the purchase of a motor vehicle provides an analogy. If one purchases a vehicle costing \$25,000, makes a \$3,000 down payment, and finances the remaining \$22,000, one could not say one paid \$22,000 for the vehicle. Purchase price includes down payments.

Real estate commissions and down payments are included in the amount paid by a willing buyer and to a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. They are included in fair market value.

The Board of Equalization value for the subject property on January 1, 2004 was \$\$\$\$\$. This is \$\$\$\$\$ more than what Petitioner paid for the property in 2001. This de minimus increase is less than one percent. This difference does not establish a substantial error in the Board of Equalization value. This, alone, is not sufficient to meet Petitioner's burden.

At the Formal Hearing, Petitioner offered one post lien date sale of unit number #####-2 in support of his position. This sale occurred sixteen months after the January 1, 2004 lien date. Petitioner made no adjustments, contending that none should be made.

Unit number #####-2 is listed at 1,900 square feet in size. This appears to be an error. In Respondent's appraisal is an engineering drawing of the fourth floor. The subject and unit number #####-2 appear to be the same size. This is also noted in the record from the Board of Equalization. There are hand-written corrections to MLS information concerning square footage of properties offered as comparables. The MLS listing for the subject shows 1,900 square feet. This was corrected by hand to 1,729 square feet. The listing states the buyer is responsible to verify the square footage.

Unit number #####-2 sold for \$\$\$\$\$ per square foot. At this price per square foot, the subject property would also be valued at \$\$\$\$\$, substantially less than the \$\$\$\$\$

Petitioner listed as his estimate of value in his appeal to the Commission, and substantially less than Petitioner paid for it in 2001.

Petitioner states unit number #####-2, \$\$\$\$\$, was in the same condition as his property. Petitioner's suggested value for his property is \$\$\$\$\$. If it were in the same condition as Petitioner's property, it is likely it would not have sold for \$\$\$\$\$ less absent other factors. The property was listed five days before it was under contract. The asking price was \$\$\$\$\$. The sale price was \$\$\$\$\$. These suggest its condition was not like that of the subject, or that the sale may not have been a fair market value sale.

The appraisal offered by Respondent uses comparable sales from the same building where the subject is located. These sales are for smaller units in the same building sold prior to the lien date. Respondent made adjustments for date of sale, view, floor on which the respective units were located, effective age, condition, number of rooms and bedrooms, and square footage. Though Respondent's appraisal comparables indicated a value of \$\$\$\$\$ based on the sales comparison approach, the appraisal also said it "supports the 2004 Board of Equalization decision." Thus, we make no finding that as to the correctness for the \$\$\$\$\$ value. The Commission does find it supports the value of the Board of Equalization.

DECISION AND ORDER

Petitioner's argument hangs on two issues. First, he argues the realtor's commission and Petitioner's down payment should not be included in the purchase price. For the reasons stated above, the Commission rejects this argument.

Second, Petitioner offers one unadjusted comparable property, which sold for \$\$\$\$\$ some sixteen months after the lien date. Petitioner's evidence is not sufficient to establish the alternative value he urges the Commission to accept. The Respondent's appraisal uses comparables that are close to each other and are part of the same building as the subject. The Commission finds Respondent's appraisal supports the Board of Equalization value of \$\$\$\$\$.

Based on the foregoing, the Commission sustains the Board of Equalization value of \$\$\$\$\$. It is so ordered.

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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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.