

05-1484
Property Tax
Signed 11/20/2006

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|-----------------------|---|--|
| PETITIONER, |) | FINDINGS OF FACT, CONCLUSIONS |
| |) | OF LAW, AND FINAL DECISION |
| Petitioner, |) | |
| v. |) |) Appeal No. 05-1484 |
| |) |) Parcel No ##### |
| BOARD OF EQUALIZATION |) |) Tax Type: Property Tax/Locally Assessed |
| OF UTAH COUNTY, |) |) Tax Year: 2004 |
| STATE OF UTAH, |) |) Judge: Chapman |
| 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
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Representative
 PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Utah County Assessor’s
 Office
 RESPONDENT REPRESENTATIVE 2, from the Utah County Assessor’s
 Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 7, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

Appeal No. 05-1484

1. The tax at issue is property tax.
2. The lien date at issue is January 1, 2004.
3. The subject property is identified as Parcel No. ##### and is located on STREET near (X) in Utah County, Utah.
4. The subject property consists of 0.43 acres of land that is improved with a home that has 4,741 square feet of living space (above grade) and a 2,096 square foot basement (finished). The home, which was constructed in 1997, has five bedrooms, 5¾ baths, a two-car garage, and two fireplaces. The home has a cedar and log exterior and sits close to the road. The subject's view is considered inferior to many homes in the (X) area.
5. The Petitioner is appealing the assessed value of the subject property, as established by the Utah County Board of Equalization ("County BOE"). For the 2004 tax year, the County Assessor assessed the subject property at \$\$\$\$\$, which the County BOE sustained.
6. The Petitioner requests that the subject's assessed value be reduced to \$\$\$\$\$, asserting that the County Assessor agreed in a mediation conference conducted by the Tax Commission to lower the assessed values of a number of other (X) properties under appeal. The Petitioner believes that it would be inequitable not to lower the subject's value as well, given that the County agreed to further lower the value for 13 of 15 parcels, as listed in Exhibit P-3. Although it is not known how many the 15 parcels listed in the exhibit are vacant lots and how many have homes built on them, testimony at the Formal Hearing indicated that some of these properties were vacant lots.
7. One of the 15 properties listed on Exhibit P-3 is referred to as the "PROPERTY 1," a (X) home that the 2004 County BOE reduced in value from \$\$\$\$\$ to \$\$\$\$\$. At the mediation conference

Appeal No. 05-1484

conducted by the Tax Commission, the Petitioner asserts that the County Assessor agreed to further reduce the PROPERTY 1's value to \$\$\$\$ for the 2004 tax year. Although little information is available about the size and features of the PROPERTY 1, the Petitioner stated that the home on the property was smaller than the subject and had no basement, but had a better view than the subject and was located on a private paved road. In addition, the Petitioner submitted pictures of the PROPERTY 1 that show that it was constructed with logs and stone (Exhibit P-6).

8. The Petitioner also submitted pictures of another (X) property referred to as the "PROPERTY 2" (Exhibit P-5). The County Assessor assessed this property for \$\$\$\$\$, which the 2004 County BOE reduced to \$\$\$\$\$. The Petitioner indicated in Exhibit P-3 that, although this property was one of the 15 properties for which a mediation conference was conducted by the Tax Commission, the County Assessor did not agree to further reduce its value.

The Petitioner stated that the home on the PROPERTY 2 is similar in size to the subject, but has a more open interior that was constructed with logs. In addition, the Petitioner stated that the PROPERTY 2 has a great view and that its lot was approximately one acre larger than the subject's lot. The Petitioner estimated that the size of and view from the PROPERTY 2 lot made it worth between \$\$\$\$\$ and \$\$\$\$\$ more than the subject's value. RESPONDENT REPRESENTATIVE 1, a certified appraiser with the County Assessor's Office, disagreed, stating that such an adjustment was more than the prices at which individual lots were selling near the lien date.

9. The Petitioner also argues that a further reduction in value for the subject property is appropriate because the market for properties at (X) was depressed during 2003 and 2004. The Petitioner believes that comparables sales provided in Exhibit P-8 and Exhibit R-1 support this argument because there are fewer sales and because a number of properties sold for prices below their respective list prices during this

period. PETITIONER REPRESENTATIVE 2, a realtor who is familiar with the (X) real estate market, testified that several (X) properties under foreclosure sold in 2003 and 2004 for prices significantly less than they had originally been listed. Both the Petitioner and PETITIONER REPRESENTATIVE 2 indicated that prices have increased significantly beginning in 2005.

10. For the County, RESPONDENT REPRESENTATIVE 1 prepared and submitted an appraisal of the subject property (Exhibit R-2), in which he estimated its fair market value, as of the lien date, to be \$\$\$\$\$. In his appraisal, RESPONDENT REPRESENTATIVE 1 compared the subject property to six comparables that had sold between March 2002 and October 2005. Based on his appraisal, RESPONDENT REPRESENTATIVE 1 asks the Commission to increase the subject's value from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

2. For property tax purposes, “fair market value” is defined in UCA §59-2-102(12) to mean “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.”

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property . . . may appeal that decision to the commission. . . .
-

- (3) In reviewing the county board's decision, the Commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (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.

....

4. For the Commission to change a value established by a county board, that party must:

1) demonstrate that the County's assessment contained error; and 2) provide the Commission with a sound evidentiary basis for changing the County's assessment to the amount that the party proposes. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION AND CONCLUSIONS OF LAW

For the 2004 tax year, the County BOE established a fair market value of \$\$\$\$ for the subject property. In this appeal, the Petitioner proposes that the Commission lower the subject's value to \$\$\$\$, while the County proposes that the value be raised to \$\$\$\$. For either party to prevail, it must not only demonstrate that the \$\$\$\$ value established by the County BOE is incorrect, but must also provide the Commission with a sound evidentiary basis for changing the value to the amount proposed.

The County submits an appraisal as evidence of the subject's "fair market value," which by definition is "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." The Petitioner, on the other hand, has raised the issue of equalization and argues that,

Appeal No. 05-1484

because the County agreed to reduce the value for 13 of 15 (X) properties settled in a mediation conference, the Commission should also reduce the value of the subject property.

First, the Commission will address whether the evidence submitted by either party is sufficient to show that the fair market value of the subject property is not \$\$\$\$\$, the value established by the County BOE. Then, the Commission will address the equalization issue and determine if the Petitioner's evidence is sufficient to show that the subject property has been assessed in a manner that is not uniform and equal to the assessment of other properties.

Fair Market Value. In Exhibit P-8, the Petitioner submitted a number of comparable sales to show the prices at which other (X) properties sold between 2000 and 2006. In Exhibit R-1, the Respondent submitted similar comparable sales that sold between 1999 and 2006. Of these sales, the Commission believes that those that occurred in 2003 and 2004 are more likely to show the market that existed as of the lien date, January 1, 2004, than sales that occurred in other years. Each party included four comparable sales that sold in 2003 and 2004. These four sales sold for prices that ranged between \$\$\$\$\$ and \$\$\$\$\$. However, all of these homes are older than and much smaller than the subject, as even the largest of the four comparables has less than 50% of the subject's above-grade living space. Furthermore, homes more similar in size to the subject property sold at \$\$\$\$\$ and \$\$\$\$\$ in 2002 (County's appraisal and Exhibit P-8). Although the market for (X) properties may have been stagnant as of the lien date, the Commission does not find any evidence to show that values decreased after 2002. For these reasons, the Commission is not convinced that the comparables provided by both parties show that the \$\$\$\$\$ value established by the County BOE is incorrect.

The County also submitted an appraisal of the subject property, in which it estimated the subject's value to be \$\$\$\$\$ as of the lien date. Of the six comparables the County used in its appraisal, two sold in 2002 and the other four sold in 2005. The Petitioner believes that the Commission should disregard the

Appeal No. 05-1484

appraisal because it uses 2005 sales to estimate the subject's value as of January 1, 2004, which he contends would distort the appraisal's estimate of value. The Petitioner argues that such a result would occur because (X) properties greatly appreciated after (X) announced plans to expand and build new amenities, as explained in Exhibit P-4. Although the Petitioner may be correct that (X) values appreciated greatly in 2005, the County adjusted the 2005 sales downward to reflect the change in market conditions between the lien date and date of the 2005 sales. Because the Petitioner has not shown that these time adjustments are incorrect, the Commission will not disregard the appraisal for this reason.

Nevertheless, the Commission is not convinced that the appraisal proves that the current value of \$\$\$\$\$ is incorrect. First, RESPONDENT REPRESENTATIVE 1, the County's appraiser, admitted that it was difficult to appraise properties at (X) due to the uniqueness of the properties and the great range of values that exist at (X). Second, four of the comparables sold between \$\$\$\$\$ and \$\$\$\$\$, and all four adjusted to values ranging between \$\$\$\$\$ and \$\$\$\$\$, a range in which the current value falls. Only the two comparables that sold in 2005 for prices of \$\$\$\$\$ and \$\$\$\$\$ adjusted to values (\$\$\$\$\$ and \$\$\$\$\$, respectively) that would support the appraisal's \$\$\$\$\$ estimate of value. Third, the two comparables closest in location to the subject, as shown on the map in the appraisal, are Comparables #4 and #6, which adjusted to values of \$\$\$\$\$ and \$\$\$\$\$, respectively. The current value of \$\$\$\$\$ falls within these adjusted values of these two comparables.

Furthermore, the Commission is concerned about the lack of information regarding several adjustments. For example, almost all of the comparables are described as having outstanding views, which appear to be superior to the subject's view. Although the appraiser stated that he accounted for this difference by adjusting for it in the "site" adjustment and not the "view" adjustment, there is no information to show how the appraiser determined the amounts of the adjustments and whether the adjustments are reasonable. In

Appeal No. 05-1484

addition, the multiple listing service (“MLS”) information provided for Comparable #6 indicates that this home was sold fully furnished. Although the County made a \$\$\$\$ adjustment to account for furnishings, this amount appears low to account for 5,420 square feet of fully furnished living space. Also, the MLS information for Comparable #2 indicates that a home theater is included and that all furnishings are negotiable. No adjustment was made for the home theater and it is not known whether any furnishings may have been included in the sales price (even though the property sold slightly higher than its list price). For these reasons, the Commission is not convinced by the appraisal that the \$\$\$\$ fair market value established by the County BOE is incorrect.

The Petitioner submits evidence (Exhibit P-7) to show that the subject property’s assessed value increased from \$\$\$\$ in 2003 to \$\$\$\$ for the 2004 tax year. However, this information does not show that the 2004 assessment is incorrect, as it is possible that the subject was underassessed in 2003. For the reasons stated above, the Commission finds that neither party has demonstrated that the \$\$\$\$ fair market value established by the County BOE is incorrect.

Equalization. The Petitioner raises an equalization argument concerning the \$\$\$\$ value established by the County BOE. Even if the \$\$\$\$ value represents the subject’s fair market value, the Petitioner contends that it would be inequitable not to reduce the subject’s value when the values of other (X) properties were reduced pursuant to a Tax Commission mediation conference. As evidence, the Petitioner submits a list of 15 (X) properties (Exhibit P-3) that were resolved at the mediation conference, which resulted in a value reduction for 13 of the 15 properties.

The Commission does not find the equalization argument convincing. Of the hundreds of properties located at (X), the Petitioner only provides evidence of 13 properties having their values lowered after being appealed to the Tax Commission. In addition, several of these 13 properties appear to be

Appeal No. 05-1484

assessments of vacant land and, thus, are not comparable to the subject, which has a home on it.

Furthermore, the Commission has found that the subject's fair market value of \$\$\$\$\$, as established by the County BOE, has not been shown to be incorrect. Given this finding, the fact that another home's value was lowered does not demonstrate an inequity in assessment without also showing that the other home's adjusted value is below its fair market value. No information is provided by the Petitioner to show that the 13 properties that received value reductions were adjusted to values below their respective fair market values.

Nevertheless, the Petitioner submitted pictures of two properties, the PROPERTY 1 and PROPERTY 2, to show why a reduction to the subject's value would be equitable. The Petitioner asserts that the assessed value of the PROPERTY 1 was reduced from \$\$\$\$\$ to \$\$\$\$\$ by the County BOE. At the mediation conference conducted by the Tax Commission, the Petitioner asserts that the County Assessor agreed to further reduce the value of the PROPERTY 1 to \$\$\$\$\$. Although little information is available about the PROPERTY 1, the Petitioner stated that the home on the property was smaller than the subject and had no basement, but had a better view than the subject and was located on a private paved road. The information provided at the Formal hearing, however, does not indicate whether the PROPERTY 1 is more or less valuable than the subject property. Without evidence of the size of the home on the PROPERTY 1 and its other features, the Commission is unable to estimate its fair market value and determine whether it was underassessed for the 2004 tax year. As a result, the Commission finds that the information provided about the PROPERTY 1 does not show that the subject property has been inequitably assessed.

The Petitioner also asserts that the assessed value of the PROPERTY 2 was reduced from \$\$\$\$\$ to \$\$\$\$\$ by the County BOE, but was not reduced further at the mediation conference conducted by the Tax Commission (Exhibit P-3). The Petitioner stated that the home on the PROPERTY 2 is similar in size to

Appeal No. 05-1484

the subject, but has a more open interior constructed with logs. In addition, the Petitioner stated that the PROPERTY 2 has a great view and that its lot is approximately one acre larger than the subject's lot. The Petitioner estimated that the size of the lot and the view from the PROPERTY 2 made it worth between \$\$\$\$ and \$\$\$\$ more than the subject. Therefore, for an equitable assessment, the Petitioner asserts that the subject property should be assessed at \$\$\$\$\$, which is \$\$\$\$\$ less than the PROPERTY 2's assessment of \$\$\$\$\$.

It is plausible that if the home on the PROPERTY 2 is the same size as the subject's home and that it has a larger lot with a better view, the PROPERTY 2 could have a greater fair market value than the subject property. Currently, the PROPERTY 2's \$\$\$\$\$ assessed value is \$\$\$\$\$ greater than the \$\$\$\$\$ fair market value the Commission sustained for the subject, as discussed above. There is no evidence, however, to show that the PROPERTY 2 is underassessed. Although the Petitioner claims that the PROPERTY 2 is worth up to \$\$\$\$ more than the subject because of its superior lot, there is no evidence to support this claim.

All sales of (X) lots prior to 2005, as provided at the Formal Hearing (Exhibit R-1), sold for prices that range between \$\$\$\$ and \$\$\$\$\$. Furthermore, even though a lot may have sold for as much as \$\$\$\$ prior to 2005, there is no evidence to show the appropriate difference in value between a lot with a view and a lot without a view. Likewise, there is no information to show the appropriate difference in value for a lot with an additional acre of land and a lot without the additional acreage. Finally, there is no evidence to show that the additional acre of the PROPERTY 2 could be subdivided into a separate building lot that could be worth an additional \$\$\$\$ and \$\$\$\$\$, based on the values at which building lots were selling prior to 2005. For these reasons and based on the information provided at the Formal Hearing, the Commission does not find that the assessed value of the PROPERTY 2 indicates that the subject's current value of \$\$\$\$\$ is inequitable.

Conclusions of Law. In summary, the Commission finds that neither party has provided sufficient evidence to show that the subject's fair market value is not \$\$\$\$\$, the value established by the

Appeal No. 05-1484

County BOE. The Commission also finds that the Petitioner has not provided sufficient evidence to establish that the subject's \$\$\$\$ value is an inequitable assessment.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's request to lower and the Respondent's request to raise the fair market value of the subject property. Accordingly, the Commission sustains the County BOE's decision that the fair market value of Parcel No. #####, as of January 1, 2004, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2006.

Kerry R. Chapman
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

Appeal No. 05-1484

(30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63-46b-13 et seq.

KRC/05-1484.jof.doc