

05-1492
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. 05-1492
)) 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
 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

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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 at ADDRESS 1 near (X) in Utah County, Utah.
4. The subject property consists of 0.45 acres of land that is improved with a 3,605 square foot home that was built around 1983. The home has three bedrooms, 2½ baths, a two-car garage and one fireplace, but no basement. Although the structure has recently been remodeled, the remodeling occurred after the January 1, 2004 lien date. The subject's lot is not considered a "view" lot. The subject was originally built to house (X) staff and, while it might not have been finished as expensively as many (X) homes, it was well kept and in good condition as of the lien date.
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 reduced to \$\$\$\$\$.
6. The Petitioner requests 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-1. 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-1 is referred to as the "PROPERTY 1," a

(X) home that the 2004 County BOE reduced in value from \$\$\$\$\$ to \$\$\$\$\$. At the mediation conference 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 in 2004, the home on the PROPERTY 1 was larger in size than the home on the subject property. In addition, the Petitioner submitted pictures of the PROPERTY 1 that show that it was constructed with logs and stone (Exhibit P-3). The Petitioner contends that these pictures indicate that the subject property's assessed value should be lower than the \$\$\$\$\$ value that was negotiated for the PROPERTY 1 at the mediation conference.

8. The Petitioner also submitted pictures of another (X) property referred to as the "PROPERTY 2" (Exhibit P-4). The County Assessor assessed this property for \$\$\$\$\$, and the 2004 County BOE reduced the assessed value to \$\$\$\$\$. The Petitioner indicated in Exhibit P-1 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 PROPERTY 2 is significantly larger than the subject property, was constructed with logs, and has a better view than the subject.

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-1 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 at least three (X) properties under foreclosure sold in 2003 and 2004 for prices between \$\$\$\$\$ and \$\$\$\$\$, 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, a certified appraiser with the County Assessor's Office, 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 five comparables that had sold between March 2002 and September 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, 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 \$\$\$\$\$, as established by the

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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-1, 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.

The subject property consists of 0.45 acres of land and a home with 3,605 square feet (above grade), no basement, three bedrooms, 2½ baths, one fireplace and a two-car garage. One comparable that was much smaller in size than the subject sold in April 2003 for \$\$\$\$\$. This home had 940 square feet (above grade), a 720 square foot basement (unfinished), one bedroom, 1¾ baths, and no garage. The Commission would conclude from this sale that the subject's fair market value would be significantly greater than \$\$\$\$\$.

A second comparable, located at ADDRESS 2, sold in September 2003 for \$\$\$\$\$. It appears to be located on the same road and very close to the subject, as the subject's address is ADDRESS 1. This comparable had 1,777 square feet (above grade), no basement, 2 bedrooms, two baths, and a two-car garage. Of the four comparable sales that sold in 2003 and 2004, it appears to be most similar to the subject. Because it is smaller than the subject, its sales price appears to support the subject's assessed value of \$\$\$\$\$.

A third comparable sale sold for \$\$\$\$\$ in July 2003 and had 1,100 square feet (above grade), an 1,100 square foot basement (finished), three bedrooms, two baths, and a one-car garage. Because it is smaller than the subject, its sales price would appear to support the subject's current value, as well.

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Only the fourth comparable, which sold for \$\$\$\$\$ in September 2003, would appear to suggest a lower value for the subject. This comparable had 2,365 square feet (above grade) and a 1,329 square foot basement (finished). Although similar in total size to the subject, it appears to have superior features, which include six bedrooms and 4 ¾baths (consisting of three master suites), two kitchens and two laundry rooms. However, this one comparable is insufficient to outweigh the other comparable sales. Accordingly, based on the comparables sales that sold within a year of the lien date, the Commission is not convinced that the subject's assessed value of \$\$\$\$\$ 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. However, the Commission is not convinced that the appraisal proves that the current value of \$\$\$\$\$ is incorrect. First, the County's appraiser, RESPONDENT REPRESENTATIVE 1, 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, the subject was built to house (X) staff and does not appear to have a similar quality of finish as many custom homes in the area have. For example, in the multiple listing service ("MLS") information provided about the comparables used in the appraisal, Comparables #1 and #5 are described as custom-built homes that have five and four fireplaces, respectively. Yet, there appears to be no adjustment for this arguably superior feature in the appraisal.

Third, almost all of the comparables are described as having outstanding views, while the subject property does not have such a 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. Lastly, the only comparable, like the subject, that does not have a basement is Comparable #2, which when adjusted, shows a value of \$\$\$\$\$ for the subject. This value is almost identical to the \$\$\$\$\$ value established by the

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County BOE. Of all the comparables, the Commission believes that this is the comparable that appears most like the subject property.

For the reasons stated above, the Commission finds that neither party has shown 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-1) 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 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 properties, to show that the subject is inferior to these two properties. That the subject is

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inferior to the PROPERTY 2 does not show an inequity of assessment because the PROPERTY 2 home is assessed at \$\$\$\$\$, which is more than \$\$\$\$\$ higher than the subject's assessment of \$\$\$\$\$. On the other hand, that the subject may be inferior to the PROPERTY 1 may demonstrate an inequity of assessment. The PROPERTY 1's value was reduced to \$\$\$\$\$ at the mediation conference, which is \$\$\$\$\$ lower than the subject's current assessment of \$\$\$\$\$. However, even if the PROPERTY 1's fair market value is more than its \$\$\$\$\$ assessed value, evidence of one property with a valuation disparity is insufficient to establish a violation of one's constitutional and statutory rights to a uniform and equal assessment. *See Mountain Ranch Estates v. Utah State Tax Commission*, 2004 UT 86 (Utah 2004). As a result, the Commission finds that the Petitioner has not demonstrated that the subject's \$\$\$\$\$ value, as established by the County BOE, is an inequitable assessment.

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 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

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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 et seq. and §63-46b-13 et seq.

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