

06-0112  
Locally Assessed Property  
Signed 11/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal No.    06-0112
	)	Parcel No.    #####
v.	)	
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Residential
SALT LAKE COUNTY,	)	Tax Year:    2005
UTAH,	)	
	)	Judge:        Phan
Respondent.	)	

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REPRESENTATIVE, Appeals Manager, 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 pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on August 10, 2006. Petitioner is appealing the assessed value as established for the subject property by Salt Lake County Board of Equalization. The lien date at issue is January 1, 2005.

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. . . . (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. (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

The subject property is parcel no. ##### and is located at ADDRESS, CITY, Utah. The Salt Lake County Assessor’s Office had originally set the value of the subject property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization sustained the value.

The subject property consists of .22-acres of land improved with a two-story style residence. The residence is 11 years old and of average-plus quality of construction. The

residence was in good condition on the lien date. It has a total of 2,147 square feet, all of which is above grade. Additionally there is an attached 2- car garage on the property.

There are two factors that make this property unique from all the comparables offered by either party. The subject property has no basement. Petitioner explained the water table was too high in the area to allow a basement. Additionally the property backs directly onto CREEK. Petitioner points to the fact that his yard is small. The backyard consists mostly of a deck and then there is the creek. The creek is of sufficient depth, especially during the spring run-off periods, to be a hazard for small children. For this reason, despite its appeal, Petitioner felt if he were to sell the property the creek would eliminate from the potential customer group people with small children. There are also some issues with erosion of his lot and nuisance issues with people and dogs following the creek bed or fishing in the creek.

Petitioner argues at the hearing that the value should be reduced to \$\$\$\$\$. First Petitioner points out that the value indicated for the improvement had increased 34% in one year. He argues that a residential building could not possibly have increased by 34% in one year.

The Tax Commission must look to the applicable law in this matter, review the evidence and determine fair market value of the property as of the lien date. A large percentage increase from a prior year may indicate only that the property was undervalued the prior year. There is no provision in the law that the value be limited to certain percentage increase. For tax assessment purposes fair market value is the value of the total property, which includes the land and all improvements. So the issue that the Commission must consider in this case is the total value (land plus building) of this property on the lien date at issue. In a property such as Petitioners, the Tax Commission determines the total value only. It does not allocate a portion of the value to land and a portion to building. The County's appraisal value is based on sales of improved residential properties and after a total value is determined it is allocated between land and improvements.

In addition to the percentage increase argument, Petitioner did present comparable sales and he attempted to make adjustments for differences. For a residential property in this area the best way to determine the market value is from comparable sales. However, Petitioner's sales were not comparable to the subject. Although the total square feet of the comparables including above grade, below grade finished and below grade unfinished did equal an amount near the subject's total square feet, all the comparables had significantly less above grade square feet than the subject. Petitioner's comparables were not comparable on that fact alone. Basements will add value to a residence but not at the same rate as above grade square feet. Additionally none of the comparables were true two-story residences, they were in different neighborhoods, most were of significantly lesser quality grade than the subject and the lots were significantly smaller than the subject. Petitioner's comparables had sold from \$\$\$\$\$ to \$\$\$\$\$. Petitioner had no comparables located on the creek.

Petitioner also argued that his property was devalued by the facts that it was on the creek and had no basement. Although he acknowledged that when he had purchased the lot, eleven plus years ago, he had paid a significant premium for the lot due to its location on the creek.

Respondent submitted an appraisal in this matter in which the appraiser had considered six sales. Like Petitioner, the appraiser was unable to find a comparable directly on the creek, but there was one that had a corner of the backyard touching the creek. The Multiple Listing Services Report for this comparable indicated a creek influence. In addition this comparable was only one block from the subject. Respondent's appraisal comparables were far more comparable to the subject than those offered by Petitioner. They had sold in a range from \$\$\$\$\$ to \$\$\$\$\$. The highest priced sale was the one property with the creek influence.

The appraiser did add a \$\$\$\$ adjustment to the other comparables indicated value for the creek, as the appraiser concluded the creek was a positive factor that would increase the value of the subject.

All of Respondent's appraisal comparables had basements with varying degree of basement finish. The appraiser tried to value the subject as having no basement by making appraisal adjustments. The Commission would note that for the one comparable, no. 6, with a full, finished basement, the adjustments for basement and finished basement totaled \$\$\$\$.

Upon reviewing the information and evidence in this matter, the weight of the evidence favors the County's appraisal value. The County's appraisal has reasonable comparables and adjustments. In reaching this conclusion the Commission is not ignoring Petitioner's concerns with the basement issue or the creek issue. Without other sales on the creek and in Petitioner's immediate neighborhood to show a positive or negative impact of the creek, Respondent's appraisal conclusion that it adds a small value is reasonable. There are buyers who would pay more for the property, such as Petitioner did when he purchased the lot originally. There would also be buyers who would not purchase the property because of the creek.

As far as the basement issue, there is no question that Petitioner's property would be worth more if it had a basement, assuming the basement did not have water issues. In fact, if it had a full finished basement, Respondent's appraisal adjustments would indicate that the value of Petitioner's house would be nearly \$\$\$\$ more than its current assessment. The County's appraisal is attempting to value this property as one that has no basement. The Commission would have liked to have some comparables, in the neighborhood or near the neighborhood, of the subject that also had no basement, but apparently there were none. There is a concern when comparing the subject to properties with basements there might be some obsolescence in addition to the per square foot adjustment made by the County. The County's adjustment is generally used to compare differences in basement square foot or finish to a property that has a basement.

However, there is no evidence to determine this amount, or even that it would be a significant difference above the adjustment already made by the County.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005, 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

Appeal No. 06-0112

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

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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