

06-0289
Property Tax/Locally Assessed
Signed 02/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,	)	ORDER	
)		
Petitioner,	)	Appeal No	06-0289
	)	Parcel No.	#####
v.)		
	)	Tax Type:	Property Tax/Locally
	)		Assessed
BOARD OF EQUALIZATION OF)		
SALT LAKE COUNTY,	)	Tax Year:	2005
UTAH,)		
	)	Judge:	Jensen
Respondent.)		

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2
 PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Salt Lake County
 Assessor's Office
 RESPONDENT REPRESENTATIVE 2, from the Salt Lake County
 Assessor's Office

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Salt Lake County Board of Equalization. This matter was argued in an Initial Hearing on November 14, 2006, pursuant to the provisions of Utah Code Ann. §59-1-502.5.

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).)

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 Ann. Sec. 59-2-1006(1).)

To prevail in a real property tax dispute, a party requesting a change in the value as set by the County Board of Equalization must (1) demonstrate that the Board of Equalization assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by party requesting the change in value. *See Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

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. 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) and 59-2-1004(4).) The evidence required for adjustment on the basis of equalization under Utah Code Ann. Sec. 59-2-1004(4) is a showing that there has been an “intentional and

systematic undervaluation” of property that results in “preferential treatment” to the property owners receiving the lower valuations. *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 16.

DISCUSSION

Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2005. The subject property is parcel no. #####, located at ADDRESS 1 in CITY, Utah. The County Assessor had set the value of the subject property, as of the lien date at \$\$\$\$\$. The County Board of Equalization sustained the value. Petitioner requests that the value be reduced to \$\$\$\$\$. Respondent requests that the value set by the County Board of Equalization be increased to \$\$\$\$\$.

The subject property consists of a .28-acre lot improved with a two-story style residence. The residence was 67 years old, has exterior walls with a stucco finish, and is built of average quality of construction. It has 4,340 square feet above grade and 1066 basement square feet of which 1013 are finished. There is also a built-in two-car garage and a separate basement one-car garage. The County considered the residence to be in good condition.

To support a valuation less than the \$\$\$\$\$ valuation set by the Board of Equalization, Petitioner has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. In this matter Petitioner provided evidence of five comparable properties. Three of these properties had sale dates in late 2004. One had a sale date in late 2005. The remaining property was listed as having had an appraisal in April 2005, although the Petitioner indicated at hearing that he understood that the home had sold in the spring of 2005. Three of the comparable properties were ranch/rambler style and the other two were listed as

duplexes. The above-grade square footages of the five comparables were, 1,689, 1,404, 1,508, 1836, and 2,288 square feet. Each of these total above-grade square footages is smaller than just the main floor of the subject property. None of the properties presented as comparables had the second story present on the subject property.

The Respondent also bears a burden of proof in attempting to show a value in excess of the \$\$\$\$ as set by the Board of Equalization. The Respondent provided an appraisal, prepared by RESPONDENT REPRESENTATIVE 2. It was the appraiser's conclusion that the value for the subject property as of the lien date at issue was \$\$\$\$\$. The appraiser relied on five comparable sales, with selling dates in 2004 and early 2005. After making adjustment for differences in factors such as time of sale, square footage, and basement finish, the five comparable properties had adjusted selling prices between \$\$\$\$ and \$\$\$\$.

The Petitioner provided comment on the county's comparable properties on the basis of his experience as a long-time resident of the area and from his visits to many of the county's comparables. The Petitioner describes the construction and interior finish of four of the county's comparable properties as superior to that of the subject property. As for the remaining property, the Petitioner explained that it is in the more prestigious (X) neighborhood while the subject is in the (X) area.

With regard to the issue of valuation, the Commission finds that the Petitioner's evidence does not show error in the findings of the Board of Equalization. The Petitioner's comparables are different from the subject in both size and style of home. The county's comparable sales are stronger in that they have similar size and design when compared to the subject property. On the strength of these comparables, the county has supported the \$\$\$\$ value as set by the County Board of Equalization. However, the testimony of the Petitioner regarding the exterior construction of the comparable homes together with file photographs showing better

exterior finish and construction details causes some concern that the county's comparable properties may be better in ways that are not fully compensated with the county appraiser's \$\$\$\$ adjustments for quality of construction on two of the comparable properties. On this basis, the Commission finds that the county has likewise not borne its burden of proof with regard to showing error in the value as set by the Board of Equalization.

As a separate matter, the Petitioner also presented an equalization issue, arguing that the value of the subject property should be equalized with a neighboring property. Petitioner looked at the assessed value of the subject and another property at ADDRESS 2. He provided detailed information regarding the home and its condition and assessment. However, evidence of the assessed values of only one property in a neighborhood with several similar properties is not sufficient to show an "intentional and systematic undervaluation" of other properties as is required to successfully present an equalization case under *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86. For this reason, the Commission finds no reason to change value on the basis of an equalization argument.

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

Appeal No. 06-0289

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2007.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

Clinton Jensen
Administrative Law Judge

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

CJ/06-0289.int

DISSENT

I disagree with the conclusion reached in this Order. In examining the evidence and the record, two points are clear. To begin, no relevant sales for comparable properties sold for less than \$\$\$\$\$, which calls the existing assessment of \$\$\$\$\$ into question. Second, homes in the (X) area, where the subject property is located, exhibit strong variation in construction features. Thus, appraising property is extremely difficult, particularly in establishing comparability between homes. With that point in mind, I find that the appraisal done by the assessor is competent. Therefore, the second prong, establishing a better value, has been met.

Nonetheless, before critiquing the majority decision, I will give closer scrutiny to the appraisal. I agree that comparables 4 and 5 are not relevant to establishing value. Comparable number one is questionable for two reasons. First, there were concessions granted in the amount of almost \$\$\$\$\$, indicating a real selling price of about \$\$\$\$\$. Furthermore, the original listing was for \$\$\$\$\$. As a result, although the appraiser made adjustments, I believe this sale is suspect. Comparable number 2 is clearly superior to the subject property. It sold for almost \$\$\$\$\$, and the appraiser determined an adjusted selling price of just under \$\$\$\$\$. This sets the upper limit of value, in my opinion. Comparable number 3 appears, in my opinion, to be the most comparable to the subject. It is 1,000 sq. ft. smaller and is better in terms of quality and condition. The selling price was \$\$\$\$\$, which sets the lower limit of value.

With these factors in mind, the majority found that Petitioner's testimony, coupled with photographs of the properties, was sufficient to warrant additional adjustments for quality of construction and/or condition. In order to reach the value sustained in this decision, additional adjustments would have to total \$\$\$\$\$. There is no evidence in the record to demonstrate that the appraiser's adjustments were incorrect, much less that they were off by \$\$\$\$\$.

In conclusion, the record clearly shows that the fair market value of the subject property is between \$\$\$\$\$ and \$\$\$\$\$. I need not make the exact determination here, since it is moot.

Marc B. Johnson
Commissioner