

06-0305  
Locally Assessed Property  
Signed 01/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal No.    06-0305
	)	Parcel No.    #####
v.	)	
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)	Residential Property
OF SALT LAKE COUNTY,	)	Tax Year:    2005
STATE OF UTAH,	)	
	)	Judge:        Jensen
Respondent.	)	

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**Presiding:**  
Clinton Jensen, Administrative Law Judge

**Appearances:**  
For Petitioner:    PETITIONER 1  
                    PETITIONER 2  
For Respondent:    RESPONDENT REPRESENTATIVE, 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 September 18, 2006 in accordance with the provisions of Utah Code Sec. 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).)

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).

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. ##### and is located at ADDRESS, CITY, Utah. The Salt Lake County Assessor had originally set the value of the subject property, as of the lien date, at \$\$\$\$\$ and the County Board of Equalization sustained the value. Petitioner requests that the

value be reduced to \$\$\$\$ and Respondent requests that the value as set by the County Board of Equalization be sustained.

The subject property consists of a .27-acre lot improved with a cottage/bungalow style residence. The residence was 70 years old and built of average brick quality of construction. It has 800 square feet above grade and 800 basement square feet of which 560 are finished. There is also a detached two-car garage. The County considered the residence to be in average condition. The subject property is on STREET 1 between STREET 2 and STREET 3 and bears a heavy impact from traffic and from commercial development in the area. The subject property is across the street from a gas station and a building used for commercial purposes. In addition to the noise and congestion of traffic, light pollution presents a problem to the subject property.

The Petitioner presented evidence regarding the fair market value of the subject property. The Petitioner presented information regarding five comparable sales. These homes sold in late 2004 and early 2005 for between \$\$\$\$ and \$\$. Two of the taxpayer comparable sales (the two lowest in price) listed information such as “[r]educd for needed repairs/renovation,” “needs work,” or “no kitchen, home sold ‘as is.’” The other three comparables are a considerable distance from the subject, with one being west of STREET 4 and two others less than a half block east of STREET 4.

The Petitioner also performed an income capitalization and a replacement cost analysis. The income capitalization approach indicated a value of \$\$\$\$ and the replacement cost approach indicated \$\$\$\$.

Respondent provided an appraisal, prepared by RESPONDENT REPRESENTATIVE. It was the appraiser’s conclusion that the value for the subject property as of the lien date at issue was \$\$. The appraiser considered the sale of five comparable properties with sale dates in late 2004 and early 2005. Three of the comparable properties are on

STREET 1 between STREET 2 and STREET 3. The other two are on STREET 5, which does not have the traffic and commercial development that is present on STREET 1 in this area. Photographs of the comparable properties indicate construction quality and upkeep similar to the subject property. The adjustments for differences in size and rooms appear appropriate. The appraiser attempted to adjust for differences in traffic by making a \$\$\$\$ traffic adjustment for each of the two properties on STREET 5. The appraiser completed a replacement cost analysis that indicated a replacement cost of \$\$\$\$ after taking depreciation into account. But the appraiser testified that the market approach was the only valid measure of a property such as the subject property since replacement cost did not accurately address a 70 year old property and the income approach was not that applicable to a single family dwelling.

The Commission agrees that the market approach is the most applicable to the subject property and places little, if any, weight on the replacement cost and income approaches to value. The county's comparables appear to better approximate the value of the subject property under the market approach. The three comparables on STREET 1 between STREET 2 and STREET 3 are particularly good indicators of value and take into account much of the negative impact of traffic and commercial development described by the Petitioner.

As a separate matter, the Petitioner also presented an equalization issue, arguing that the value of the subject property should be equalized with neighboring properties. Petitioner looked at the assessed value of the subject and the two homes directly north of his on STREET 1. The county valued the property next to the subject to the north at \$\$\$\$ for 2005 while it valued the subject at \$\$\$\$ for the same year. Some of this difference can be attributed to difference in size, because the subject has 800 square feet above grade and 800 square feet of basement while the property to the north has 708 square feet above grade and a 708 square foot basement. The county valued the property two doors north of the subject at \$\$\$\$ even though it has 1096

square feet above grade and 1096 square feet of basement and is thus larger than the home on the subject property. From the evidence submitted, there appear to be no major differences in quality of construction or upkeep of the subject property when compared to the homes directly to the north. This disparity in valuation between the subject property and two similar properties to the north raises concern of a possible equalization problem. However, evidence of the assessed values of only two properties 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. While evidence regarding valuation of the two houses next to the subject property appears to be a good start to the type of evidence necessary for an equalization case, the Petitioner would need to present evidence of other properties on the street. A full presentation of evidence in support of an equalization case would include the assessed value of the three properties on STREET 1 relied on by the county as comparable sales.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005 is \$\$\$\$\$. It is so ordered.

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 \_\_\_\_\_, 2007.

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Clinton Jensen  
Administrative Law Judge

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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

DISSENTING OPINION

I respectfully dissent from the Majority Opinion. I would lower the value of the subject property to \$\$\$\$ to equalize it with two adjacent properties. Although the Petitioner presented evidence of only two properties, he has picked a representative sample by choosing two neighboring properties. Nothing suggests that he has purposely picked two properties with unusually low valuations. More important, the Respondent provided no evidence to rebut the Petitioner's evidence that a representative sample of this neighborhood shows an "intentional and systematic undervaluation" of other properties and thus a reasonable basis to equalize value under *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86. I find this evidence sufficient to lower valuation to equalize the subject property with similar properties.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

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D'Arcy Dixon Pignanelli  
Commissioner