

06-0899
Property Tax/Locally Assessed
Signed 11/08/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 06-0899</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2005</p> <p>Judge: Phan</p>
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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 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.

Presiding:

Marc B. Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 13, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien date January 1, 2005.

2. The property at issue is Parcel No. #####, located at ADDRESS, CITY, Utah.

3. For the January 1, 2005 lien date the County Assessor had valued the property at \$\$\$\$\$ and the County Board of Equalization had sustained the value.

4. The subject property consists of 3.70 acres of land in the SUBDIVISION located in CANYON. The subdivision is primarily summer recreation property. The subdivision roads are not plowed during the winter months. As of the lien date there was a 41 year old cabin on the property. The 900 square foot cabin was in poor condition and not habitable. It was rodent infested with structural problems. There were no power, sewer or water lines hooked up to the cabin. The lot itself was very steep with a long, narrow shape.

5. Petitioner requested that the property be valued at \$\$\$\$\$. Petitioner had acquired the subject property in January 2005 in a property exchange transaction, in which Petitioner had traded another similar parcel for the subject parcel. The subject parcel had been owned by the (X), who had acquired it for \$\$\$\$\$, including a water share, in September 2003. Petitioner's representative could not state affirmatively that this property transaction had any market exposure.

6. Petitioner had purchased another property, at ADDRESS 2 ("Second Property"), in January 2005 from the (X) and (X) for a price of \$\$\$\$\$, which included one water share. The Second Property was about four acres and had no cabin. The Second Property was not offered for sale on the Multiple Listing Service ("MLS"), nor was there evidence of market exposure. Petitioner's representative had called the owners, offering to purchase this Second Property and they sold it to Petitioner for the \$\$\$\$\$. Then also in January 2005, Petitioner traded the Second Property to the (X) in exchange for the subject property. The (X) had wanted the Second Property because it was adjacent to another property that they owned.

7. It was Petitioner's position that the cabin added no value to the property, that it was, in fact, a

detriment to the value.

8. Respondent submitted an appraisal in this matter that had been prepared by RESPONDENT REPRESENTATIVE, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE'S appraisal conclusion that as of January 1, 2005, the value of the subject property was \$\$\$\$\$. However, the appraisal was offered in support of the value set by the County Board of Equalization at \$\$\$\$\$. In the appraisal RESPONDENT REPRESENTATIVE considered three comparable sales of cabins that were either in poor or fair condition at the time of the sales. These comparables were located in CANYON, less than one mile from the subject property. They had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. The sales had all occurred in the later half of 2005. RESPONDENT REPRESENTATIVE indicated he had used these properties as comparables, despite the fact that they were post lien date sales, because they were the most similar to the subject property. He indicates there were sales in the canyon that had occurred in 2004, but they were superior properties and not comparable. He made appraisal adjustments for the differences between the subject and the comparables and the indicated range for the subject was from \$\$\$\$\$ to \$\$\$\$\$.

9. In the appraisal, RESPONDENT REPRESENTATIVE attempted to make adjustments based on the condition of the comparables at the time of the sale, which is the appropriate consideration. The comparables were renovated to some extent after the sales had occurred. RESPONDENT REPRESENTATIVE provided photographs in the appraisal of the comparables that were taken subsequent to the date of the sale, after some of the renovations had been made. The Commission would note that it is not usual in appraisal practice to use a photograph taken while preparing the appraisal. During the hearing RESPONDENT REPRESENTATIVE testified that the photographs were not the condition as of the sale, but taken subsequently. However, this was not explained in the appraisal.

10. It was RESPONDENT REPRESENTATIVE'S opinion that having a cabin already

constructed on the property, despite its poor condition, did add value to the property because it was easier to obtain a permit to renovate an existing cabin than to build a cabin on a lot that did not have one.

11. RESPONDENT REPRESENTATIVE also considered a cost approach in the appraisal, based on land sales and the depreciated cost of the improvement. He considered six sales in total for the land value. There were four sales with land only and two sales with cabins for which he felt the cabins had only salvage value. These six properties had sold for a range from \$\$\$\$\$ to \$\$\$\$\$. From these sales RESPONDENT REPRESENTATIVE concluded that the value of the land was \$\$\$\$\$ and the depreciated value of the improvement \$\$\$\$\$.

12. In his appraisal RESPONDENT REPRESENTATIVE listed that the subject property had transferred on February 3, 2005 for a price of \$\$\$\$\$. In addition, he stated, "The subject property also transferred ownership on September 11, 2003; the sale price is unknown." Petitioner provided evidence that RESPONDENT REPRESENTATIVE did, in fact, have a copy of the closing statement for the 2003 transaction when he would have been preparing the appraisal.

13. Upon review of all the evidence submitted in this matter and in conclusion, the Commission would note that Petitioner submitted only two sales, the subject property transaction that occurred in 2003 and Petitioner's purchase of the Second Property in January 2005. The sales both appear to be private transactions, although between non related parties, where there was not adequate market exposure to result in a fair market value. There were no market sales submitted that supported values near what Petitioner was requesting for the subject property. In Respondent's appraisal, considering both the sales comparables and the land sales, there were seven different comparables that sold for prices much nearer or in excess of the value set by the County than the value Petitioner is requesting. For this reason, although Petitioner has shown error in Respondent's value, Petitioner has not provided a sound evidentiary basis to adopt a new, lower value.

14. Petitioner had objected to RESPONDENT REPRESENTATIVE'S appraisal being received as evidence in this matter, pointing to several areas of concern. The Commission did receive the appraisal over the objections as the appraisal and the comparables included therein are relevant and probative to the issue of determining market value, especially in the absence of market sales that occurred nearer to the lien date. Petitioner argued that the appraisal should be excluded based on an asserted violation of the Uniform Standards of Professional Appraisal Practice ("USPAP") because of the post lien date sales. The Commission prefers to have sales that occurred just prior to the lien date. However, there are some geographical locations where it is far more difficult to find comparable sales and an appraiser would need to expand the parameters for choosing comparables. The Tax Commission issues no conclusion on whether the use of the post lien date sales is a violation of USPAP, as the Tax Commission is not the appropriate body to make that determination. Petitioner also took issue with the statement in the appraisal regarding the 2003 sale of the subject. RESPONDENT REPRESENTATIVE did have an error in the appraisal regarding the 2003 transaction. The Commission does consider this going to the credibility of the appraisal, and, in fact, places less weight on the appraisal conclusion. Petitioner also argued that the photographs in the appraisal were misleading as they had been taken after improvements had been made. As far as the issue with the photographs being taken when the appraisal had been prepared and not at the time of the sale or lien date, this is not unusual in appraisals. Unless photographs were taken and posted on the MLS at the time the property was listed for sale, the only way for an appraiser to include photographs of comparables in the appraisal would be to take them during the course of the appraisal preparation. However, it would be helpful to have in the appraisal the date the photograph was taken.

15. After reviewing the comparable sales, the Commission concludes that the value of the subject property is in the land. A land value was estimated by RESPONDENT REPRESENTATIVE in the cost

approach based on land sales and salvage cabin sales. From this the Commission concludes that the value of the subject property as of the lien date at issues is \$\$\$\$\$.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. (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).)

CONCLUSIONS OF LAW

1. 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).

2. The two sales and one trade presented by Petitioner did not appear to be reflective of market value for the lien date at issue. Although Petitioner objected to the admissibility of Respondent's appraisal, and had several criticisms that did tend to show error in the County value, Petitioner did not provide a sound evidentiary basis to support its requested value. The sales comparables in Respondent's appraisal did support a value somewhat lower than that set by Respondent.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2005, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2007.

Jane Phan
Administrative Law Judge

Appeal No. 06-0899

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 _____, 2007.

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. Sec. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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