

07-0142  
Property Tax/Locally Assessed  
Signed 08/27/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 07-0142</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2006</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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Assessor  
RESPONDENT REPRESENTATIVE 2, Certified General  
Appraiser, Davis 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 July 30, 2007. Petitioner is appealing the assessed value as established for the subject property by the Davis County Board of Equalization. The lien date at issue is January 1, 2006.

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(12).)

(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. . . . (Utah Code Ann. Sec. 59-2-1006(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).

DISCUSSION

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

The subject property consists of .41-acres of land improved with a two-story style residence. The residence was one year old on the lien date. Except for some construction defects with the foundation Respondent considers the residence to be of good quality construction and in excellent condition. There are 2,647 square feet above grade and a basement of 1,197 square feet. The basement is unfinished. There is also an attached three-car garage.

There were two problems with the basement foundation. It was not made to square and there were “rock pockets” at various locations through the foundation walls, which would cause leaking of exterior water into the basement. Petitioner did present a bid on the cost to cure these problems, which indicated that at the high end the cost would be \$\$\$\$\$. In addition to this problem with the foundation, the subject property yard had been flooded in the past by mud sliding from the property above while a residence on the property above was under construction. Petitioner did provide a bid dated December 15, 2004, on the cost to remove the mud from the subject yard. However, Petitioner provided no engineering study or information that would indicate this would be an ongoing problem, nor did he present a bid on the actual cost to cure an ongoing problem, if any. The bid indicated that the mudslide had occurred more than one year prior to the lien date.

Petitioner asked that the value for the subject property be set at \$\$\$\$\$ based on the sale price of the property located above the subject, which had cause the problems with the mudslide on his property. That house had sold for \$\$\$\$\$ in February 2006. From this he subtracted an amount for the problems with the foundation of his property and made adjustments for differences in square feet to reach his value conclusion.

Respondent submitted an appraisal in this matter that indicated the value of the subject was \$\$\$\$\$. Five comparables were considered. All were two-story properties like the subject, similar as far as size and style, and sold for a range from \$\$\$\$\$ to \$\$\$\$\$. Although some of these residences were older than the subject and the locations of at least three of the comparables were in neighborhoods that were a bit different, from the subject, all were in reasonable proximity and they were the best comparables presented at the hearing. Respondent had made an adjustment of \$\$\$\$\$ for the foundation problems. Respondent did not adjust for the mudslide from the neighboring property, but Respondent’s representative indicated if Petitioner

provided an engineering report or some other evidence that this would be an ongoing problem, or a bid for the cost to cure the problem, they would take that into consideration.

The Commission notes the one comparable that Petitioner relied on in determining a value, although the Multiple Listing Service (“MLS”) report indicated it was a two-story, appeared from the photograph to be a rambler with a subbasement. This was supported by the fact that the kitchen is listed as being located on the top level in the MLS report. As such it was not a good comparable to subject, and had only 940 square feet above grade, with the rest being basement area. Petitioner, thought the property was a two-story and indicated that the lower levels were above ground. The photo would support a daylight basement off the back at least. However, appraisers typically would not compare a rambler, even with a full daylight basement, to a two-story residence if two-story comparables are available.

The value set by the County Board of Equalization has the presumption of correctness in this matter and Petitioner the burden of proof. Respondent has made a deduction for the foundation problems and supported its value with sales of two-story properties in the area. Petitioner has not supported a further deduction for the mudslide issues from the property above as it is unclear that if this will continue to be a problem.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2006, 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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Jane Phan  
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

D'Arcy Dixon Pignanelli  
Commissioner