

07-0185
Property Tax/Locally Assessed
Signed 09/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF SALT
LAKE COUNTY, UTAH,

Respondent.

ORDER

Appeal No. 07-0185

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

Judge: Phan

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 1

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, 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 June 4, 2007. Petitioner is appealing the assessed value as established for the subject property by the Salt Lake 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)&(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 1, CITY, Utah. The 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 .21-acres of land improved with a rambler-style residence. The residence is 45 years old. Respondent considers the property to be of average quality of construction and in average condition. There are 1,248 above grade square feet and a basement of 1,248 square feet. The basement is 40% finished. However, Petitioner indicates the basement does not have a floor drain and is too low into the ground for the sewer line. For this

reason, although there is a bathroom finished in the basement both the toilet and tub are raised off of the floor to facilitate drainage into the sewer. The basement has no door or daylight windows. Petitioner indicates his basement appears to be lower into the ground than neighboring properties. In addition Petitioner states that the exterior walls were not insulated, so the subject is more costly to heat or keep cool. The subject property does not have a garage; instead there is an attached, two-car, carport.

The subject property is located on a residential street, with residences on both sides of the street. However, directly behind the subject property is a commercial area and a COMPANY A fast food restaurant with a drive through that is open late into the night. Petitioner indicates that there is noise from this commercial activity late into the night, as well as glaring lights that are a constant nuisance for the subject property.

At the hearing Petitioner requested that the assessed value for tax year 2006 be lowered to \$\$\$\$\$, which was the price that he had paid when he purchased the property in April of 2005. He acknowledged that he had purchased the property from his granddaughter, but indicated that they negotiated the purchase price based on other property sales in the area. He also indicated that the basement had flooded twice since he purchased the property and ruined the carpet.

Petitioner submitted an appraisal that indicated that the value of the subject property was \$\$\$\$\$. The appraisal had been prepared by RESPONDENT REPRESENTATIVE, Licensed Appraiser. RESPONDENT REPRESENTATIVE had considered Petitioner's purchase of the subject, as well as four additional comparables. Two of the additional comparables were located on the same street as the subject.

RESPONDENT REPRESENTATIVE indicated that the market had been appreciating significantly during 2005, so that the Petitioner's purchase in April of 2005 would need to be adjusted for time to get to a value for the lien date of January 1, 2006. With the time

adjustment it was his position that Petitioner's purchase price of the subject property indicated a value of \$\$\$\$\$ as of the lien date at issue.

RESPONDENT REPRESENTATIVE pointed out, however, that one comparable on the same street and same side of the street as the subject, less than one block away, had sold for \$\$\$\$\$. This property was located at ADDRESS 2 and had no basement. It was close enough in location that it may have had some influence from the commercial businesses operated behind the properties. However, he was unsure if it would have the same direct nuisance from the COMPANY A drive through. The other property that sold on STREET 1 was at ADDRESS 3 and had sold for \$\$\$\$\$ in March of 2005. This would be across the street from the subject. This property was similar in size but did have a somewhat unsightly garage addition on the front. The two comparables not on the same street were located on STREET 2. From the photographs they appeared nicer than the comparables on the subject street and had sold for more than the comparables on the subject street.

In analyzing all of the comparables, if the basement issues and flooding prior to the lien date are as represented by Petitioner, the basement would add some value, but more in the range unfinished basement would add to the value. RESPONDENT REPRESENTATIVE'S other adjustments are in line with standard appraisal adjustments. The time adjustments are large, but it was an appreciating market and Petitioner did not have evidence that would refute values increasing. In reaching its decision the Commission relies more on the comparables on the same street as the subject. Petitioner's purchase of the subject was not an arms length transaction. However, the purchase price was supported generally by the sale at ADDRESS 4. Taking into account the basement condition and the location of the COMPANY A drive through, the purchase of the subject property adjusted for time is the best indicator of value for this property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2006, is \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

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.

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