

07-1462
Locally Assessed Property
Signed 08/14/2008

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>KANE COUNTY BOARD OF EQUALIZATION</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 07-1462</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2007</p>
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Presiding:

Commissioner: Marc B. Johnson
Commissioner: R. Bruce Johnson

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Kane County Assessor
RESPONDENT REPRESENTATIVE 2, Kane County Chief Deputy Assessor
RESPONDENT REPRESENTATIVE 3, Kane County Deputy Appraiser

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Kane County Board of Equalization. This matter was argued in an Initial Hearing on April 30, 2008. Taxpayer is appealing the assessed value of the subject property as set by the Kane County Board of Equalization for property tax purposes. The lien date at issue in this matter is January 1, 2007.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows, in pertinent part:

- (1) All tangible taxable property located within the state 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 provided by law.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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. §59-12-102(12) (2007).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2)

provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

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 lowered the value to \$\$\$\$\$. Taxpayer argues that the assessed value is between \$\$\$\$\$ and \$\$\$\$\$.

The subject property consists of a .79 acre lot improved with a rambler style residence. The residence was approximately 1 year old as of the lien date and built of average quality construction. It has 1,614 square feet above grade and no basement. There is also an attached two-car garage. The County considered the residence to be in average condition.

Market Value

Taxpayer provided evidence of four comparable properties to demonstrate that the County's assessed value for subject property was too high. The comparable properties sold between February 2006 and December 2006. Though the Taxpayer did not provide information on the distance of the comparable properties from the subject, at least two of the comparable properties were located within the same subdivision, SUBDIVISION. The Taxpayer's comparables are summarized as follows:

Comparable "a" is located at ADDRESS 2, and is a 1,737 square foot home located on a .53 acre lot. The home sold for \$\$\$\$\$ in November of 2006. Though the Taxpayer indicated the MLS sales data was attached to the information he provided, there was no MLS data sheet for this property. Without additional data, such as the exterior finishes of the home, the age of the home, whether there is a garage, the Commission is unable to determine whether this property is a good comparable.

Comparable "b" is located at ADDRESS 3, and is a 1,578 square foot home located on a .66 acre parcel. The home sold for \$\$\$\$\$ in February of 2006. Though the Taxpayer indicated the MLS sales data was attached to the information he provided, there was a no MLS data sheet for this property. Without additional data, such as the exterior finishes of the home, the age of the

home, whether there is a garage, the Commission is unable to determine whether this property is a good comparable.

Comparable “c” is located at ADDRESS 4, and is a 1,525 square foot home located on a .3 acre parcel. The home sold for \$\$\$\$\$ on November 16, 2006. According to the MLS data sheet, comparable “c” is located in the same subdivision as the subject, SUBDIVISION. It is a 3 bedroom, 2 bathroom home constructed in 2006 with a stucco exterior, “architecture shingles,” and a 2 car garage. This is a good comparable, but requires adjustment. For instance, this property is located on a smaller lot, and the home has less square footage. This comparable does not support the Taxpayer’s argument that his home should be valued at \$\$\$\$\$, as the difference in lot size and square footage could reasonably account for the difference in value.

Comparable “d” is located at ADDRESS 5, and is a 1,500 square foot home located on a .75 acre parcel. The home sold for \$\$\$\$\$ on December 5, 2006. According to the MLS data sheet, comparable “d” is also located in the same subdivision as the subject, SUBDIVISION. It is a 3 bedroom, 2 bathroom home constructed in 1985 with a brick and press board exterior, and has an attached garage. The MLS data sheet indicates that this home was remodeled in 2006. This is a good comparable, but requires adjustment. For instance, this property is located on a larger lot, the home has less square footage, and the exterior finishes are of a lower quality than the subject. This comparable does not support the Taxpayer’s argument that his home should be valued at \$\$\$\$\$, as the exterior finish, square footage, and lot size could reasonably account for the difference in value.

The county provided an appraisal, prepared by RESPONDENT REPRESENTATIVE 3. The county’s appraiser relied on the sales of three comparable properties, as follows:

Comparable #1 is located at ADDRESS 6, and is a 1,598 square foot ranch-style home located on a .31 acre parcel. The home sold for \$\$\$\$\$ on November 6, 2006. It is a 3 bedroom, 2 bathroom home with a two-car garage. It was constructed in 2006 with a stucco exterior. The appraiser made adjustments for lot size, square footage, and a porch. The appraiser adjusted the sales price to \$\$\$\$\$.

The County’s comparable #2 is also the Taxpayer’s comparable “d”. The County made adjustments for the lot size, age of the home, square footage, porch, and fireplace. The appraiser adjusted the sales price to \$\$\$\$\$.

The County’s comparable #3 is located at ADDRESS 7, and is a 1,649 square foot ranch-style home located on a 2.69 acre parcel. The home sold for \$\$\$\$\$ on December 16, 2005. It is a 3 bedroom, 2 bathroom home with an attached garage that. It has a siding exterior and was 13

years old as of the lien date, with an effective age of 5 years. The appraiser made adjustments for the lot size, age of the home, square footage, porch, and fireplace. The appraiser adjusted the sales price to \$\$\$\$\$.

Taxpayer 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. While the Taxpayer did proffer some good sales comparables, he made no adjustments to his comparables to account for differences in lot size, square footage, building style, or other amenities. An arithmetic average of the value of nearby properties, unadjusted for the specific differences between the subject and the comparables, is not a well-accepted valuation methodology.

The County, on the other hand, submitted a written appraisal report, identifying several comparables and making appropriate adjustments for lot size, age, and other factors. Based on the analysis using the sales comparison approach, the appraiser recommends a value of \$\$\$\$\$ for the subject property. The appraiser also completed a cost approach that indicates a value of \$\$\$\$\$, though she seemed to give no weight to the cost approach in arriving at the recommended value. The Commission finds that the Taxpayer's comparable properties that were most similar to the subject, comparable "c" and "d", both support a higher value than the value claimed by Taxpayer. The Commission further finds that the County's submitted appraisal fully supports the Board of Equalization value of \$\$\$\$\$. Therefore, the Commission sustains that value.

Equalization

The taxpayer also asked that the Commission determine the value of his home based on an equalization argument. He argued that his property had been assessed at a higher value per square foot than the other properties on his street. To prevail on an equalization theory, a taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties.

The Taxpayer determined that his property was valued at \$\$\$\$\$ per square foot. He then calculated the value per square foot of neighboring properties. The Taxpayer submitted County valuation sheets for five properties that are all located within 1 block north or south of the subject property on STREET, as follows:

The property located at ADDRESS 8 was assessed at \$\$\$\$\$ for the 2007 tax year. The county record indicates that this home has 1,265 square feet, and the Taxpayer calculated the value per square foot to be \$\$\$\$\$. This is 7.87% less than the subject.

The property located at ADDRESS 9 was assessed at \$\$\$\$ for the 2007 tax year. The county record indicates that this home has 1,950 square feet, and the Taxpayer calculated the value per square foot to be \$\$\$\$\$. This is 25.5% less than the subject.

The property located at ADDRESS 10 was assessed at \$\$\$\$ for the 2007 tax year. The county record indicates that this home has 3,237 square feet, and the Taxpayer calculated the value per square foot to be \$\$\$\$\$. This is 74% less than the subject.

The property located at ADDRESS 11 was assessed at \$\$\$\$ for the 2007 tax year. The county record indicates that this home has 1,757 square feet, and the Taxpayer calculated the value per square foot to be \$\$\$\$\$. This is 23.47% less than the subject.

The property located at ADDRESS 12 was assessed at \$\$\$\$ for the 2007 tax year. The county record indicates that this home has 1,916 square feet, and the Taxpayer calculated the value per square foot to be \$\$\$\$\$. This is 29.38% less than the subject.

The evidence presented by the taxpayer indicates that his property received a higher total valuation per square foot than the neighboring properties. The subject property is valued between 7.87% and 74% higher than the surrounding properties on a per square foot basis. As noted above, the use of average values per square foot, unadjusted for specific differences in property characteristics, is not a well-accepted appraisal technique. Similarly, it does not establish a lack of equalization. The disparate values, however, are sufficient to warrant additional inquiry to see if the difference is justified.

The County provided no response to the Taxpayer's equalization argument at the hearing. However, the County was allowed to submit documentation post-hearing on the five neighboring properties the Taxpayer referred to in his equalization argument. The County reviewed the assessment of the five properties located on STREET. The County took into consideration the year built, the lot size, the gross living area, the building style, the condition of the home, the roofing material, exterior material, garages, sheds and outbuildings, and other amenities. The surrounding properties seem to be of similar lot size, ranging between .75 and .8 acres. However, the homes were built between 1977 and 2006; the square footage ranges from 1,265 to 3,237; the building styles include one story, one and one-half story, and two story; the condition ranges between fair and good; all of the properties except the subject have composition shingles; the exterior finishes are stucco, brick, wood siding, and vinyl siding; one home has a carport and no garage, and one of the homes has only a one car garage; and three of the properties have outbuildings. Based on the review of the surrounding properties, it is the County's position that

the difference in the value per square foot of the properties is attributable to the differences cited above.

While the Taxpayer has shown that the total value per square foot of the subject property is more than 5% higher than neighboring properties, he did not succeed in demonstrating that this deviation is disparate treatment. The County offered documentation on the neighboring properties to show that there are significant differences in square footage, building style, condition, finishes, and other amenities when compared to the subject property. The County testified that these differences affected the values of the properties and different values per square foot were justified because of the different characteristics. The Taxpayer failed to rebut the County's testimony on this point. There is no showing that *similar* properties have been treated unequally. Therefore, the Commission rejects the Taxpayer's equalization claim.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2007 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

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

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this ____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner