

07-1651
LOCALLY ASSESSED PROPERTY
SIGNED 04-16-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 07-1651 Parcel Nos. ##### - 1 ##### - 2 ##### - 3 Tax Type: Property Tax/Locally Assessed Tax Year: 2007 Judge: Jensen
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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 regulation pursuant to 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Pam Hendrickson, Commission Chair
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP 1, appraiser for Salt Lake County
 RESPONDENT REP 2, appraiser for Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 15, 2008. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Taxpayer") is appealing the assessed value of the subject property for the lien date January 1, 2007.
2. The subject property consists of three parcels. The first is parcel no. ##### - 1, located at

ADDRESS 1 in CITY 1, Utah (the "PROPERTY 1"). The second is parcel no.##### - 2, located at ADDRESS 2 in CITY 2, Utah (the "PROPERTY 2"). The third is parcel no. ##### - 3, located at ADDRESS 3 in CITY 3, Utah (the "PROPERTY 3").

3. The County Assessor had set the value of the PROPERTY 1, as of the lien date, at \$\$\$\$\$. The County Board of Equalization sustained that value. In its Initial Hearing Decision, the Commission raised the value of the PROPERTY 1 to \$\$\$\$\$. The Taxpayer's request for a formal hearing indicated that was on the basis of a dissent from the Initial Hearing Decision. That dissent was clear that it challenged the majority's action in raising the value of the PROPERTY 1 to \$\$\$\$\$. The Taxpayer's request thus put the value of the PROPERTY 1 at issue for the Formal Hearing. At the Formal Hearing, the County requested that the value of the PROPERTY 1 be increased to \$\$\$\$\$ and the Taxpayer requested that the Commission sustain the value set by the board of equalization.

4. The County Assessor had set the value of the PROPERTY 2, as of the lien date, at \$\$\$\$\$. The County Board of Equalization sustained that value. At the Initial Hearing, the County requested that the Commission lower the value to \$\$\$\$\$ and the Taxpayer joined in that request. On that basis, the Commission issued an Initial Hearing Decision lowering the value of the PROPERTY 2 to \$\$\$\$\$. The Taxpayer's request for a formal decision indicated that it was on the basis of a dissent from the Initial Hearing Decision. That dissent was clear in supporting the action of the majority in lowering the value of the PROPERTY 2 to \$\$\$\$\$. Accordingly, the Taxpayer's request for a formal hearing did not address the PROPERTY 2.

5. The County Assessor had set the value of the PROPERTY 3, as of the lien date, at \$\$\$\$\$. The County Board of Equalization sustained that value. At the Initial Hearing, the County requested that the Commission lower the value to \$\$\$\$\$ and the Taxpayer joined in that request. On that basis, the Commission issued an Initial Hearing Decision lowering the value of the PROPERTY 2 to \$\$\$\$\$. The Taxpayer's request for a formal decision indicated that it was on the basis of a dissent from the Initial Hearing Decision. That dissent was clear in supporting the action of the majority in lowering the value of the PROPERTY 3 to \$\$\$\$\$. Accordingly, the Taxpayer's request for a formal hearing did not address the PROPERTY 3.

6. The PROPERTY 1 consists of a .21-acre lot improved with a two-story style residence. The residence was 11 years old as of the lien date and built of average quality construction with a siding and brick exterior. It has 1,668 square feet above grade and an unfinished basement of 672 square feet. There is also a two-car garage. The County considered the residence to be in good condition.

7. In support of its request to raise the value that the board of equalization had set for the subject, the

County provided an appraisal, prepared by APPRAISER 1. It was the appraiser's conclusion that the value for the PROPERTY 1 as of the lien date at issue was \$\$\$\$\$. The County's appraiser relied on the sales of five comparable properties with sale dates from September 2006 to January 2007. The comparable properties were from .45 of a mile to 1.18 miles from the subject and ranged in age from 11 to 24 years. The County's comparable properties had unadjusted selling prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser made adjustments to compensate for differences between the PROPERTY 1 and the comparable properties in factors such as time of sale, condition, and building size. After making adjustment for factors that the appraiser considered would influence market value, the comparable sales indicated values for the subject of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser also considered a cost approach, which valued the PROPERTY 1 at \$\$\$\$\$. The appraiser reconciled the appraisal to a final value of \$\$\$\$\$ as of the lien date.

8. The Taxpayer provided written documentation regarding the sales of five properties with sale dates in October 2006, November 2006, December 2006, April 2007, and August 2008. These properties were between 1.1 and 2 miles from the PROPERTY 1. They ranged in age from 22 to 33 years. All had smaller area above grade compared to the PROPERTY 1. The selling prices of these comparable properties, after deducting for seller concessions, ranged from \$\$\$\$\$ to \$\$\$\$\$.

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 provided 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).)

DISCUSSION

Considering the evidence presented, the Commission finds the County's comparable sales to be more persuasive than those presented by the Taxpayer. The Taxpayer's comparable properties all had homes that were older and smaller than the home on the PROPERTY 1. The distance from the PROPERTY 1 to the Taxpayer's comparable sales indicates that the Taxpayer chose sales farther from the PROPERTY 1. The County's appraisal demonstrates that closer sales were available.

The County's comparable sales indicated values for the PROPERTY 1 of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Taxpayer argues that the \$\$\$\$\$ value set by the board of equalization is within the range of values set by the County's appraisal and therefore the County's appraisal does not show error in the \$\$\$\$\$ value. While the Commission agrees that the \$\$\$\$\$ value set by the board of equalization is within the values suggested by the County's appraisal and is slightly above the extreme low end of the range, it is below the value suggested by four of the County's five sales comparables. The Commission notes that Utah law requires that property be valued at "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." The Commission finds that the County's reconciled appraisal value of \$\$\$\$\$ fits with that requirement and is a better determination of value than a figure slightly above the lowest available value. On that basis, the Commission finds that the board of equalization value of \$\$\$\$\$ is in error and that a value of \$\$\$\$\$ has a reasonable evidentiary basis.

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, a party requesting a value different from that determined by the board of equalization 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 The Taxpayer. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. Because the Taxpayer's request for a formal hearing did not address or challenge the Commission's action in the initial hearing in lowering the value of the PROPERTY 2 to \$\$\$\$\$, the Initial Hearing Order became the final order of the Commission for the 2007 tax year for that property. *See* Utah Administrative

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Rule R861-1A-24(2)(a)(iii) (providing that formal hearing is to address only “matters that remain in dispute after the initial hearing is issued”).

3. Because the Taxpayer’s request for a formal hearing did not address or challenge the Commission’s action in the initial hearing in lowering the value of the PROPERTY 3 to \$\$\$\$\$, the Initial Hearing Order became the final order of the Commission for the 2007 tax year for that property. *See id.*

4. In this matter County has demonstrated error in the \$\$\$\$\$ value as determined by the board of equalization for the PROPERTY 1.

5. The County has provided a sound evidentiary basis to value the PROPERTY 1 at \$\$\$\$\$ as of the lien date.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that reasonable market values, as of January 1, 2007, are \$\$\$\$\$ for the PROPERTY 1 (parcel no. ##### - 1), \$\$\$\$\$ for the PROPERTY 2 (parcel no. ##### - 2) and \$\$\$\$\$ for the PROPERTY 3 (parcel no. ##### - 3). It is so ordered.

DATED this _____ day of _____, 2009.

Clinton Jensen
Administrative Law Judge

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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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce 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. 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 Ann. Sections 59-1-601 and 63-46b-13 et. seq.

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CONCURRENCE AND DISSENT IN PART

I concur with the majority's finding on parcel nos. ##### - 2 and ##### - 3. With respect to the parcel no. ##### - 1, I reach a different conclusion. We have consistently interpreted the Court to require the same burdens from the assessor as the Taxpayer when the former is requesting an increase in an assessment. (See *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000)). In examining County's appraisal, I first note that the comparable sales support a range of values, of which the PROPERTY 1 is at the lower end. The sales range from \$\$\$\$\$ to \$\$\$\$\$ and the adjusted sales prices, as estimated by the county's appraiser, range from \$\$\$\$\$ to \$\$\$\$\$. Thus, the range of data supports the BOE value of \$\$\$\$\$. It is only the appraiser's final estimate that calls the assessment into question.

Without questioning the county's appraisal directly – to the contrary, I find it to be professional and competent - I am nonetheless concerned about abandoning the original assessment, in favor of a 3.6% increase in the amount of \$\$\$\$\$. While we clearly have a duty to determine the correct value of a property, whether higher or lower than the Board of Equalization's determination, we must recognize that the Board's

determination has a presumption of correctness. Accordingly, we must exercise caution when considering increasing an assessment. Therefore I will first examine the comparable sales used in the appraisal.

To begin, I believe the first two sales are the least comparable. Although they are closest in size to the PROPERTY 1, both sold for the highest prices, were adjusted to the highest prices, and sold for the highest dollars per square foot (\$\$\$\$\$ and \$\$\$\$\$ respectively). More than the differences in appearance from the PROPERTY 1, as I observe from the photographs, the most apparent distinguishing features are the upgrades. Both comparables were adjusted for upgrades, while neither the rest of the comparables nor the PROPERTY 1 displayed this characteristic. I am concerned that the value of such features is highly subjective, and because of this problem I am reluctant to place much emphasis on those comparables. Of the remaining three comparables, #3 is the least similar in appearance and # 4 appears to be the most similar. The three remaining sales range in sales price from \$\$\$\$\$ (#5) to \$\$\$\$\$ (#4), and range in adjusted sales prices from \$\$\$\$\$ (#3) to \$\$\$\$\$ (#5). Comparable #4 has a home that is larger than the home on the PROPERTY 1 by 330 square feet and sold for, by far, the lowest dollars per square foot. The unit selling price was \$\$\$\$\$ while the other two sold for \$\$\$\$\$ and \$\$\$\$\$. The assessor made the least net adjustments for comparables 3 and 4, which sold for \$\$\$\$\$ and \$\$\$\$\$ respectively, and were adjusted to \$\$\$\$\$ and \$\$\$\$\$ respectively.

Furthermore, two of the Taxpayer's comparable sales are relevant. They sold for \$\$\$\$\$ and \$\$\$\$\$, net of concessions. While they were 12-14 years older than the PROPERTY 1, the Assessor also used a comparable sale (# 3) that was 13 years older.

Thus from the market transaction prices alone, I conclude a value range above \$\$\$\$\$ and below \$\$\$\$\$.

My biggest concern, however, is the fundamental difference between the characteristics and features of all of the relevant comparable sales and the PROPERTY 1. The PROPERTY 1 is a two-story building, with no basement finish. None of the comparable sales displayed these two significant characteristics. Regardless of the reasonableness of the Assessor's adjustments **there is absolutely no direct evidence of the transaction price of a two-story residence with no basement finish.**¹

¹ The assessor classified comparable # 3 as a 2-story building. This is not clear from the photograph, where it appears to be 1-1/2 stories. If it were indeed two stories, it would be conclusive evidence of \$\$\$\$\$.

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As the majority recognizes in its statement of Applicable Law, a party challenging the Board of Equalization value has a two-fold burden. First, it must demonstrate error in the Board's value. Only then does a revised value become relevant. What the majority fails to recognize explicitly is that this burden falls upon the Board when it abandons its assessment. (See *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000). The Board's original assessment falls within a range of values set by the market. Thus, I would hold that the Respondent has not carried its burden of demonstrating error in the Board's value. Furthermore, although moot, because of the clear and distinct differences between the PROPERTY 1 and every comparable sale, I find that there is no preponderance of evidence to show that the assessor's estimated value is more correct than the value set by the BOE. Accordingly would uphold the valuation of \$\$\$\$\$.

Marc B. Johnson
Commissioner