

07-1719  
Locally Assessed Property  
Signed 02/19/2009

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 07-1719  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2007  Judge: Marshall
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**Presiding:**

Pam Hendrickson, Commission Chair  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County  
Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 15, 2009. The Commission allowed the parties additional time to submit information on the replacement of concrete at the subject property. On February 2, 2009, the County submitted a letter from a home inspector, a bid to replace the concrete, and photographs of the concrete at homes in the surrounding area. On February 9, 2009, the Taxpayer submitted a written response. Based upon the evidence and testimony presented at the hearing and these post-hearing documents, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in Salt Lake County, Utah for the January 1, 2007 lien date.
2. The County assessed the property at \$\$\$\$\$. The Board of Equalization reduced the value to \$\$\$\$\$. The County asked the Commission to increase the value to \$\$\$\$\$. The Taxpayer requested the value of the subject be reduced to \$\$\$\$\$, excluding the costs to replace the concrete around the home.

3. The subject property is a single-family residence that is identified as Parcel No. ##### and is located at ADDRESS 1 in CITY 1, Utah.
4. The subject is a 0.22-acre lot improved with a split foyer home. The home is 42 years old and has a brick and siding exterior. It has 1,864 square feet above grade and a basement with 1,092 square feet that is 80% finished. The home has three bedrooms, one and three-quarter bathrooms, two fireplaces, and two garages, each of which is a two-car garage.
5. Taxpayer explained that an underground water drain was installed when the subdivision was developed that drains water from the subdivision to a holding area near the southeast corner of the subject property. In addition, Salt Lake County installed a pump to divert the drain water into the ( X ) ditch. After several years, the pump burned out and the Taxpayer claims that the County will not repair or replace it. As a result, the Taxpayer stated that the high water table caused damage to his property. Taxpayer submitted, as part of his Exhibit A, a map of the water drain area and photographs of the concrete he claims was damaged by the high water table.
6. Taxpayer stated that the County is responsible for an irrigation ditch on the east side of the subject property. He stated that the ditch once had clear water, but that the County has diverted ( X ) water into it, resulting in muskrats, mosquitoes, bugs and bad smells when it is hot. Taxpayer considers the property to be an eyesore that lowers the value of his property. Taxpayer submitted several photographs as part of his Exhibit A, showing the weeds and a rat. Taxpayer also submitted, as part of his Exhibit C, a letter from CITY 1 that indicates there is a city ordinance that requires weeds not exceed six inches in height.
7. Taxpayer obtained a bid from a contractor, CONTRACTOR, to replace the concrete around the subject. The bid included removing all concrete; fill in and tamp, with new soil, the areas that have washed away the fill dirt; and to replace all concrete with new cement. The total cost for CONTRACTOR'S bid was \$\$\$\$\$. (Exhibit C).
8. The County was given additional time to submit information in response to the Taxpayer's bid to replace the concrete. The County submitted a letter from HOME INSPECTOR, a home inspector with COMPANY A. HOME INSPECTOR inspected the exterior concrete of the subject. He noted that the concrete appears "to be several years old, with possible varying ages from surface to surface. There are what appear to be average stress cracks in places, and some slight settlement in places." The inspector concluded that the condition was typical for homes of that

age, and determined that the concrete at the subject appeared to be in above-average condition. HOME INSPECTOR also noted that near the front patio, the downspouts for the rain gutter drained directly onto the concrete. He observed that portions of the concrete in this area slopes toward the home, and water accumulating on the surface and running toward the house. Along the rear of the house, there are several end pieces missing between sections of the rain gutter, and drainage occurs directly onto the sidewalk/patio below. In addition, the County provided a bid from COMPANY B to remove and replace the front and rear patios at the subject. The bid included installing one inch of gravel to fill low spots, compact all areas, and drilling the foundation for 24 inch rebar to tie the slab every four feet to keep it from dropping using seven bag mixes. The total cost was \$\$\$\$\$.

9. The County submitted in its response several photographs of the concrete at the subject, which appears to be in good condition overall. Two of the photographs show some settling of concrete at the southwest corner of the house, and the downspout discharging water directly onto the concrete. Also included were several photographs purportedly of neighboring properties, showing the condition of the concrete.
10. The Taxpayer submitted a written response to the County's information on the concrete. Taxpayer contends that neither the home inspector nor the contractor were hydrologists. He stated that the bid to replace the contract was only guaranteed for one year. Taxpayer also submitted a copy of a letter he submitted to the County requesting additional information about both the home inspector and contractor.
11. Taxpayer also contends the value of the subject property is impacted by electrical poles and lines that cross a corner of the property. He provided evidence that the poles and lines may violate an easement that applies to the property. Taxpayer argued that the electrical lines and poles deprive him of the ability to use his backyard for a swimming pool or hot tub. (Exhibit B).
12. In support of a reduced land value, the Taxpayer pointed to two newly constructed homes located behind the subject. The first is located at ADDRESS 2. It is a 0.81-acre lot that is improved with a two-story home that has 3,838 square feet above grade and a 2,559 square foot basement. The County had the land valued at \$\$\$\$\$ for the January 1, 2007 lien date. The second is located at ADDRESS 3. It is a 0.80-acre lot that is also improved with a two-story home with 3,838 square feet above grade and a 2,559 square foot basement. The County had the land valued at \$\$\$\$\$ for

the January 1, 2007 lien date. (Exhibit D). Taxpayer argued that his lot should be valued at the same per acre rate as these properties.

13. The Taxpayer provided information in his Exhibit D on six other properties for the Commission to consider as land comparables. Based on the following, the Taxpayer asked the Commission to reduce the value of his lot below \$\$\$\$\$:

Location	Lot Size	Square Footage	Age	Land Value	Value Per Acre
SUBJECT	0.20	1864	42	\$\$\$\$\$	\$\$\$\$\$
ADDRESS 4	0.64	1520	70	\$\$\$\$\$	\$\$\$\$\$
ADDRESS 5	0.50	2356	47	\$\$\$\$\$	\$\$\$\$\$
ADDRESS 6	0.43	1547	47	\$\$\$\$\$	\$\$\$\$\$
ADDRESS 7	0.89	2640	55	\$\$\$\$\$	\$\$\$\$\$
ADDRESS 8	0.43	3160	8	\$\$\$\$\$	\$\$\$\$\$

14. In his Exhibit C, Taxpayer provided information on several vacant lots that he considered to be comparable in support of his request to lower the value of the subject below \$\$\$\$\$:

- a. A 0.27-acre lot located at ADDRESS 9 in CITY 1 had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.
- b. A 0.44-acre lot located at ADDRESS 10 in Salt Lake County had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.
- c. A 0.37-acre lot located at ADDRESS 11 in Salt Lake County had an assessed valued of \$\$\$\$\$ for the January 1, 2007 lien date.
- d. A 0.22-acre lot located at ADDRESS 12 in CITY 1 had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.
- e. A 0.21-acre lot located at ADDRESS 13 in CITY 2 had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.
- f. A 0.34-acre lot located at ADDRESS 14 in CITY 2 had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.
- g. A 0.31 acre lot located at ADDRESS 15 in CITY 3 had an assessed value of \$\$\$\$\$ for the January 1, 2007 lien date.

15. RESPONDENT REPRESENTATIVE is a certified appraiser who works in the County Assessor’s Office. He stated that Taxpayer’s methodology for calculating the land value of the

subject property is flawed, because as the size of a lot increases, the value per square foot decreases. In addition, RESPONDENT REPRESENTATIVE stated that the two large homes located behind the subject are not comparable properties, as they are high-end homes, and the subject is not. With regard to the other properties the Taxpayer submitted, RESPONDENT REPRESENTATIVE pointed out that a number of the properties are not located in the same area as the subject. He stated that enough information was not provided to determine if the properties are actually comparable. The Taxpayer did not provide information on the condition of the land, influences surrounding the property, or other encumbrances to the property.

16. For the County, RESPONDENT REPRESENTATIVE prepared and submitted an appraisal in which he determined the subject property's fair market value to be \$\$\$\$ as of the January 1, 2007 lien date. In his appraisal, RESPONDENT REPRESENTATIVE compared the subject property to four comparable sales that sold within four months of the lien date for prices that ranged between \$\$\$\$ and \$\$\$\$. RESPONDENT REPRESENTATIVE adjusted these comparables to sales prices that ranged between \$\$\$\$ and \$\$\$\$. (County's Exhibit 1).
  - a. The County's first comparable property is a .26-acre parcel improved with a 36-year old split foyer home with a brick and siding exterior located .80 miles from the subject. It has 1,062 square feet above grade and a 1,062 square foot finished basement. The home has 4 bedrooms, 1.75 bathrooms, and a two-car garage. The appraiser made adjustments for seller concessions, the date of sale, square footage, basement finish, central air, garage, deck, and fireplace. The home sold for \$\$\$\$ on October 3, 2006 and had an adjusted sales price of \$\$\$\$.
  - b. The County's second comparable property is a .23-acre parcel improved with a 44-year old split foyer home with a brick exterior located .41 miles from the subject. It has 1,052 square feet above grade and a 1,052 square foot finished basement. The home has 4 bedrooms, 2 bathrooms, and a two-car garage. The appraiser made adjustments for seller concessions, the date of sale, bathroom fixtures, square footage, basement finish, garage, deck, and fireplace. The home sold for \$\$\$\$ on October 11, 2006 and had an adjusted sales price of \$\$\$\$.
  - c. The County's third comparable property is a .21-acre parcel improved with a 37-year old split foyer home with a brick and siding exterior located 1.51 miles from the subject. It

has 1,364 square feet above grade and a 1,335 square foot basement that is 85% finished. The home has 4 bedrooms, 1.75 bathrooms, and a two-car garage. The appraiser made adjustments for square footage, basement finish, garage, and deck. The home sold for \$\$\$\$\$ on December 27, 2006 and had an adjusted sales price of \$\$\$\$\$.

- d. The County's fourth comparable property is a .23-acre parcel improved with a 42-year old split foyer home with a brick and siding exterior located .69 miles from the subject. It has 1,248 square feet above grade and a 1,248 square foot basement that is 95% finished. The home has 3 bedrooms, 2.75 bathrooms, and a two-car garage. The appraiser made adjustments for the date of sale, bathroom fixtures, square footage, basement finish, garage, and deck. The home sold for \$\$\$\$\$ on August 8, 2008 and had an adjusted sales price of \$\$\$\$\$.

17. The appraisal report notes that the subject has a power pole in a corner of a backyard. The appraiser performed a complete exterior inspection of the subject, as well as surrounding neighborhoods. He determined that power poles and above ground power lines were commonplace for the subject neighborhood, as well as in surrounding neighborhoods. The appraiser found no evidence to support a reduction in value for the power pole.

18. The appraisal report notes the location of the canal to the East of the subject. The appraiser concluded that the canal did not have a negative impact on the value of the subject. He determined this because there is a fence that separates the canal from the subject. In addition, the appraiser noted that there have recently been custom homes built on the other side of canal that have incorporated the canal as a feature of the lot.

APPLICABLE LAW

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

- (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.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.

- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

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).

CONCLUSIONS OF LAW

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).

The Commission finds that Taxpayer has not demonstrated that the \$\$\$\$ value established by the County BOE contains error. First, the Taxpayer provided evidence of a nearby irrigation canal and a power line in the corner of the back yard of the subject. However, he has not provided any evidence on the effect these factors would have on the value of the subject. Second, the Taxpayer provided information on the condition of the concrete at the subject property, which he claims was damaged by high water tables due to a drainage problem in the subdivision. The County provided information that indicates the problem is due to the age of the home and the rain gutter downspouts draining directly onto the concrete. Neither party offered evidence that the condition of the concrete actually had a negative impact on the value of the subject, although each provided a bid for the replacement of the concrete. Without evidence as to the need to replace the concrete or the impact the replacement would have on the value of the subject, the Commission declines to make an adjustment to the value of the subject based on the condition of the concrete.

The Commission finds that the Taxpayer has not provided a sound evidentiary basis to support his request to reduce the value of the subject from \$\$\$\$ to \$\$\$\$\$. The Taxpayer did not provide any sales comparables or other documentation that would support his requested value. The Taxpayer requested that the value of his land be reduced, arguing that it is valued significantly higher than other properties, effectively raising an equalization argument. 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. Taxpayer provided information on several different properties that have a lower per acre value than the subject. However, Taxpayer has not



shown the properties to be comparable to the subject. They are not all located within the subject subdivision, some of the comparables are outside of CITY 1, and many of the lots are significantly larger than the subject. The Commission finds the Taxpayer's evidence insufficient to show that the value should be lowered based on the provisions for equalization in Utah Code Ann. §59-2-1006(4). Therefore, the Commission finds that the taxpayer has not sustained his burden of proof, and there is no evidence to reduce the value determined by the Board of Equalization.

The County requested the Commission increase the value of the subject property from \$\$\$\$ to \$\$. Like the Taxpayer, the County bears the burden of showing that the Board of Equalization determination was in error, and must provide a sound evidentiary basis in support of the increased value. The County submitted an appraisal that compared the subject to four comparable properties that sold within four months of the lien date for prices that ranged between \$\$\$\$ and \$\$. RESPONDENT REPRESENTATIVE adjusted these comparables to sales prices that ranged between \$\$\$\$ and \$\$. Although the comparable properties were located near the subject, of similar age, and similar style to the subject, none of the comparables have an actual sales price of \$\$. The Commission finds that the County has failed to meet its burden of proof to increase the value of the subject property.

Neither the Taxpayer nor the County has met its burden of proof to support a change in the value of the subject property. As the actual sales prices of the comparables used in the County's comparable tend to support the Board of Equalization value, the Commission finds that the \$\$\$\$ value is not unreasonable.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the \$\$\$\$ value that the County BOE established for the subject property for the 2007 tax year. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Jan Marshall  
Administrative Law Judge

Appeal No. 07-1719

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

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

*JM/07-1719.fof*