

08-0305  
LOCALLY ASSESSED PROPERTY  
SIGNED: 04-29-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE  
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal No. 08-0305

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

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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:**

D’Arcy Dixon Pignanelli, Commissioner  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
PETITIONER, *Pro Se*  
For Respondent: RESPONDENT REP 1, Appraiser for Salt Lake County  
RESPONDENT REP 2, Salt Lake County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 9, 2009, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located at ADDRESS 1, CITY 1. For the January 1, 2007 lien date, the County Assessor had valued the property at \$\$\$\$\$, which

the Board of Equalization sustained. The County is asking the Commission to sustain that value. Taxpayer is requesting the value of subject be reduced to \$\$\$\$\$.

2. The subject property is parcel no.#####. It is a 0.57-acre vacant residential lot located in a gated community with two other parcels. There is a thirty-foot water main easement on the property and a drop-off on the west side of the property of approximately twenty-feet.
3. Taxpayer testified that he has a letter from Salt Lake County that prohibits building or landscaping on the easement and requires access to the water main 365 days a year. Taxpayer did not provide a copy of the letter.
4. Taxpayer testified that the subject is located within 1,000 feet of I-215, which makes the property unenjoyable and negatively affects the value.
5. Taxpayer testified that because of the water main easement and twenty-foot drop-off that the property is not as marketable. He stated that the footprint he is able to build on is not very good, and that they have had a difficult time trying to sell the lot.
6. Taxpayer had the property on the market at the lien date. Taxpayer's wife testified that at the peak of the market, the property was listed for \$\$\$\$\$. She noted that the market had increasing values through mid-2007.
7. Taxpayers testified that they did not have any offers on the property, and that it is currently listed for \$\$\$\$\$, which includes building plans that cost taxpayers \$\$\$\$\$.
8. The Taxpayer submitted four comparable properties in support of his requested value.
  - a. Taxpayer's first comparable is located at ADDRESS 2 in CITY 2. It is a .50-acre residential building lot on a private lane. It sold for \$\$\$\$\$ on October 6, 2006.
  - b. Taxpayer's second comparable is located at ADDRESS 3 in CITY 2. It is a .55-acre residential building lot on a private lane. It sold for \$\$\$\$\$ on October 6, 2006.
  - c. Taxpayer's third comparable is located at ADDRESS 4 in CITY 1. It is a .34-acre residential building lot. The home sold for \$\$\$\$\$ on September 27, 2006.
  - d. Taxpayer's fourth comparable is located at ADDRESS 5 in CITY 1. It is a .49-acre residential building lot. It went under contract on August 9, 2007 for \$\$\$\$\$.
9. The County's representative testified, upon questioning, that he did not consider the Taxpayer's comparables to be a good indication of value for the subject. He testified that location was very important, and that the comparables offered by the Taxpayer would not support the same type of home as the subject.

10. The County's representative testified that in preparation of his appraisal report, he visited the subject property and took several photographs. He testified that while he was at the property, there was not significant traffic noise, and so he made no adjustment for the proximity to I-215.
11. The County's representative made a \$\$\$\$\$ adjustment to account for the easement and drop-off on the west side of the property. He testified that he believed this was appropriate after speaking with the Taxpayer. The County's representative argued that even though the easement does impact the style of home that could be built, that the property is still fully developable.
12. The County's representative testified that building lots in gated communities typically sell for a premium, and he made a \$\$\$\$\$ positive adjustment to those comparables that were not located in a gated community.
13. The County's representative made a market adjustment of 1% per month. He stated that this adjustment was in agreement with the testimony of Taxpayer's wife that the market was increasing through mid-2007.
14. In support of the Board of Equalization value, the County's representative submitted a retrospective appraisal with five comparable properties.
  - a. The County's first comparable is located at ADDRESS 6. It is a 0.45-acre residential building lot. It sold for \$\$\$\$\$ on October 31, 2006. The County's representative made adjustments to account for the date of sale, lot size, easement, and because the property is not located in a gated community. The property had an adjusted sales price of \$\$\$\$\$.
  - b. The County's second comparable is located at ADDRESS 7. It is a 0.61-acre residential building lot. It sold for \$\$\$\$\$ on December 12, 2005. The County's representative made adjustments to account for the date of sale, lot size, easement, and because the property is not located in a gated community and sits on a creek. The property had an adjusted sales price of \$\$\$\$\$.
  - c. The County's third comparable is located at ADDRESS 8. It is a 0.50-acre residential building lot. It sold for \$\$\$\$\$ on October 2, 2006. The County's representative made adjustments to account for the lot size and easement. The property had an adjusted sales price of \$\$\$\$\$.
  - d. The County's fourth comparable is located at ADDRESS 9. It is a .40-acre residential building lot. It sold for \$\$\$\$\$ on January 16, 2007. The County's representative made adjustments to account for the lot size and easement. The property had an adjusted sales

price of \$\$\$\$\$.

- e. The County's fifth comparable is located at ADDRESS 10. It is a .58-acre residential building lot. It sold for \$\$\$\$\$ on April 7, 2005. The County's representative made adjustments to account for the date of sale and easement. The property had an adjusted sales price of \$\$\$\$\$.
15. The County's representative testified that he reconciled his appraisal value with the listings for the subject. Included in the County's appraisal was an MLS listing for the subject at \$\$\$\$\$, with the condition that the buyer use Taxpayer as the builder, which expired on April 9, 2007. A second MLS listing was included with a price of \$\$\$\$\$, which included the lot and an 8,200 square foot home, "to be built."

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).

Utah Code Ann. §59-2-301 provides, “[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.”

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

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Commission relies in part on ( *X* )*v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997);( *X* ). *v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); ( *X* )*V. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and ( *X* ). *v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

The Taxpayer provided discussion on the water main easement, the twenty-foot drop-off, and noise from I-215. In addition, he provided four comparable sales in support of his requested value. The Commission finds that the Taxpayer has provided sufficient evidence to call the value established by the Board of Equalization into question.

The Commission has reviewed the comparable sales presented by both parties. The Taxpayer provided information on four land sales. The lots ranged from .34 to .55 of an acre, with unadjusted sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The County’s representative testified that the Taxpayer’s

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comparables would not support the same type of home as the subject property, and therefore were not a good indication of value. The County submitted a retrospective appraisal report that had five comparable land sales, with lot sizes ranging from .40 to .61 of an acre. The County's appraiser made adjustments for the date of sale, lot size, the easement, and whether the property was located in a gated community. The lots had actual sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$, and adjusted sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The County's representative testified that he made an upward adjustment of \$\$\$\$\$ to account for the gated community. However, the appraisal report makes a negative adjustment, which would indicate the adjusted value of comparables one through four should be higher. The Taxpayer did not refute the sales comparables provided by the County. The Commission finds that the Taxpayer has not met his burden of proof to reduce the value of the property to \$\$\$\$\$.

Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller. Based on the comparables submitted by the County, as well as the Taxpayer's MLS listings, the Commission sustains the Board of Equalization value of \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. ##### is \$\$\$\$\$ as of the January 1, 2007 lien date. It is so ordered.

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

\_\_\_\_\_  
Jan Marshall  
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

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

*JM/08-0305.fof*