

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 08-0334 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2007 Judge: Chapman
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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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Summit County Assessor's
Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 22, 2008.

At issue is the fair market value of the subject property as of January 1, 2007. The subject is a condominium located at ADDRESS in the COMPLEX in CITY, Utah. The Summit County Board of Equalization ("County BOE") reduced the \$\$\$\$ value at which the subject property was assessed for the 2007

Appeal No. 08-0334

tax year to \$\$\$\$\$. The property owner asks the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the \$\$\$\$\$ value established by the County BOE.

APPLICABLE LAW

Utah Code Ann. §59-2-102(12) defines "fair market value" for assessment purposes, as follows:

(12) "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.

UCA §59-2-1113 provides that "[h]ousehold furnishings, furniture, and equipment used exclusively by the owner at the owner's place of abode in maintaining a home for the owner and the owner's family are exempt from property taxation."

Utah Administrative Rule R884-24P-29 clarifies, however, that household furnishings, furniture and equipment are taxable under certain conditions, as follows:

- A. Household furnishings, furniture, and equipment are subject to property taxation if:
 1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or
 2. the abode is held out as available for the rent, lease, or use by others.

UCA §59-2-1006(1) provides that "[a]ny 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"

Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is a two-story condominium unit with 1,236 square feet of living space. The unit is approximately five years old and has two bedrooms and 2½ baths. Because it is one of the few units in the complex where the living space occupies two stories, it has a “U-shaped” staircase inside the unit. The property owner uses the subject property as her own place of abode.

Property Owner’s Information. The property owner notes that one-story, two-bedroom units in the complex sell for prices near \$\$\$\$\$. These one-story, two-bedroom units are 1,056 square feet in size, approximately 15% smaller than the subject. The property owner argues, however, that these smaller units are similar in size to the subject property if one disregards the space occupied by the U-shaped staircase in her unit. For these reasons, she asks that the subject’s value be reduced to the \$\$\$\$\$ price at which these smaller units sold.

County’s Information. The County proffers an appraisal in which it estimates the subject’s value to be \$\$\$\$\$ as of the lien date. In its appraisal, the County compares the subject property to three condominiums in the subject complex. Two of the units are identical to the subject unit; i.e., they are two-story units with 1,246 square feet of space and, like the subject, have an interior U-shaped staircase. These comparables sold for \$\$\$\$\$ and \$\$\$\$\$, respectively.

Although the County estimated the subject's value at \$\$\$\$ in its appraisal, it could not explain how this value was derived. The County admitted, however, that the \$\$\$\$ comparable sale of an identical unit appears to be an outlier because the three-bedroom units in the complex, which are similar in size to the subject property, sold for values between \$\$\$\$ and \$\$\$\$. For these reasons, the County stated at the hearing that it believed the \$\$\$\$ sale of an identical unit in October 2006 to be the best estimate of the subject's value for the 2007 tax year. As a result, the County asked the Commission to sustain the \$\$\$\$ BOE value.

However, the County also stated that all three of the comparables it used in its appraisal were sold furnished. The County did not adjust the comparables for the value of the furnishings, even though the furnishings of the property owner in this case are exempt from taxation under Section 59-2-1113. The County explained that such an adjustment is difficult because the County has approximately 8,800 parcels that sell with furnishings, because of the disparity between furnishings from unit to unit, and because banks often accept the entire price of the sale without deducting for any included furnishings. Nevertheless, the County notes that other states it has contacted about this issue often deduct 5% to 7% to account for furnishings.

Conclusion. Based on the evidence proffered at the Initial Hearing, the Commission finds that the \$\$\$\$ sale of an identical unit in October 2006 is the best evidence of the subject property, if there is no adjustment for the furnishings included with this sale. However, the evidence shows that the property owner's furnishings are exempt from taxation, thus requiring a furnishings adjustment to the \$\$\$\$ sale. If a deduction of 5% to 7% were applied to the \$\$\$\$ comparable, the deduction would range between \$\$\$\$ and \$\$\$\$. Subtracting these amounts from the \$\$\$\$ sales price results in an adjusted value for the subject property that ranges between \$\$\$\$ and \$\$\$\$. Because the property owner's requested value of \$\$\$\$ falls within this range, the Commission finds \$\$\$\$ to be a reasonable value for the real property at issue.

Appeal No. 08-0334

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property should be reduced to \$\$\$\$\$. The Summit County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 taxpayer'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 _____, 2008.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

Appeal No. 08-0334

DATED this _____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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