

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 08-0339 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:

Pam Hendrickson, Commission Chair
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE, Senior Appraiser for Summit County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 13, 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 in Summit County, Utah. The County assessed the property at \$\$\$\$\$. The Board of Equalization reduced the value to \$\$\$\$\$. The County asked the Commission to sustain the Board of Equalization value. The Taxpayer is requesting that the subject be reduced to \$\$\$\$\$.
2. The subject property is parcel no. #####. It is a condominium located at ADDRESS in the COMPLEX in CITY, Utah. The complex has a hot tub, sauna, and lounge.

3. The subject is the smallest, and only one-bedroom unit in the complex. The building is 41 years old, built of average quality construction, and has not been remodeled. The subject is located on the ground floor, has six hundred square feet, one bathroom, and a one-car underground garage.
4. Taxpayer submitted as Exhibit P-1 a copy of a “Stipulation of Agreement” from Summit County. The Stipulation of Agreement reduced the value of the subject from \$\$\$\$\$ to \$\$\$\$\$. The explanation for the change was that the subject sold for \$\$\$\$\$ in 2003, when the two-bedroom units were selling for \$\$\$\$\$. The County applied the ratio to the current sales prices to arrive at the \$\$\$\$\$ value.
5. Taxpayer’s primary argument is that the County erred in calculating the 2007 value. He argued that the 65% sales price difference should be applied to the \$\$\$\$\$ assessed value, arriving at a value of approximately \$\$\$\$\$ for the January 1, 2007 lien date.
6. The County’s representative testified that to arrive at the \$\$\$\$\$ value, the 65% sales price difference was applied to the \$\$\$\$\$ average sales price of the other units in the complex.
7. Taxpayer’s Exhibit P-2 is information from the County on the sales of other units that occurred in 2003, when the Taxpayer purchased his unit. In addition, the information included a calculation of the average value per square foot of units that sold closer to the lien date.
8. Taxpayer’s Exhibit P-3 is a history of sales in the complex. The Taxpayer asked the Commission to consider the sales prices of Units ##### and ##### in the County’s calculations of value per square foot in Exhibit P-2.
9. The Taxpayer was given additional time to submit his calculations of the subject’s value using the sales prices of Units ##### and #####. Taxpayer did not submit any information in the time allowed.
10. The County submitted an unsigned retrospective appraisal report. The appraisal determined the value of the subject as of the January 1, 2007 lien date to be \$\$\$\$\$, but asked the Commission to sustain the Board of Equalization value of \$\$\$\$\$.
11. The County’s first comparable is a one bedroom, one bathroom, 608 square foot condominium unit located in the COMPLEX 2. The complex amenities include a hot tub, sauna, pool, and lounge. The building is twenty-six years old and built of average quality construction. The unit has not been updated, and includes a 1-car underground garage.

The unit sold for \$\$\$\$\$ on March 3, 2006. The appraiser made adjustments for location, square footage, and air conditioning. The unit had an adjusted sales price of \$\$\$\$\$.

12. The County's second comparable is a one bedroom, one bathroom, 587 square foot condominium unit located in the COMPLEX 3. The complex has a hot tub. The building is twenty-two years old and built of average quality construction. The unit has been updated, and includes 1-car open parking space. The unit sold for \$\$\$\$\$ on November 16, 2006. The appraiser made adjustments for amenities, the remodeled condition, square footage, and air conditioning. The unit had an adjusted sales price of \$\$\$\$\$.
13. The County's third comparable is a one bedroom, one bathroom, 529 square foot condominium unit located in the COMPLEX 4. The complex amenities include a hot tub and pool. The building is twenty-eight years old and built of average quality construction. The unit has been updated. The unit sold for \$\$\$\$\$ on March 9, 2006. The appraiser made adjustments for the remodeled condition, square footage, heating system, and garage. The unit had an adjusted sales price of \$\$\$\$\$.
14. The County's representative stated that in order to find comparable sales, he had to go outside the COMPLEX 1. The comparables used by the County were all located less than .07 miles from the subject.

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

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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).

Property tax is based on the market value of the property, which is defined under Utah Code Ann. §59-2-102 as the amount for which property would exchange hands between a willing buyer and seller. The Taxpayer provided a copy of a Stipulation of Agreement that explained the County was reducing the value from \$\$\$\$\$ to \$\$\$\$\$ based on the 65% difference between the sales price of the subject and other units in the complex in 2003. Taxpayer argued that the County should have applied the 65% to the assessed value, not the sales price. However, Taxpayer provided no information to support this contention, or that would otherwise suggest the other units in the complex were not being assessed at fair market value. The Commission declines to issue an opinion as to the methodology used by the County to determine the value of the subject, but notes that the appraisal report submitted by the County supports a value higher than the \$\$\$\$\$ set by the Board of Equalization.

The Commission finds that the Taxpayer has failed to show that the Board of Equalization value was in error. The Taxpayer did not provide any documentation of comparable sales or other evidence in support of his requested value of \$\$\$\$\$.

DECISION AND ORDER

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

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