

08-0340  
Locally Assessed Property  
Signed 08/25/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,  Petitioners,  v.  BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 08-0340  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 REPRESENTATIVE, Attorney

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 August 6, 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 1 in CITY, Utah. The Summit County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject property was assessed for the

2007 tax year. The property owners ask 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

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 condominium located in the COMPLEX 1. The unit was built in or around 1980. The property owners purchased the subject property approximately 20 years ago and have not remodeled the unit since. The subject has two above-grade floors and a finished basement. In addition, the property owners lease out the subject property in a rental pool.

Square Footage. One issue is the square footage of the subject property. The County has assessed the subject property on the basis of it having a total of 3,977 square feet of living space on its three floors. The County asserts that the condominium complex's CCRs (covenants, conditions and restrictions)

show the subject property as having 4,074 square feet of living space. The County also asserts that when the subject property was offered for sale in 2002, the subject's Multiple Listing Service ("MLS") listing showed it to have 4,074 square feet of living space. Furthermore, the County has provided diagrams of the subject property's three floors that it obtained from plats submitted to the County when the subject's complex was built. The County contends that these interior measurements shown on these plats result in a total of 3,977 square feet for the subject. This total amount of square footage is supported by the measurements shown on the County's diagrams.

On the other hand, the property owners have drawn out each of the rooms in the subject property and, from their drawings, derived a total of 3,162 square feet for the subject property. However, the property owners' approach does not appear to accurately estimate the subject's total square footage. The drawings show the square footage estimates of each room, but fail to estimate the square footage of all interior space, including any interior walls. As a result, the Commission finds that the property owners have not met their burden of showing that the County's estimate of 3,977 square feet is incorrect.

Basement. The property owners contend that their finished basement, which is the same size as the main floor, should not be "counted" for assessment purposes. The Commission has found that the existence of basement square footage generally increases a property's fair market value. Because assessments are based on fair market value in Utah, the Commission finds that the subject's basement square footage must be considered for purposes of establishing the subject's value.

Rental Income. The property owners submit that their rental of the subject property often generates only enough income to cover their expenses for the property. However, a residential condominium is generally sold in accordance with market prices, not by the income that the property owners generate from leasing it out. Furthermore, the property owners admitted that they would sell the property at its market value

instead of an income-derived value if the market value were higher. As a result, the amount of income the subject property produces does not necessarily equate to its market value. Accordingly, the Commission is not convinced that the property owner's income information shows that the current assessed value of \$\$\$\$ is incorrect.

Market Value. The property owners submit two recent pending sales of condominiums in the COMPLEX 2, which is across the street from the subject property. These properties are smaller than the subject property, as they are 3,530 and 3,511 square feet in size, respectively. Furthermore, these pending sales occurred approximately 1½ years after the lien date. Because these comparables are from a different complex, are smaller in size than the subject, and occurred so far after the lien date, during which time values may have changed, the Commission is not convinced that these sales show the \$\$\$\$ value to be incorrect.

Furthermore, 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 five condominiums located near the subject. The five comparables are approximately the same age as the subject and sold in 2006 for prices ranging from \$\$\$\$ to \$\$\$\$. The two comparables similar in size to the subject sold for \$\$\$\$ and \$\$\$\$, respectively. These are located in the COMPLEX 2 that is across the street from the subject. They are slightly smaller than the subject. These two sales suggest that prices have declined between the lien date and the dates of the two pending sales in COMPLEX 2 that the property owners proffered.

The County's remaining three comparable sales are of other units in the subject's own complex. These comparables are significantly smaller than the subject, as they range in size from 2,089 to 2,820 square feet. However, they sold for prices ranging from \$\$\$\$ for the 2,089 square foot unit to \$\$\$\$ for the 2,820 square foot unit. The selling prices of these much smaller units in the same complex convince the

Commission that the County's \$\$\$\$ appraisal estimate is a reasonable fair market value for the subject property as of the lien date.

Value of Improvements. The current assessed value of \$\$\$\$ is comprised of a \$\$\$\$ land value and a \$\$\$\$ improvements value. The property owners contend that the improvements value is too high, but proffer no information to show what it should be. Had the County valued the subject property on a cost approach, where it derived both a land value and an improvements value to arrive at total value, a challenge of either the land or improvements value would be more pertinent. The County explained, however, that the subject's current assessed value of \$\$\$\$ was determined using the market approach. It also explained that its segregation of the total value into a land value and an improvements value was completely arbitrary. The property owners, however, have not shown that either the total market value or the improvements value is incorrect.

Conclusion. The property owners have not shown that the County based its assessment on an incorrect square footage. Moreover, the property owners have not shown the current assessed value to be incorrect. Furthermore, the County has proffered evidence to show that the current assessed value appears reasonable. The County does not ask the Commission to raise the subject's current value of \$\$\$\$. For these reasons, the Commission sustains the County BOE's value and denies the property owners' appeal.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the \$\$\$\$ value as established by the County BOE for the 2007 tax year. The property owners' appeal is denied. 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

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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.

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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.

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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