

08-1131
Locally Assessed Property
Signed 08/05/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1131 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, Petitioner's wife

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

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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 2,218 square foot condominium located on the first floor of the COMPLEX. Most units in the complex have direct access to one of (X) ski runs. The subject property does not. In addition, the subject property has not been remodeled since it was built in 1986, while most units in the complex have been remodeled. PETITIONER REPRESENTATIVE indicated that she and her husband intend the “gut” the unit in the near future. PETITIONER REPRESENTATIVE also indicated that the unit is not used as a rental.

Property Owner’s Information. The property owner proffers evidence to show that she and her husband purchased the subject property for \$\$\$\$\$ on August 8, 2007, approximately seven months after the lien date. The property had been offered for sale for nine months at \$\$\$\$\$ before the prior owner agreed to sell it for \$\$\$\$\$. PETITIONER REPRESENTATIVE explained that she and her husband first offered \$\$\$\$\$ for the unit during the winter ski season, and after counteroffers were exchanged, raised their offer to \$\$\$\$\$. Later, several months after the ski season, the prior owner and the PETITIONERS began negotiating again, finally arriving at the sales price of \$\$\$\$\$. For the County, RESPONDENT REPRESENTATIVE stated that it does not appear that the prior owner was under any distress to sell, due to the length of time the subject property was listed on the market prior to selling.

PETITIONER and PETITIONER REPRESENTATIVE purchased the subject unit furnished and estimate the value of the furnishings at \$\$\$\$\$. PETITIONER REPRESENTATIVE stated that the furnishings included all furniture, electronic equipment, such as televisions for every room, and all household items, such as kitchen utensils. PETITIONER REPRESENTATIVE proffers that the sales price must be reduced by the estimated value of the furnishings in order to obtain the fair market value of the real property at issue. As a result, PETITIONER REPRESENTATIVE asserts that the fair market value of the subject should be reduced to \$\$\$\$\$.

County's Information. The County proffers an unsigned 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 that are also located on the first floor of the COMPLEX. The three comparables are similar in size to the subject property and have the same number of rooms and baths as the subject property. For purposes of its appraisal, the County assumed that the subject property had not been remodeled. The County also noted in its appraisal that the subject property appears "subpar" to other units, based on the Multiple Listing Service's description of the subject property.

The first County comparable sold for \$\$\$\$\$ in April 2008. It, like the subject, is not located directly on the ski run. The County adjusted this comparable downward by \$\$\$\$\$ because it had been remodeled. However, the County made no time adjustment, even though it sold 16 months after the lien date. The County explained that the market was relatively flat from January 1, 2007 to January 1, 2008. After adjustments, the County determined an adjusted value for \$\$\$\$\$ for this comparable.

The second comparable sold for \$\$\$\$\$ in March 2007. It, unlike the subject, is located directly on the ski run, a factor for which the County made a 22% downward adjustment of \$\$\$\$\$ to the sales price. The County could not explain how it determined the 22% adjustment. The County made no adjustment

for time of sale as the sale occurred after January 1, 2007 when values were relatively flat. After adjustments, the County determined an adjusted value for \$\$\$\$\$ for this comparable.

The third comparable sold for \$\$\$\$\$ in January 2005, almost two years prior to the lien date. It is also located directly on a ski run, a factor for which the County made a 22% downward adjustment of \$\$\$\$\$ to the sales price. The County also made an upward adjustment for time of sale, adjusting the sales price by \$\$\$\$\$, which equates to 15% per year. The County explained that sale prices increased greatly between January 1, 2005 and the lien date. After adjustments, the County determined an adjusted sales price of \$\$\$\$\$ for this comparable.

The County appraised the subject property at \$\$\$\$\$, stating that this number came from a computer program. The County does not ask the Commission to raise the subject's value above the \$\$\$\$\$ value established by the County BOE.

The County explained that even though all of its comparables were sold as furnished, it did not deduct any value for the furnishings when determining the value of the subject property. The County explained that such an adjustment is difficult because the County has approximately 8,800 parcels that have sold with furnishings, because the quality of furnishings is so different from unit to unit, and because banks often accept the entire sales price of such properties without requiring a deduction for any included furnishings. Nevertheless, the County notes that other states it has contacted about this issue often deduct 5% to 7% of the sales price to account for household furnishings.

Conclusion. From PETITIONER REPRESENTATIVE'S description of the circumstances surrounding her and her husband's purchase of the subject property, it appears that neither party was under any compulsion to sell or to buy. Although the \$\$\$\$\$ sales price appears low when compared to the three comparables provided by the County, the Commission notes that the subject property is inferior to all three

comparables. The subject property does not have direct access to a ski run and it has had no remodeling. The County itself notes that the property appears “subpar” to other units in the complex. Lastly, the County admitted that prices were relatively flat from January 1, 2007 through August 2007, when the subject property was purchased. For these reasons, the Commission finds that \$\$\$\$ price the PETITIONERS paid in August 2007 appears to be a reasonable fair market value for the subject property, as of January 1, 2007, and the included furnishings.

Because the unit is used by the PETITIONERS and is not leased to other parties, the furnishings are exempt from taxation pursuant to Section 59-2-1113. In its appraisal, the County failed to make a deduction for furnishings, even though the sales price of each comparable included the furnishings. The County explained that other states estimate the value of furnishings to be 5% to 7% of the total purchase price. Applying these percentages to the \$\$\$\$ purchase price of the subject property results in a value for the subject’s furnishings that ranges between \$\$\$\$ and \$\$\$\$. The higher end of this range is close to PETITIONER REPRESENTATIVE’S estimate of \$\$\$\$ for the furnishings. For these reasons, the Commission accepts PETITIONER REPRESENTATIVE’S \$\$\$\$ estimate as the value of the furnishing. As a result, the Commission finds that \$\$\$\$ is a reasonable value for the subject property as of the lien date.

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

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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.

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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