

08-1355
LOCALLY ASSESSED PROPERTY
SIGNED 04-27-09

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioners, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-1355 Parcel No. ##### -1 Tax Type: Property Tax/Locally Assessed Tax Year: 2007</p> <p>Judge: Phan</p>
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Presiding:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
For Respondent: RESPONDENT REP 1, Appraiser, Salt Lake County
RESPONDENT REP 2, Certified Residential Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 12, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Property Owner") is appealing the assessed value of the subject property for the lien date January 1, 2007.
2. For the January 1, 2007 lien date the County Assessor had valued the property at \$\$\$\$\$ and the County Board of Equalization (the "County") sustained the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing, the County asked that the value set by the County Board of Equalization be sustained.
3. The property at issue is Parcel No.##### -1, located at ADDRESS 1.
4. The property consists of .31 of an acre of land improved with 23-year-old residence. The residence is of glass, stone and wood. The residence has 1,994 above grade square feet and no basement.

There is one bedroom and two bathrooms. There is also a two-car garage, deck and patio. The subject property does have year round access and it is, in fact, the Property Owners' primary residence. Additionally the subject property does have a unique feature in that it was designed to be (X). (SENTENCE REMOVED)The subject lot is somewhat triangular in shape and one long side of the lot is adjacent to HIGHWAY 1 (the "Highway"). At the point in the Highway where the subject is located, the uphill side separates into two lanes and automobiles then accelerate to pass slower moving vehicles going up hill. The nearness to the highway is a nuisance due to traffic noise. Because of the shape of the lot, one corner of the residence is 18 inches from the highway right of way.

5. The Property Owner argued that there were errors in the County Board of Equalization's value and he provided home sale statistics from SLRealtors.com that indicated percentage increases or decreases in 2007. He supported his requested value with one primary comparable. Additionally he provided information on some of the comparables that had been relied on by the County at the Board of Equalization hearing and information on costs to obtaining a building permit and the necessary approvals to begin construction on a vacant lot.

6. The Property Owner asserted that the subject property should be valued at \$\$\$\$\$. He supported this request with the comparable he felt was the most similar to his property, parcel no.#####. He felt that this was the most similar property because it had also been built as a (X). This property was located in CITY and the Property Owner represented that it had sold for \$\$\$\$\$ in March 2006. He did not provide the MLS printout on this property at the hearing, but he did provide a photograph and printout from the Salt Lake County Real Property Characteristics, which indicated that this property had 1504 above grade square feet as well as unfinished basement of 900 square feet. It had three bedrooms and one bathroom. There was no garage. This CITY comparable had been built in 1990. It was in a private gated area of summer cabins and could not be accessed by car during the winter months. The Property Owner testified that it was possible to park about four houses away from this CITY property and then walk up the rest of the way to the comparable during the winter. The Property Owner, a real estate agent, also testified that this property had year round water. It was his contention that when compared to the subject property's location on the Highway, the difficulty of the winter access was offset by the quiet, private setting.

7. The Property Owner had provided photographs and information from the County records regarding some of the comparables that the County had relied on at the Board of Equalization and argued about

the value attributed to the subject land value. However, if a value is appealed to the Tax Commission, the County may prepare an individual appraisal and rely on comparables that an appraiser finds to be more similar.

8. The County submitted an appraisal in this matter that indicated the value of the subject property was \$\$\$\$\$. However, the County offered the appraisal in support of the value set by the County Board of Equalization of \$\$\$\$\$ and not to raise the value of the property. The appraisal had been prepared by RESPONDENT REP 2 who is an independent Certified Residential Appraiser and not an employee of Salt Lake County. RESPONDENT REP 2 considered nine comparable sales all located fairly near the subject property.

9. RESPONDENT REP 2 indicated that there was a wide range of sale prices in the canyon. The comparables he considered bracketed the subject ranging from \$\$\$\$\$ to \$\$\$\$\$. Taking out the high and low sale, the range was from \$\$\$\$\$ to \$\$\$\$\$. The properties that he considered had year round access like the subject. He considered one of the comparables, No. 6, to also be on a busy road. For all the other comparables, RESPONDENT REP 2 made location adjustments. Comparable No. 6, at ADDRESS 2 had sold for \$\$\$\$\$ in February 2008. Of all nine sales, four had sold for less than the value set by the County Board of Equalization for the subject property and five had sold for more. From the information and photos provided in the appraisal, a value in the middle of the range appeared appropriate for the subject. After making the location and other appraisal adjustments, RESPONDENT REP 2's indicated range for the subject property was from \$\$\$\$\$ to \$\$\$\$\$. He testified that he did not consider the Property Owner's CITY comparable because he did not consider it to be a year round access property.

10. Upon review of the evidence submitted in this matter, the weight of the evidence supports a value at least as high as the County Board of Equalization's value at \$\$\$\$\$. In reaching this conclusion, the Commission does agree with the Property Owner to a point that the location of the subject property on the highway and even the odd shape of the lot that creates more Highway frontage would be a detriment in selling the subject property. However, the Property Owner has not shown that this detriment is equal to not having winter access to the comparable in CITY. Further the CITY property appears inferior to the subject based on the photograph as far as the quality of construction and has less above grade square feet than the subject. The County's appraiser did make some adjustment for the location of the subject next to the busy Highway and concluded a value of \$\$\$\$\$ for the subject. By asking that the subject value remain at the County Board of Equalization level of \$\$\$\$\$ the County is allowing an even larger adjustment than indicated in the appraisal

for this and any other negative factor.

APPLICABLE LAW

1. All tangible taxable property 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 provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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. 59-2-102(12).)

3. (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 value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. (*X*) *V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). The evidence submitted in this matter more than supports the value set by the County Board of Equalization. The Commission finds that the Property Owner has not submitted a sufficient basis for further reduction of value.

2. Property tax is based on the market value of the property, which is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2007, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2009.

Jane Phan
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 _____, 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. 63G-4-302. 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 63G-4-401 et seq.

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