
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF DAVIS
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal No. 08-1685

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

Presiding:

Marc Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REP, Appraiser
For Respondent: RESPONDENT REP 1, Esq.
RESPONDENT REP 2, Appraiser
RESPONDENT REP 3, Appraiser Supervisor
RESPONDENT REP 4, Davis County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 9, 2008. 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 Davis County, Utah for the January 1, 2007 lien date.
2. The property at issue is identified as Parcel No. ##### and is located at ADDRESS, CITY.
3. For the January 1, 2007 lien date, the County Assessor valued the property at \$\$\$\$\$. The Board of Equalization reduced the value of the subject to \$\$\$\$\$. The County asked the Commission reduce the value of the subject to \$\$\$\$\$. The Taxpayer requested the value be reduced to \$\$\$\$\$.
4. The subject property consists of a .62 acre parcel improved with a two-story residence with a brick and stucco exterior. The residence was 28 years old as of the lien date and built of average quality

construction. The County's appraiser determined the subject was in good condition, while the Taxpayer's appraiser determined the home was in average condition. It has 4,220 square feet above grade and a 2,001 square foot basement that is 100% finished. The home has seven bedrooms, three and one-half bathrooms, a two-car garage, a porch, a patio, two fireplaces, a spa/sunroom, and the lot is fully landscaped.

5. Taxpayer's Exhibit 1 is a Uniform Residential Appraisal Report prepared by PETITIONER REP, a licensed appraiser with the State of Utah. The appraisal report has an effective date of January 1, 2007 and PETITIONER REP determined a value of \$\$\$\$\$.

6. PETITIONER REP performed an interior and exterior inspection of the subject. He considered the interior of the subject to be out-dated, as it contains most of the items from the original construction. He also made an adjustment of \$\$\$\$\$ for deferred maintenance of the subject, noting that there is chronic flooding in the basement and a foundation crack on the southwest corner of the garage. PETITIONER REP also made marginal square footage adjustments of \$\$\$\$\$ per square foot above grade, \$\$\$\$\$ per square foot for basement, and \$\$\$\$\$ per square foot for basement finish.

7. In his appraisal, PETITIONER REP compared the subject property to six comparables that sold between August 16, 2006 and December 28, 2006, and had adjusted sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$.

8. The Taxpayer's first comparable property is a .26 acre parcel improved with a twenty-eight year-old two story home with a brick and stucco exterior, built of average quality construction. The home is located 1.86 miles from the subject, and is considered to be in average condition. PETITIONER REP stated that he contacted the seller's agent and verified the square footage of the home, which is 4,585 square feet above grade and a 1,594 square foot finished basement. The home has five bedrooms, three and one-half bathrooms, a three-car garage, a porch, a deck, two fireplaces, and is fully landscaped. PETITIONER REP made adjustments for seller concessions, location, lot size, view, square footage, deferred maintenance, garage size, and the spa/sunroom. The home sold for \$\$\$\$\$ on November 29, 2006 and had an adjusted sales price of \$\$\$\$\$.

9. The Taxpayer's second comparable property is a .23 acre parcel improved with a twenty-eight year-old two-story home with a brick and stucco exterior, built of average quality construction. The home is located 1.03 miles from the subject, and is considered to be in average condition. It has 3,850 square feet above grade and no basement. The home has six bedrooms, two and one-half bathrooms, a two-car garage, a porch, a patio, two fireplaces, and the lot is fully landscaped. Adjustments were made for seller

concessions, lot size, bathroom fixtures, square footage, deferred maintenance, and the spa/sunroom. The home sold for \$\$\$\$\$ on August 30, 2006 and had an adjusted sales price of \$\$\$\$\$.

10. The Taxpayer's third comparable property is a .24 acre parcel improved with a twenty-two year-old two-story home with a brick and siding exterior, built of average quality construction. The home is located .39 miles from the subject, and is considered to be in good condition. It has 3,075 square feet above grade and a 1,700 square foot finished basement. The home has two bedrooms, two and one-half bathrooms, a two-car garage, a porch, a patio, a covered deck, four fireplaces, and the lot is fully landscaped. The appraiser testified that this home had an elaborate deck system that he made an adjustment of \$\$\$\$\$. Additional adjustments were made for the location, lot size, view, condition, bathroom fixtures, square footage, deferred maintenance, fireplaces, and spa/sunroom. The home sold for \$\$\$\$\$ on December 28, 2006 and had an adjusted sales price of \$\$\$\$\$.

11. The Taxpayer's fourth comparable property is a .44 acre parcel improved with a twenty-seven year-old two-story home with a brick exterior of average quality construction. The home is located 1.14 miles from the subject, and is considered to be in average/good condition. It has 2,268 square feet above grade and a 1,743 square foot basement that is 95% finished. The home has four bedrooms, two bathrooms, a two-car garage, a porch, a patio, a deck, and the lot is fully landscaped. Adjustments were made for the lot size, view, condition, bathroom fixtures, square footage, deferred maintenance, deck, fireplaces, and spa/sunroom. The home sold for \$\$\$\$\$ on August 16, 2006 and had an adjusted sales price of \$\$\$\$\$.

12. The Taxpayer's fifth comparable property is a .80 acre parcel improved with a twenty-six year-old two-story home with a brick and cedar exterior of average quality construction. The home is located 1.10 miles from the subject, and is considered to be in good condition. It has 3,158 square feet above grade and the appraisal report shows a 73 square foot finished basement, although adjustments were made to indicate square footage in the range of 1,900 square feet. The home has four bedrooms, two and one-half bathrooms, a two-car garage, a porch, a patio, a deck, and the lot is fully landscaped. Adjustments were made for the lot size, view, condition, bathroom fixtures, square footage, deferred maintenance, deck, fireplaces, and spa/sunroom. The home sold for \$\$\$\$\$ on August 16, 2006 and had an adjusted sales price of \$\$\$\$\$.

13. The Taxpayer's sixth comparable property is a .51 acre parcel improved with a thirty-five year-old one-story home with a brick exterior of average quality construction. The home is located .15 miles from the subject, and is considered to be in average condition. It has 2,827 square feet above grade

and a 2,827 square foot finished basement. The home has three bedrooms, two and one-half bathrooms, a two-car garage, a porch, a patio, two fireplaces, and the lot is fully landscaped. Adjustments were made for the lot size, bathroom fixtures, square footage, deferred maintenance, and spa/sunroom. The home sold for \$\$\$\$\$ on October 26, 2006 and had an adjusted sales price of \$\$\$\$\$.

14. The County's Exhibit 1 is a Residential Appraisal Report prepared by RESPONDENT REP, a licensed appraiser in the State of Utah. The appraisal report has an effective date of January 1, 2007 and RESPONDENT REP determined a value of \$\$\$\$\$. The County's Exhibit 2 is an amended analysis of the third comparable used in the appraisal, based on a correction to the square footage of the home. Based on this amended comparable, RESPONDENT REP revised her determination of value to \$\$\$\$\$. RESPONDENT REP compared the subject property to three comparables that sold between November 29, 2006 and December 28, 2006 and had adjusted sales prices ranging from \$\$\$\$\$ and \$\$\$\$\$.

15. RESPONDENT REP testified that she performed an exterior inspection of the property, but utilized county data for square footage and room counts. She attributed the difference in square footage between her appraisal and the Taxpayer's appraisal to rounding. RESPONDENT REP testified that her adjustments were based on extensive study made by the County. She made an adjustment of \$\$\$\$\$ per square foot above-grade, \$\$\$\$\$ per square foot for basement, and \$\$\$\$\$ per square foot for basement finish. In addition, she made an adjustment of \$\$\$\$\$ per garage stall, which she testified was the industry standard.

16. The County's first comparable property is also the Taxpayer's first comparable. It is a .26 acre parcel improved with a twenty-nine year-old two story home built of average quality construction. The home is located 1.86 miles from the subject, and is considered to be in good condition. It has 4,483 square feet above grade and a 1,556 square foot finished basement. The home has five bedrooms, three and one-half bathrooms, a three-car garage, a porch, a deck, and two fireplaces. RESPONDENT REP made significant adjustments to account for the superior location of the comparable, traffic noise, and lot usability because of the topography of the comparable lot. Additional adjustments were made for seller concessions, the date of sale, lot size, view, age, square footage, garage, fireplace, and swim spa. The home sold for \$\$\$\$\$ on November 29, 2006 and had an adjusted sales price of \$\$\$\$\$.

17. The County's second comparable is a .24 acre parcel improved with a twenty-four year-old two-story home built of good quality construction. The home is located 1.06 miles from the subject, and is considered to be in good condition. It has 3,532 square feet above grade and a 2,700 square foot finished basement. The home has four bedrooms, two and one-half bathrooms, a three-car garage, and

four fireplaces. RESPONDENT REP made adjustments for the date of sale, lot size, quality of construction, age, square footage, garage, fireplaces, and swim spa. The home sold for \$\$\$\$\$ on May 30, 2007 and had an adjusted sales price of \$\$\$\$\$.

18. The County's third comparable property is also the Taxpayer's third comparable. It is a .24 acre parcel improved with a twenty-one year-old two-story home built of average quality construction. The home is located .39 miles from the subject, and is considered to be in very good condition. It has 3,075 square feet above grade and a 1,700 square foot finished basement, although the adjustment amount was as if the basement was unfinished. The home has two bedrooms, two and one-half bathrooms, a two-car garage, a porch, a covered deck, and four fireplaces. RESPONDENT REP made adjustments for the lot size, age, condition, square footage, fireplaces, and swim spa. The home sold for \$\$\$\$\$ on December 28, 2006 and had an adjusted sales price of \$\$\$\$\$.

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).

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 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).

CONCLUSIONS OF LAW

To prevail in a real property tax dispute, the Taxpayer must demonstrate both that the value established by the Board of Equalization is in error, and provide a sound evidentiary basis for changing the value established by the Board of Equalization. The Commission finds that the appraisal report

provided by the Taxpayer was sufficient to show that the value established by the Board of Equalization was in error.

The Commission finds that sufficient evidence was provided to support a reduction in the value of the subject property. The Commission disregards comparable sale numbers four and six in Taxpayer's appraisal report, as the homes are not the same building style and have significantly less above-grade square footage as the subject. In addition, the Commission places less weight on the comparable number two in both the Taxpayer's and the County's appraisal reports. The Commission is concerned that the sales price of Taxpayer's comparable number two was significantly lower than the other sales comparables, and that the County's comparable number two sold nearly six months after the lien date. The Commission placed the most weight on the property located on STREET 1 (comparable number one for both the Taxpayer and County) and the property on STREET 2 (comparable number three for both the Taxpayer and County), and considered the testimony offered at the hearing with regard to the adjustments made. With regard to comparable number one, the Commission finds that the time adjustment of \$\$\$\$\$ was appropriate, that the view should have had an adjustment of \$\$\$\$\$, that an adjustment of \$\$\$\$\$ for deferred maintenance was appropriate, that \$\$\$\$\$ for a garage stall reflects the industry standard, and that the County's adjustments for traffic and lot usability were appropriate. With regard to comparable number two, the Commission finds that no adjustment was needed for the location, or the view; that an adjustment should have been made for the age of the property; and that the condition adjustment of \$\$\$\$\$, the \$\$\$\$\$ adjustment for deferred maintenance, and \$\$\$\$\$ adjustment for the elaborate deck were appropriate.

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 evidence presented indicates that if the subject property were to have changed 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, as of January 1, 2007, the selling price would have been \$\$\$\$\$.

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 \$\$\$\$\$ for parcel no. #####. It is so ordered.

DATED this _____ day of _____, 2009.

Appeal No. 08-1685

Jan Marshall
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. 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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