

09-03-65
LOCALLY ASSESSED PROPERTY
SIGNED 10-21-2009

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioner, vs. BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-0365</p> <p>Parcel No. ##### - 1 Tax Type: Property Tax/Locally Assessed Tax Year: 2008</p> <p>Judge: Marshall</p>
---	---

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, *Pro Se*
PETITIONER 2, *Pro Se*
For Respondent: RESPONDENT REP 1, Appraiser for Davis County
RESPONDENT REP 2, Appraisal Supervisor for Salt Lake County
RESPONDENT REP 3, Davis County Assessor

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Davis County Board of Equalization (“the County”). This matter was argued in an Initial Hearing on August 13, 2009. The Davis County Assessor’s Office assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. The County is requesting the Commission sustain the Board of Equalization value. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$.

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.

Utah Code Ann. §59-2-103 (2008).

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) (2008).

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 (2008).

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).

DISCUSSION

The subject property is parcel no.##### - 1, located at ADDRESS in CITY 1, Utah. It is a 0.26-acre lot improved with a 5-year old brick rambler. The home has 1,755 square feet above grade, and a 1,732 square foot basement with 1,558 square feet finished. The home has three bedrooms and two bathrooms, a fireplace, and a three-car garage.

The Taxpayers argued that the County's appraisal is unfair because it uses comparable sales from June of 2007. Taxpayers submitted the following three comparable sales in support of their requested value:

- a. Taxpayer's first comparable is located at ADDRESS 2 in CITY 1. It is a 0.29-acre lot improved with a rambler with a brick, stucco, and siding exterior. The home has 1,727 square feet above grade and a 1,727 square foot basement that is 65% finished. The home has four bedrooms, three bathrooms, a fireplace, and a three-car garage. The home sold for \$\$\$\$\$ on May 13, 2008.
- b. Taxpayer's second comparable is located at ADDRESS 3 in CITY 1. It is a 0.25-acre lot improved with a rambler with a brick and siding exterior. The home has 1,676 square feet above grade and a 1,676 square foot unfinished basement. The home has three bedrooms, two and one-half bathrooms, a fireplace, and a three-car garage. The home sold for \$\$\$\$\$ on May 7, 2008.
- c. Taxpayer's third comparable is located at ADDRESS 4 in CITY 1. It is a 0.24-acre lot improved with a rambler with a brick, stucco, and siding exterior. The home has 1,665 square feet above grade and a 1,665 square foot finished basement. The home has five bedrooms, two full and one three-quarter bathrooms, two fireplaces, and a three-car garage. The home sold for \$\$\$\$\$ on August 5, 2008.

Taxpayers also argued that their home was assessed higher than comparable homes in their neighborhood. Taxpayers reviewed the information the County provided to them on the price per square foot of homes in their neighborhood, and then determined the average price per square foot. The subject property is assessed at \$\$\$\$\$ per square foot. Taxpayers determined that the average assessed value in the neighborhood was \$\$\$\$\$ per square foot; homes over 1,800 square feet had an average assessed value of \$\$\$\$\$; homes below 1,700 square feet had an

average assessed value of \$\$\$\$; and homes between 1,700 and 1,800 square feet had an average assessed value of \$\$\$\$\$. In addition, Taxpayers selected three homes in their neighborhood with floor plans similar to the subject, and determined that they had an average price of \$\$\$\$\$. Following are the three homes the Taxpayers believe are most similar to the subject:

	Address	Value	Sq. Ft.	\$/Sq. Ft.
##### - 1	SUBJECT	\$\$\$\$	1755	\$\$\$\$
##### - 2	ADDRESS 5	\$\$\$\$	1809	\$\$\$\$
##### - 3	ADDRESS 6	\$\$\$\$	1727	\$\$\$\$
##### - 4	ADDRESS 7	\$\$\$\$	1734	\$\$\$\$

In support of the Board of Equalization value, the County’s representative submitted a retrospective appraisal report. The appraisal determined a value of \$\$\$\$ as of the January 1, 2008 lien date, using the following comparables:

- a. The County’s first comparable is located at ADDRESS 8 South in CITY 1. It is a 0.26-acre lot improved with a six-year old rambler in very good condition. The home has 1,934 square feet above grade and a 1,900 square foot basement with 1,700 square feet finished. The home has three bedrooms, tow and one-half bathrooms, a fireplace, and a three-car garage. The appraiser made adjustments for concessions, bathrooms, and square footage. The home sold for \$\$\$\$ on October 31, 2007, and had an adjusted sales price of \$\$\$\$.
 - b. The County’s second comparable is located at ADDRESS 9 in CITY 1. It is a 0.23-acre parcel improved with a six-year old rambler in very good condition. The home has 1,866 square feet above grade and a 1,786 square foot finished basement. The home has three bedrooms, two bathrooms, two fireplaces, and a two-car garage. The appraiser made adjustments for square footage, basement finish, garage size, and fireplace. The home sold for \$\$\$\$ on June 29, 2007, and had an adjusted sales price of \$\$\$\$.
 - c. The County’s third comparable is located at ADDRESS 10 in CITY 1. It is a 0.26-acre parcel improved with an eight-year old rambler in very good condition. The home has 1,588 square feet above grade and a 1,606 square foot basement with 1,482 square feet finished. The home has two bedrooms, two bathrooms, two fireplaces, and a three-car garage. The appraiser made adjustments for seller concessions, square footage, and fireplace. The home sold for \$\$\$\$ on June 20, 2007, and had an adjusted sales price of \$\$\$\$.
- ADDRESS 11 in CITY 1. It is a 0.24-acre parcel improved with a four-year old rambler in very good condition. The home has 1,665 square feet above grade and a 1,622 square foot finished basement. The home has two bedrooms, two bathrooms, two

fireplaces, and a two-car garage. The appraiser made adjustments for square footage, garage, and fireplace. The home sold for \$\$\$\$\$ on August 5, 2008, and has an adjusted sales price of \$\$\$\$\$. The County's representative stated that she included this comparable to show that the market was declining in 2008.

In response to the Taxpayer's equalization argument, the County provided information on the valuation of other properties in the subject neighborhood. The County's representative stated that typically as square footage increases, the cost per square foot decreases. She stated that there are many properties in the subject neighborhood that are valued at over \$\$\$\$\$ per square foot, and that the difference in the value per square foot amongst the homes accounts for the differences in square footage and other features of the homes. The County's representative determined that the entire neighborhood had an average value per square foot of \$\$\$\$\$ and that homes within 100 square feet of the subject had an average value per square foot of \$\$\$\$\$. The County's representative argued that the Taxpayer's value is within the 5% of the average assessed values both for the neighborhood and homes within 100 square feet of the subject, and asked the Commission to sustain the Board of Equalization value.

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Taxpayers provided evidence of three comparable properties in support of their requested value. The Commission finds the Taxpayers have presented sufficient evidence to call into question the value established by the Board of Equalization.

Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller. The Commission has reviewed the evidence presented by both parties. In support of their requested value, the Taxpayers submitted evidence of three post-lien date sales. All of which are located in the same neighborhood as the subject, of similar age and building style. The Taxpayer's comparable properties range in sales price from \$\$\$\$\$ to \$\$\$\$\$. The County provided a retrospective appraisal report with four comparable sales, three of which sold prior to the lien date, with sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The County offered one post-lien date sale to show that the values in the subject neighborhood dropped after the lien date. The Commission finds the Taxpayers have failed to meet their burden of proof to provide an evidentiary basis to support their requested value of \$\$\$\$\$.

The Taxpayers have also raised an equalization argument, claiming the subject property has been overvalued when compared to neighboring properties. To prevail on an equalization theory, a taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. The Commission finds that the Taxpayers did raise an equalization argument, and thus meet the first prong of the test for a successful equalization argument. To meet the second prong, the Taxpayers would have to show that the County's assessed value for the subject property deviates more than 5% from the assessed value of comparable properties. The evidence presented by the Taxpayer does show that their home is valued higher per square foot than both the neighborhood average, and that of homes with similar square footage. However, the Taxpayers have not provided any evidence that the value of the subject property deviates by more than 5% from other properties in the neighborhood. The County provided information to show that the subject property is valued 4.35% more than the average for homes in the neighborhood within 100 square feet of the subject and 3.37% more than the average for the entire neighborhood. The County's representative stated that this value range, and differences in value in the subject neighborhood account for the differences in square footage, lot size, and other features of the properties. Therefore, the Commission rejects the Taxpayer's equalization claim.

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Board of Equalization value of \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written 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 Petitioner'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 _____, 2009.

Jan Marshall
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this ____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

JM/09-0365.int