

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION FOR DAVIS COUNTY, UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 09-0424  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2008  Judge:     Marshall
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

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

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 19, 2009. The Davis County Assessor’s Office assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date, which the Board of Equalization sustained. The County is requesting the Commission reduce the value of the subject to \$\$\$\$\$. 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.

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.#####, located at ADDRESS 1 in CITY 1, Utah. It is a 0.62-acre parcel improved with a 94-year old bungalow in good condition. The home has 1,300 square feet above grade and a 650 square foot unfinished basement. The home has two bedrooms and one bathroom above grade, and a two-car garage. There is also a second residence located on the property which the County has valued at \$\$\$\$\$.

The Taxpayer requests a reduction in the value of the subject property based on the declining housing market and the condition of the subject. Taxpayer stated that her home is nearly 100 years old, has only two bedrooms and one bathroom, has not been updated, still has the original plumbing and electrical, needs a new roof, and that the basement is not livable area.

With regard to the second residence on the property, Taxpayer contends it is not livable. She said the space is being rented out only for storage, that there is no toilet, and the gas is not connected. In addition, she stated that at one time she tried to sell the second residence, but it was not feasible because of the frontage requirements from the City.

Taxpayer testified that she believed she could have sold the property for \$\$\$\$\$ as of the January 1, 2008 lien date. In support of her requested value, the Taxpayer relied on the comparables she submitted to the Board of Equalization, as follows:

- a. Taxpayer's first comparable is located at ADDRESS 2 in CITY 1. It is a 0.18 acre parcel improved with a 90-year old brick bungalow. The home has 1,516 square feet above grade and a 758 square foot basement that is 15% finished. It has three bedrooms and one bathroom. The MLS report indicates that the home is charming but in need of updating. The home sold for \$\$\$\$\$ on June 1, 2007.
- b. Taxpayer's second comparable is located at ADDRESS 3 in CITY 2. It is a 0.42-acre parcel improved with a 110-year old bungalow with a frame and stone exterior. The home has 1,900 square feet above grade and a 300 square foot unfinished basement. It has three bedrooms, one bathroom, and a two-car garage. The MLS report indicates that the home has been modernized. The home sold for \$\$\$\$\$ with \$\$\$\$\$ in concessions on February 15, 2007.
- c. Taxpayer's third comparable is located at ADDRESS 4 in CITY 3. It is a 0.27-acre parcel improved with a 111-year old bungalow with a cedar exterior. The home has 1,693 square feet above grade and no basement. It has three bedrooms, one and three-quarter bathrooms, a fireplace, and a one-car garage. The MLS report indicates there has been a total remodel; including paint, carpet, plumbing, wiring, and hardwood floors. The home sold for \$\$\$\$\$ on February 28, 2007.
- d. Taxpayer's fourth comparable is located at ADDRESS 5 in CITY 4. It is a 1.07-acre parcel improved with an 87-year old brick bungalow. The home has 1,201 square feet above grade and a 1,201 square foot basement that is 20% finished. It has two bedrooms, one bathroom, and a fireplace. The MLS report indicates that an offer should be made

subject to inspection. The home sold for \$\$\$\$\$ with \$\$\$\$\$ in concessions on February 8, 2007.

In support of its requested value of \$\$\$\$\$, the County submitted a retrospective appraisal report. The County made a \$\$\$\$\$ adjustment to account for the second residence on the property. He determined the adjustment amount based on six other comparables, using the extraction method. Following are the comparables the County used to determine the value for the subject:

- a. The County's first comparable is also the Taxpayer's first comparable and is located at ADDRESS 2 in CITY, 0.15 miles from the subject. It is a 0.18-acre parcel improved with a 90-year old bungalow. The home has 1,516 square feet above grade and a 758 square foot basement with 114 square feet finished. It has three bedrooms and one bathroom. The appraiser made adjustments for the lot size, condition, square footage, central air, garage, and the second residence. The home sold for \$\$\$\$\$ on June 1, 2007 and had an adjusted sales price of \$\$\$\$\$.
- b. The County's second comparable is located at ADDRESS 5 in CITY 1, 0.22 miles from the subject. It is a 0.22-acre parcel improved with a 51-year old rambler. The home has 1,064 square feet above grade and a 1,764 square foot basement with 1,234 square feet finished. It has 2 bedrooms, 1 bathroom, and a 1-car carport. The appraiser made adjustments for the lot size, age, square footage, evaporative cooler, garage, and second residence. The home sold for \$\$\$\$\$ on May 29, 2007 and had an adjusted sales price of \$\$\$\$\$.
- c. The County's third comparable is located at ADDRESS 6 in CITY 1, 0.22 miles from the subject. It is a 0.33-acre parcel improved with a 59-year old rambler. The home has 2,604 square feet above grade and no basement. It has four bedrooms two and one-half bathrooms, and a two-car garage. The appraiser made adjustments for the lot size, age, bathrooms, square footage, central air, and second residence. The home sold for \$\$\$\$\$ on October 8, 2007 and had an adjusted sales price of \$\$\$\$\$.

A party seeking a value lower than that established by the board of equalization, 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 Taxpayer provided testimony on the condition of the property and four comparable sales. The Commission finds this is sufficient 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 documents submitted by both parties. Only one of the comparables submitted by the Taxpayer is located in Centerville. This comparable was also used by the County in its appraisal. It appears to be the most similar to the subject in terms of location, building style, and age. However, the parcel is significantly smaller than the subject and does not have a second residence on it. Even without adjustments, this comparable sold for more than the value the Taxpayer is requesting for the subject. The County submitted a retrospective appraisal report using three comparable properties, making adjustments to account for differences in the properties. The County made a \$\$\$\$ adjustment for the second residence on the property. The Commission is not convinced this adjustment is appropriate, given Taxpayer’s testimony that the second residence is not livable. The County made an adjustment of \$\$\$\$ per square foot for above grade square footage of its comparables. The Commission applies this amount to the square footage of the second residence to arrive at an adjustment of \$\$\$\$\$. Thus, the Commission finds the value of the subject as of the January 1, 2008 lien date to be \$\$\$\$.

DECISION AND ORDER

On the basis of the foregoing, the Commission finds the value of the subject as of the January 1, 2008 lien date to be \$\$\$\$\$. The 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. 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.

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Jan Marshall  
Administrative Law Judge

Appeal No. 09-0424

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/09-0424.int*