

09-0854
PROPERTY TAX
SIGNED 01-25-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT
LAKE COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-0854

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer
PETITIONER REP, Taxpayer

For Respondent: RESPONDENT REP, for Salt Lake County

STATEMENT OF THE CASE

The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of Salt Lake County (the "County"). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on October 21, 2009. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2008. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization sustained the value. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization be sustained.

APPLICABLE LAW

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. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(11).)

Utah Code Ann. §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 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 requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization 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).

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. 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) and 59-2-1004(4).) The evidence required for adjustment on the basis of equalization under Utah Code Ann. Sec. 59-2-1004(4) is a showing that there has been an “intentional and systematic undervaluation” of property that results in “preferential treatment” to the property owners receiving the lower valuations. *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 16. Where it is impossible to achieve perfectly both the standard of true value and the standard of uniformity and equality, the latter standard should prevail. *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1161 (Utah 1990).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS 1 in Salt Lake County. It consists of a .11- acre lot improved with an end-row twin home residence. The subject property is part of a development with 22 twin homes in 11 buildings. All of the homes in the PUD were built within a few years of each other. The residence on the subject property was built in 2006. It has 1,517 square feet above grade and a basement of 1,517 square feet of which 1,500 are finished. It has one fireplace but does not have a porch or a deck. It has a built in two-car garage. The subject property sold in February 2007 for \$\$\$\$\$.

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Taxpayer requested that the subject property should be equalized with the value of other similar properties in the same development as the subject property. The Taxpayer provided the 2008 assessed valued for 21 of the 22 homes in the PUD containing the subject property:

ADDRESS 2	\$\$\$\$\$
ADDRESS 3	\$\$\$\$\$
ADDRESS 4	\$\$\$\$\$
ADDRESS 5	\$\$\$\$\$
ADDRESS 6	\$\$\$\$\$
ADDRESS 7	\$\$\$\$\$
ADDRESS 8	\$\$\$\$\$
ADDRESS 9	\$\$\$\$\$
ADDRESS 10	\$\$\$\$\$
ADDRESS 11	\$\$\$\$\$
ADDRESS 12	\$\$\$\$\$
ADDRESS 13	\$\$\$\$\$
ADDRESS 14	\$\$\$\$\$
ADDRESS 15	\$\$\$\$\$
ADDRESS 16	\$\$\$\$\$
ADDRESS 17	\$\$\$\$\$
ADDRESS 18	\$\$\$\$\$
ADDRESS 19	\$\$\$\$\$
ADDRESS 20	\$\$\$\$\$

ADDRESS 21		\$\$\$\$\$
ADDRESS 1	(subject property)	\$\$\$\$\$

The Taxpayer acknowledged that although the twin homes are part of the same development and were built near the same time, there are some differences in the homes. Some have smaller basement areas with only 1017 square feet compared to the 1517 square feet in the basement on the subject property. There may also be differences in basement finish. Neither party had evidence regarding basement finish for all of the properties in the development. Some of the properties have two fireplaces and decks or porches compared to one fireplace and no deck or porch at the residence on the subject property. The Taxpayer identified four properties with the same basement size and similar basement finish as the subject property and asked the Commission to equalize to those values. The four properties are ADDRESS 19 at \$\$\$\$\$, ADDRESS 17 at \$\$\$\$\$, ADDRESS 22 at \$\$\$\$\$, and ADDRESS 14 at \$\$\$\$\$. The Taxpayer agreed that the \$\$\$\$\$ average of these four properties was somewhat above the \$\$\$\$\$ valuation request in this case, but pointed out that the four most-similar properties had more fireplaces or had decks that were not present at the subject property. Additionally, the Taxpayer noted that three of the four properties had 2008 assessed values lower than the requested \$\$\$\$\$.

The County relied on two factors to support the board of equalization value. First, the County's representative provided evidence of an appreciating market in the area of the subject property after the time of the February 2007 purchase of the subject property. The County's representative indicated that with even a mild appreciation, the purchase of the subject property in February 2007 for \$\$\$\$\$ supported a January 1, 2008 valuation of \$\$\$\$\$. The County also provided evidence that the property next to the subject property sold in May 2007 for \$\$\$\$\$.

The County's representative did not rebut the Taxpayer's equalization argument except to point out that the one property ADDRESS 23 for which the Taxpayer did not provide evidence had a 2008 assessed value as high as the subject property.

The County's sales evidence indicates that the market value of the subject property may well have been \$\$\$\$\$ or more as of January 1, 2008. This, however, does not support a property value that is not equalized with comparable properties. Under Utah law, "[w]here it is impossible to achieve perfectly both the standard of true value and the standard of uniformity and equality, the latter standard should prevail." *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1161 (Utah 1990). The Taxpayer has presented evidence that supports the position that for the

2008 tax year, there was an inequality between the assessed value for the subject property and 20 of 21 comparable properties in the same PUD. The Taxpayer's comparison of the market value of the subject property to four nearly-identical properties provides ample support for the Taxpayer's requested valuation of \$\$\$\$\$. On that basis, there is good cause to find error in the board of equalization value and to lower the value as requested by the Taxpayer.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2008 is \$\$\$\$\$. The Salt Lake 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner