

09-0874  
PROPERTY TAX  
SIGNED 07-16-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,  Petitioners,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 09-0874  Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2008  Judge: Chapman
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP, Representative

For Respondent: RESPONDENT REP, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 8, 2009.

At issue is the assessed value of the subject property as of the January 1, 2008 lien date. The subject is a single-family residence located at ADDRESS in CITY, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject was originally assessed for the 2008 tax year. The property owners ask the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the current value of \$\$\$\$.

APPLICABLE LAW

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12) to mean:

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. . . .

UCA §59-2-1006 provides that a person may appeal a decision of a county board of

equalization to the Tax Commission, pertinent parts as follows:

(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. . . .

. . . .

(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.

. . . .

Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE 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).

#### DISCUSSION

The subject property consists of a 0.08-acre lot and a two-story home that was built in 1980. The subject property is in the ( X ) PUD, which consists of ( X ) homes of similar design. The subject

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contains 2,491 square feet of above-grade living space and a basement that is 1,330 square feet in size (1,263 square feet finished). The subject has a two-car garage.

The property owners proffered an equalization argument to contest the subject's current assessed value of \$\$\$\$\$. The County proffered information to show that \$\$\$\$\$ is a reasonable "fair market value" for the subject. The County also proffered evidence to address the property owner's equalization argument. The Commission will first address the subject's fair market value. Then, the Commission will address the equalization argument.

Fair Market Value. APPRAISER A, a County appraiser, proffered an appraisal in which he estimated the subject's fair market value to be \$\$\$\$\$ as of the January 1, 2008 lien date. APPRAISER A stated, however, that the County was not asking the Commission to increase the subject's value. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

In his appraisal, APPRAISER A compared the subject to nine comparable sales that sold between January 2007 and March 2008. The nine comparables sold for values ranging between \$\$\$\$\$ and \$\$\$\$\$ and adjusted to values ranging between \$\$\$\$\$ and \$\$\$\$\$. Although eight of the comparables were not located within the subject's PUD, they were located within a mile of the subject. One comparable, however, was located within the subject's PUD.

The one comparable in the subject's PUD sold for \$\$\$\$\$ in June 2007. This unit is considerably smaller than the subject property, as it only has 1,886 square feet of above-grade living space and an unfinished basement that is 720 square feet in size. The County adjusted this comparable and derived an adjusted value \$\$\$\$\$. The adjustments included a \$\$\$\$\$ for "condition." APPRAISER A explained that he considered the \$\$\$\$\$ adjustment to be reasonable because the comparable had been a rental property prior to its sale and because the new owners had spent approximately \$\$\$\$\$ to refurbish it. The property owners, however, contend that the new owners of this property have only spent \$\$\$\$\$ since purchasing it. Based on

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this information, it appears that a condition adjustment is appropriate. Even if the condition adjustment were reduced from \$\$\$\$\$ to \$\$\$\$\$, the comparable's adjusted sales price would be \$\$\$\$\$ and would support the subject's current value of \$\$\$\$\$. The Commission does not find the other comparables sufficiently similar to the subject to show that the subject's current value is incorrect. Based on the information available at the Initial Hearing, the Commission finds the subject's fair market value to be \$\$\$\$\$.

Equalization. The Commission has found that the subject property's fair market value to be \$\$\$\$\$. Nevertheless, the subject's value may be reduced if the evidence shows that subject's value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also ( X ). v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The property owners proffer that the 2008 assessed values of two properties in the PUD have been reduced to values of \$\$\$\$\$ and \$\$\$\$\$, respectively. Specifically, the property owners proffer that the County BOE reduced the 2008 assessed value of PUD Unit #9, which is seven years newer and 370 square feet larger than the subject, to \$\$\$\$\$. In addition, the property owners assert that the County recently stipulated in *USTC Appeal No. 09-0166* (Initial Hearing Order Jul. 8, 2009) to reduce the 2008 assessed value of PUD Unit #2 to \$\$\$\$\$. Because PUD Unit #2 is identical in size and similar in age to the subject, the property owners ask the Commission to reduce the subject's value to \$\$\$\$\$ for purposes of equalization.

The County proffered that the 2008 assessed values of 8 of the ( X ) units in the PUD were appealed to the County BOE. The County BOE reduced the values of two of the units and sustained the values of the remaining six units under appeal. Of these six, several were appealed to the Tax Commission. At the

Initial Hearing, it was known that the assessed value of one the units appealed to the Tax Commission was reduced by stipulation to \$\$\$\$\$, as described above.<sup>1</sup>

The County has also proffered information about ( X ) units in the PUD, including their assessed values, square footages and years in which they were built. This information is compiled in the following chart by the amount of above-grade square footage (from greatest amount of above-grade square footage to lowest):

<b>PUD Unit</b>	<b>2008 Value</b>	<b>Above-grade Square Feet</b>	<b>Basement Square Feet</b>	<b>Basement Finish</b>	<b>Year Built</b>
1. Unit #9	\$\$\$\$\$*	2,716	1,475	1,327	1987
2. Unit #13	\$\$\$\$\$	2,636	1,404	1,333	1994
3. Unit #1	\$\$\$\$\$	2,510	1,367	1,298	1987
4. Unit #6 (Subject)	\$\$\$\$\$	2,491	1,330	1,263	1980
5. Unit #2	\$\$\$\$\$**	2,491	1,330	1,263	1981
6. Unit #11	\$\$\$\$\$	2,491	1,330	1,197	1981
7. Unit #4	\$\$\$\$\$	2,400	1,330	1,064	1981
8. Unit #5	\$\$\$\$\$	2,152	870	756	1981
9. Unit #10	\$\$\$\$\$	2,026	780	702	1983
10. Unit #8	\$\$\$\$\$	2,023	780	741	1985
11. Unit #14	\$\$\$\$\$***	1,978	1,075	1,000	1981
12. Unit #3	\$\$\$\$\$	1,894	786	707	1981
13. Unit #12	\$\$\$\$\$	1,886	720	504	1981
14. Unit #7	\$\$\$\$\$	1,854	787	393	1981
* Reduced from \$\$\$\$\$ to \$\$\$\$ by County BOE.					
** Parties stipulated to reduce \$\$\$\$\$ value to \$\$\$\$\$ at Tax Commission ( <i>Appeal No. 09-0166</i> ).					
*** Reduced from \$\$\$\$\$ to \$\$\$\$\$ by County BOE.					

This information shows that three properties the same size as or larger than the subject (Unit #1, Unit #2 and Unit #9) are assessed at values ranging between \$\$\$\$\$ and \$\$\$\$\$. The Commission notes that the values of two of the three were reduced significantly through the appeals process. It is apparent that these three properties are now assessed at values significantly below the subject’s current value of \$\$\$\$\$.

<sup>1</sup> The parties proffered that the original assessed values of three properties in the subject’s PUD have been reduced for the 2008 tax year. It is possible that evidence was provided in the appeals for these three properties to show that their fair market values were lower than their original assessed values. Such market

Nevertheless, a majority of the other properties in the PUD are assessed at values that appear consistent with the subject's current value. For example, Unit #4 and Unit #11 are approximately the same size as or smaller than the subject and are assessed at \$\$\$\$ and \$\$\$\$\$, respectively. Furthermore, smaller units, such as Unit #5 and Unit #10, are assessed at \$\$\$\$ and \$\$\$\$\$, respectively, values that appear consistent with the current value of the significantly larger subject property. Reducing the subject's value to \$\$\$\$ would result in these properties' values being inequitable in comparison to the subject's.

In (*X*) v. *Utah State Tax Comm'n*, 2004 UT 86, 100 P.3d 1206 (Utah 2004), the Utah Supreme Court addressed the equalization of property values and stated:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the property's fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner "singled out" for a legitimate fair market value assessment would be entitled to relief under section 59-2-1006(4).

In the current matter, however, the assessed value of the subject property does not stand apart from "a group of undervalued comparable properties." Three properties similar in size to or larger than the subject are assessed at values that are below the subject's assessed value. However, when all properties in the PUD are considered as a group, the subject's valuation does not stand apart. It is consistent with many, if not most, of the assessed values.

In (*X*) v. *County Comm'n*, 488 U.S. 336, 346, 102 L. Ed. 2d 688, 109 S. Ct. 633 (1989), the United States Supreme Court found that a violation of equal protection may occur when a property is assessed at market value, while other properties are "systematically" undervalued. The Commission does not believe that a "systematic" undervaluation has occurred. Most of the assessed values of other properties in subject's PUD appear to be consistent with the subject's current assessed value. Based on the evidence before the

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information, however, has not been provided by the property owners in this appeal.

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Commission at the Initial Hearing, the Commission does not find that the other properties in the PUD, when considered on the whole, are systematically undervalued in comparison to the subject. As a result, the Commission finds that the subject's current value of \$\$\$\$\$ does not require an adjustment for equalization purposes. Accordingly, the Commission denies the property owners' appeal.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property should be sustained at \$\$\$\$\$, as established by the County BOE, for the 2008 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 taxpayer'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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Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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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

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