09-1044
LOCALLY ASSESSED PROPERTY
03-24-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 09-1044 Parcel Nos. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2008 Judge: Chapman

Presiding:
R. Bruce Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP., from Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 10, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax year at issue is 2008, with a lien date of January 1, 2008.

3. At issue is the fair market value of a single-family residence. The subject property is identified as Parcel No. #####.

4. The subject property is owned by PETITIONER ("Petitioner" or "taxpayer") and is located at ADDRESS 1 (approximately ADDRESS 2) in CITY 1, Utah.

5. The Salt Lake County Board of Equalization ("County BOE") sustained the $$$$$ value at which the subject property was assessed for the 2008 tax year. The County allocated $$$$$ of the

$$$$$ total value to land. It allocated the remaining $$$$$ of value to improvements.

6. The Tax Commission held an Initial Hearing in this matter on June 10, 2009. The Commission issued its Initial Hearing Order on July 14, 2009, and the taxpayer timely submitted a request for a Formal Hearing.

7. The taxpayer asks the Commission to reduce the subject's value to $$$$$. The County asks the Commission to sustain the subject's current value of $$$$$.

8. The subject property consists of a 0.26-acre lot and a one-story home that was built in 1976. The home has 2,184 square feet of living space on the main floor and an unfinished basement that is 546 square feet in size. The subject has a two-car garage and has not been remodeled since it was built.

9. The taxpayer is requesting that the subject's 2008 value be reduced to $$$$$ The taxpayer derived this value by multiplying the subject's 2,184 square feet of "above-grade" space by $$$$$ per square foot. Exhibit P-3. The taxpayer derived the $$$$$ per square foot rate from a comparable sale located at ADDRESS 3, which sold for $$$$$ in July 2008. Exhibit P-2. This comparable, like the subject, has a relatively small basement. Unlike the subject, however, this comparable is a contemporary home with living space on two above-grade floors. This comparable has 3,362 above-grade square feet of living space, which equates to about 54% more above-grade space than the subject. When the $$$$$ sales price of this comparable is divided by its 3,362 square feet of above-grade space, a value of $$$$$ per square foot is derived.

10. The taxpayer also contends that the subject's assessed land value is inequitably high when compared to the assessed land values of other nearby properties. For 2008, the 0.26-acre subject lot is assessed at a value of $$$$$, which equates to $$$$$ per acre. The taxpayer explains that the subject's land value increased from $$$$$ in 2007 to its current 2008 value of $$$$$, an increase of 30%. The taxpayer

also provided information on the land values of six neighboring improved parcels. The taxpayer asserts that the land associated with each of these parcels is assessed at a lower price per acre than the subject, as follows:

Address	Size	Value	Value/Acre
Subject:	0.26 acres	$$$$$	$$$$$
Comparables:			
ADDRESS 4	0.29 acres	$$$$$	$$$$$
ADDRESS 5	0.30 acres	$$$$$	$$$$$
ADDRESS 6	0.30 acres	$$$$$	$$$$$
ADDRESS 7	0.34 acres	$$$$$	$$$$$
ADDRESS 8	0.36 acres	$$$$$	$$$$$
ADDRESS 9	0.39 acres	$$$$$	$$$$$

The average value per acre of the land associated with the six neighboring parcels is $$$$$. Exhibit P-8. If this value per acre is applied to the subject's 0.26 acres, a value of $$$$$ is derived for the subject's land. The taxpayer asks that its land value be reduced to $$$$$ based on this methodology.

11. The taxpayer also asserts that the subject's total value of $$$$$ is inequitable when the subject's increases in value over a 3-year period (2006 to 2008) and a 10-year period (1999 to 2008) are compared to the rates at which the values of nearby properties increased. Exhibit P-8. Based on the 3-year and 10-year "normalized increases" in values of nearby properties, the taxpayer asserts that the subject property's value has increased at a rate that is 14% to 17% higher than the rate at which nearby properties increased over these periods. The taxpayer asserts that the subject's value should be decreased from $$$$$ to $$$$$ on this basis alone.

12. The taxpayer also contends that the County increased the total value of the subject property by 10.73% from 2007 to 2008, while neighboring properties increased an average of only 6.74%. Exhibit R-8. To support this argument, the taxpayer provided assessment information for nearby properties, as follows:

Address	2007 Value	2008 Value	% Change
Subject:	$$$$$	$$$$$	10.73%
Comparables:			
ADDRESS 10	$$$$$	$$$$$	5.26%
ADDRESS 11	$$$$$	$$$$$	7.32%
ADDRESS 12	$$$$$	$$$$$	6.34%
ADDRESS 13	$$$$$	$$$$$	4.48%
ADDRESS 14	$$$$$	$$$$$	7.09%
ADDRESS 15	$$$$$	$$$$$	5.26%
ADDRESS 16	$$$$$	$$$$$	7.35%
ADDRESS 17	$$$$$	$$$$$	6.63%
ADDRESS 18	$$$$$	$$$$$	8.41%
ADDRESS 19	$$$$$	$$$$$	1.64%
ADDRESS 20	$$$$$	$$$$$	7.66%
ADDRESS 21	$$$$$	$$$$$	8.42%
ADDRESS 22	$$$$$	$$$$$	8.56%
ADDRESS 23	$$$$$	$$$$$	5.74%
ADDRESS 24	$$$$$	$$$$$	-2.82%
ADDRESS 25	$$$$$	$$$$$	10.89%
ADDRESS 26	$$$$$	$$$$$	13.81%

If the subject's 2007 value of $$$$$ had been increased at a rate of 6.74%, the average rate at which nearby properties increased between 2007 and 2008, the subject's 2008 value would have been $$$$$.

13. The taxpayer also contends that the County's regression model that it uses to assess properties is "capricious and arbitrary" and that values the County derives with its regression model should be discounted. Exhibits P-6 and P-7.

14. Lastly, the taxpayer submits three comparables of homes located within a block of the subject and asserts that they show a price of $$$$$ per square feet of total living space (which includes basement space). If the $$$$$ per square foot value is applied to the subject's 2,730 total square feet, a value of $$$$$ is derived for the subject. Exhibit P-2 and P-8. The taxpayer provided Multiple Listing Service ("MLS") information for these three comparables and derived prices per square foot for each comparable, as follows:

Address	Sales Price	Date of Sale	Above-Grade Square Footage	Basement Sq. Ft. & Finish (%)	Total Square Footage	Price per Total Square Footage
Subject:			2,184	546 (0)	2,730	
Comparables:						
ADDRESS 27	$$$$$	07/31/08	2,280	1,751(95)	4,031	$$$$$
ADDRESS 28	$$$$$	06/30/08	1,886	1,886 (95)	3,772	$$$$$
ADDRESS 29	$$$$$	07/07/08	3,362	500 (100)	3,862	$$$$$

Two of these comparables have main floors that are relatively close in size to the subject's main floor. However, these two comparables have more total living area than the subject because they have basements that are larger than the subject's basement. Each of these comparables has more finished square footage than the subject. Exhibit P-4.

15. The subject's 2009 assessed value is $$$$$. Exhibit P-1.

16. The County asks the Commission to sustain the subject's value at $$$$$. First, the County contends that the taxpayer's equity argument concerning the subject's land value is erroneous. The County explains that all six comparable lots that the taxpayer provided as evidence are larger than the subject's lot. Furthermore, the County contends that land values are not "linear" and that a smaller lot should not generally be expected to have the same value per acre as a larger lot.

17. The County also contends that using a price per square foot analysis to determine a value for a home is erroneous because many factors impact a home's value other than square footage. For example, the County contends that market prices were dropping in 2008 at a rate of 1% per month. The County notes that all three of the taxpayer's comparables that he used to derive a price per square foot of $$$$$ sold in mid to late 2008, when prices were falling. The County explains that a price per square foot analysis would not adjust for value differences due to a declining market and date of sale.

18. No information was submitted to refute RESPONDENT REP.'s opinion that a time adjustment of 1% per month is appropriate for 2008 sales. Accordingly, a positive 1% per month time adjustment will be used when adjusting the sales price of comparables that sold in 2008.

19. RESPONDENT REP. also produced evidence that suggests that prices in the subject's zip code increased 15.11% between 2007 and 2008. Exhibit R-1. Based on this information, he recommends a negative 1% per month time adjustment for comparables that sold in 2007. However, the 15.11% increase is based on the "new average asking prices" of homes. It is possible that such an increase is due to larger and more expensive homes being listed in 2007, on the whole, than were listed in 2006. A paired sales analysis of a home within four blocks of the subject suggests that prices may actually have decreased during 2007. A home at ADDRESS 30 sold in March 2007 for $$$$$ and again in January 2008 for $$$$$, which shows a 2% between March 2007 and January 2008. Given this conflicting information, a negative 1% per month time adjustment will not be used to adjust sales that occurred in 2007.

20. RESPONDENT REP. suggested that comparables in the subject's neighborhood should be adjusted for square footage as follows: 1) $$$$$ to $$$$$ per above-grade square foot; 2) $$$$$ per unfinished basement square foot; and 3) $$$$$ per finished basement square foot. These recommended square footage adjustments were unrefuted. As a result, these adjustments will be accepted and a $$$$$ per square foot adjustment will be applied to differences in above-grade square footages.

21. The County submitted nine comparable sales that sold between February 2007 and January 2008 for prices ranging between $$$$$ and $$$$$. These comparables are located between one and one-half and five blocks away from the subject property. The following chart contains information from MLS about these nine sales and the three comparables submitted by the taxpayer, along with the adjusted sales prices if the square footage adjustments and time adjustments described in the three preceding paragraphs are applied:

Address	Sales Price	Date of Sale	Year Built	Remodel (Yes or No)	Above-Grade Sq. Ft.	Basement Sq. Ft (% Finish)	Adjusted Sales Price
Subject:			1976	No	2,184	546 (0)	
Taxpayer's Comps:							
1. ADDRESS 31	$$$$$	07/31/08	1977	No	2,280	1,751(95)	$$$$$
2. ADDRESS 32	$$$$$	06/30/08	1975	Yes	1,886	1,886 (95)	$$$$$
3. ADDRESS 3	$$$$$	07/07/08	1978	No	3,362	500 (100)	$$$$$
County's Comps:							
4. ADDRESS 33	$$$$$	10/18/07	1952	No	1,957	1,480(100)	$$$$$
5. ADDRESS 34	$$$$$	04/20/07	1963	Yes	1,480	1,938 (80)	$$$$$
6. ADDRESS 35	$$$$$	06/25/07	1959	Yes	1,826	1,826 (75)	$$$$$
7. ADDRESS 36	$$$$$	03/12/07	1956	No	2,276	1,793 (90)	$$$$$
8. ADDRESS 37	$$$$$	01/03/08	1956	No	2,276	1,793 (90)	$$$$$
9. ADDRESS 38	$$$$$	03/30/07	1952	Yes	1,776	1,741(100)	$$$$$
10. ADDRESS 39	$$$$$	06/07/07	1975	No	2,156	2,156 (90)	$$$$$
11. ADDRESS 40	$$$$$	02/28/07	1978	No	2,120	1,802 (90)	$$$$$
12. ADDRESS 41	$$$$$	11/27/07	1958	Yes	1,503	1,503(100)	$$$$$

APPLICABLE LAW

1. Utah Code Ann. §59-2-102(12) defines "fair market value" 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. . . ."

2. UCA §59-2-103(1) provides that "[a]ll 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 provided by law."

3. 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.
>
> . . . .

4. 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 contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 Comm'n*, 590 P.2d 332, (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 taxpayer has submitted both fair market value arguments and equalization arguments to contest the subject's current value of $$$$$. The fair market value arguments will be addressed first, after which the equalization arguments will be addressed.

Fair Market Value. First, the Commission addresses the taxpayer's argument that the subject's current value is incorrect because it was produced with a regression model that is unreliable. The Commission believes that the County's regression model is an appropriate method to assess properties for mass appraisal purposes. Nevertheless, in the appeals process where the value of an individual property is at issue, the Commission has found that other evidence should be considered to determine whether a value produced by the mass appraisal regression model is incorrect. As RESPONDENT REP. stated at the hearing, the County's regression model "works well for the majority of properties." For these reasons, the Commission has never found that a value is correct solely because it was produced with a regression model. That being said, however, it must be noted that the value established by the County BOE, whether it was produced with a regression model or by other means, has the presumption of correctness. Accordingly, the Commission will review other evidence of value to determine whether a property's current value has been shown to be incorrect.

Second, the taxpayer has produced two "price per square foot" methodologies to contest the subject's current value. With these methodologies, he has produced values of $$$$$ and $$$$$ for the subject property. The Commission is somewhat wary of price per square foot methodologies for several reasons. One, such methodologies produces an estimate of value that is solely dependent on square footage, even though other factors, such as time of sale, lot size, age, condition, etc., also impact a property's value. Second, such methodologies tend to work best when: 1) the total square footages of the comparables and the property being valued are apportioned similarly between above-grade square footage and basement square footage; and 2) when the amount of basement finish is similar.

In this case, for example, the subject property has 2,730 total square feet, of which 2,184 square feet are above-grade. As a result, 80% of the subject's total square footage is above-grade. Two of the taxpayer's three comparables have significantly lower percentages of above-grade square footage, which is generally more valuable than basement square footage. In addition, all three comparables have fully finished basements, while the subject's basement is unfinished. Given the differences between the comparables and the subject, the Commission believes that the sales prices and adjusted sales prices of the comparables must also be considered to determine whether the taxpayer's price per square foot methodologies have produced a reasonable value.

The chart in Finding of Fact #21 shows the sales prices of the taxpayer's three comparable sales and the County's nine comparable sales. It also shows an adjusted sales price for each property, based on time adjustments to 2008 sales and square footage adjustments. The lowest sales price of any of the twelve comparables submitted at the hearing is $$$$$. No evidence was submitted to show that homes in the subject's neighborhood sell in the $$$$$ to $$$$$ range that the taxpayer produced with his price per square foot methodologies. In addition, when the comparables are adjusted for time (2008 sales only) and square footage differences, no home shows an adjusted sales price below $$$$$.[1] For these reasons, the values the taxpayer produced with his price per square foot methodologies are not convincing.

Lastly, the sales prices and adjusted sales prices of the comparables will be considered. As noted above, no evidence was submitted to show that homes sell for less than $$$$$ in the subject's neighborhood, and only two of the 12 comparables sold for prices below the subject's current value of $$$$$. The subject appears to be unique due to its having a small, unfinished basement. When the limited adjustments described earlier are made to sales prices, the adjusted sales prices of the twelve properties range between $$$$$ and $$$$$. The comparable that sold for $$$$$ is given little weight because RESPONDENT REP. admitted it was superior to the subject. If this comparable is eliminated from consideration, the remaining 11 adjusted sales prices range between $$$$$ and $$$$$.

Four of the remaining comparables (Comparables #1, #2, #10 and #11 on the chart) were built in the 1970s, like the subject. The adjusted sales prices of these three comparables are $$$$$, $$$$$, $$$$$ and $$$$$. Six of the remaining comparables (Comparables #1, #4, #7, #8, #10 and #11), like the subject, have not been remodeled. The adjusted sales prices of these six comparables are $$$$$, $$$$$, $$$$$, $$$$$, $$$$$ and $$$$$. Two of these adjusted values support the subject's current value. Four of

1 The Commission notes that the adjusted sales prices reflected in the chart would likely be more accurate if additional adjustments for other factors had been made. However, neither party provided information at the hearing that would have enabled the Commission to determine and make such adjustments.

them suggest a value between $$$$$ and $$$$$. The only three comparables, like the subject, that were built in the 1970s and have not been remodeled are Comparables #1, #10, and #11, which have adjusted sales prices of $$$$$, $$$$$ and $$$$$. It appears that Comparable #1 could be an anomaly, as it is the only remaining comparable that sold and adjusted to prices in excess of $$$$$. As a result, Comparables #10 and #11, which sold in 2007 and adjusted to prices of $$$$$ and $$$$$, appear to best demonstrate the range of values for the subject property. Based on the adjusted sales prices of these two comparables, the subject's 2008 fair market value is found to be $$$$$. This value also appears reasonable because it is the lowest price at which any of the submitted comparables sold.

Equalization. Above, it was found that the subject's 2008 fair market value should be reduced to $$$$$. Nevertheless, the subject's value may be reduced further if the evidence shows that the $$$$$ value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also Rio Algom Corp. 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 taxpayer makes several arguments to show that the subject's value should be reduced for purposes of equalization. First, he contends that the subject's land value is inequitable when compared to the price per acre value at which six nearby properties are assessed (chart in Finding of Fact #10). This argument is not persuasive. The Commission agrees with RESPONDENT REP.'s assertion that land prices are not "linear," i.e., that an additional unit of land is not necessarily worth the same as the first unit of land. It is noted that the taxpayer only provided values of lots that are larger than the subject lot. It is also noted that all of the comparable lots were assessed at values that are higher than the subject lot's assessed value, as would generally be expected. No evidence was shown that the subject lot was assessed at a higher value than comparable lots of an equal size. For these reasons, it has not been shown that the subject's land value should be reduced for purposes of equalization.

The taxpayer's remaining arguments concern the rate at which the subject's total value has increased for various periods in comparison to the rate of increase seen for other properties. The taxpayer provided evidence to show that the subject's value increased at a greater rate than other nearby properties between 2007 and 2008, between 2006 and 2008 and between 1999 and 2008. However, arguments concerning the rate of increase between past years and the year at issue are generally not persuasive. Such arguments are dependent on the past years' values of the subject and the comparables being correct. It is not known whether these past years' values are correct.

In addition, no evidence was submitted to show that the $$$$$ fair market value to which the subject is being reduced is inequitable when compared to the values at which other properties are assessed for 2008. The taxpayer provided the 2008 assessed values of 17 properties that are located near the subject (chart in Finding of Fact #12). All but three of the properties were assessed in 2008 at values in excess of the $$$$$ value established for the subject property. The evidence does not show that the $$$$$ value is inequitable when compared to the values at which other properties are assessed. Accordingly, it has not been shown that the subject's revised fair market value of $$$$$ should be further reduced for purposes of equalization.

CONCLUSIONS OF LAW

1. The taxpayer has shown that the subject's 2008 fair market value should be reduced to $$$$$.

2. The taxpayer has not shown that the subject's 2008 assessed land value is inequitable when compared to the values at which comparable properties' lots are assessed. The taxpayer has also not shown that the subject's total fair market value of $$$$$ should be further reduced for equalization purposes.

3. The subject's value should be reduced to $$$$$.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the $$$$$ value established by the County BOE should be reduced to $$$$$ for the 2008 tax year. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this ________ day of ________________________, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §63G-4-302. 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 Ann. §§59-1-601et seq. and 63G-4-401 et seq.

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