

09-1757  
LOCALLY ASSESSED PROPERTY  
SIGNED 12-23-2009

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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.    09-1757  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 1, Property Owner  
                    PETITIONER 2, Property Owner

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 December 9, 2009.

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

APPLICABLE LAW

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.

. . . .

Utah Admin. Rule R884-24P-20 ("Rule 20") provides guidance in determining the percent of a residential project complete as of the lien date, as follows:

. . . .

(c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

- (a) 10 - Excavation-foundation
- (b) 30 - Rough lumber, rough labor
- (c) 50 - Roofing, rough plumbing, rough electrical, heating
- (d) 65 - Insulation, drywall, exterior finish
- (e) 75 - Finish lumber, finish labor, painting
- (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical
- (g) 100 - Floor covering, appliances, exterior concrete, misc.

. . . .

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 0.48-acre lot and a one-story home. The home contains 2,379 square feet of above-grade living space and an unfinished basement that is 988 square feet in size. The home has a four-car detached garage.

The property owners submit both valuation and equalization arguments to contest the subject's current assessed value of \$\$\$\$\$. The Commission will address the arguments separately. First, however, the Commission will address the "completion percentage" of a portion of the subject home that was under construction as of the lien date.

Completion Percentage. When the home was built in 1932, the main floor only contained 988 square feet of living space. The property owners purchased the home in 2004 and began to remodel the existing home and to add a 1,391 square foot addition to the main floor. As of the January 1, 2008 lien date, the interior walls of the existing home had been refigured, and this portion of the main floor was complete (the basement remains unfinished). In addition, all exterior work was complete, as well as the 1,200 square-foot detached garage that had been built. The property owners stated that only some interior work remained to be finished in the home's new addition as of the lien date. The property owners believed that as of January 1, 2008, the electrical and plumbing in all of the new addition had been "stubbed," but not finished, and that the new bath was incomplete. They also stated that floorings had not yet been installed.

In August 2008, the property owners hired an appraiser to determine the subject's value as of December 31, 2007. The appraiser estimated the subject's value to be \$\$\$\$ as of this date. In the appraisal, the appraiser noted that the "subject was in good condition at the time of inspection," but that the "the second bath on the main level is only half finished." It appears that the appraiser was describing the condition of the home at the time he observed it in August 2008. He does not specifically discuss the condition of the home as of the lien date. For these reasons, the Commission will accept the property owners' proffered testimony concerning the amount of finish work that had not been completed as of the lien date.

Fair Market Value. The County did not prepare an appraisal of the subject property. It proffered instead the December 31, 2007 appraisal that the property owners had submitted to the County BOE, in which the subject's value was estimated to be \$\$\$\$\$. On the basis of this appraisal, the County asks the Commission to reduce the subject's fair market value to \$\$\$\$\$. The property owners, however, believe that this appraiser overestimated the value of their home as of December 31, 2007. As evidence, they submit a second appraisal prepared by a second appraiser, in which the subject's value as of March 31, 2009 is estimated to be \$\$\$\$\$. However, the property owners believe that this second appraiser also overestimated the value of their home. The property owners admit that prices fell between the January 1, 2008 lien date and the March 31, 2009 date of the second appraisal. Nevertheless, they assert that they believe the fair market value of their home on the January 1, 2008 lien date was \$\$\$\$\$ and that it was even lower as of March 31, 2009. For these reasons, they ask the Commission to find that the subject's fair market value as of the lien date is \$\$\$\$\$.

The information in the December 31, 2007 appraisal is more useful in determining the subject's fair market value as of the January 1, 2008 lien date than the information in the March 31, 2009 appraisal. Both parties agree that prices fell during 2008. None of the comparables used in the March 31, 2009 appraisal sold prior to October 2008, and the majority of the comparables sold in 2009. On the other hand, the five comparables used in the December 31, 2007 appraisal sold in the last half of 2007 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Four of these five comparables adjusted for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Given the amount of remodeling on the subject that had been completed as of lien date, the \$\$\$\$\$ estimate of value determined by the first appraiser appears to be a reasonable estimate of the subject's value as of the lien date, with one exception.

The appraiser determined that construction of the subject's new addition was complete except for one bath being complete. As described above, the Commission has determined that a greater amount of

finish work had not been completed as of the lien date. The Commission believes that the \$\$\$\$ estimate of value should be adjusted slightly to reflect the completion percentage of the home as of the lien date. Rule 20(c) provides that a residential property is considered to be 75% complete if the “finish lumber, finish labor, painting” are finished, 90% complete if the “cabinets, cabinet tops, tile, finish plumbing, finish electrical” are finished, and 100% complete if the “floor covering, appliances, exterior concrete, misc.” are finished.

Given the information proffered at the Initial Hearing, the Commission believes that the subject’s new addition was approximately 80% complete as of the lien date. All of the exterior work had been completed as of the lien date, which would include the exterior concrete listed in the “100%” portion of the rule. However, there is no indication that any of the other items in the 90% and 100% complete portions of the rule had been completed. As a result, the Commission believes that an 80% completion percentage for the new addition is reasonable.

In the December 31, 2007 appraisal, the appraiser deducted \$\$\$\$ because the second bath was incomplete when he inspected the property. As a result, it is reasonable to assume that the subject’s “completed value” would have been \$\$\$\$ (\$\$\$\$ appraisal estimate plus \$\$\$\$). To determine a “construction under progress” fair market value of the subject property, the Commission will derive an estimate of the reduction in value due to the unfinished portions of the new addition. The Commission will then deduct this amount from the \$\$\$\$ “completed value” to arrive at the subject’s fair market value as of the lien date.

The subject’s land is assessed at \$\$\$\$\$. Subtracting this land value from \$\$\$\$\$ results in an “improvements” value of \$\$\$\$\$. From this value the Commission will deduct the value of the garage and the basement to determine a value for the main floor. The County has estimated the cost of the 1,200 square foot garage at \$\$\$\$\$. In addition, the appraiser who prepared the December 31, 2007 appraisal estimated unfinished basement square footage to have a value of \$\$\$\$\$ per square foot. Multiplying \$\$\$\$\$ by the subject’s 988 square feet of unfinished basement space results in a value of \$\$\$\$\$ for the basement space.

Subtracting the \$\$\$\$ garage value and the \$\$\$\$ basement value from the improvements value of \$\$\$\$ results in a value of \$\$\$\$ for the subject's main floor.

The subject's main floor is 2,379 square feet in size. The new addition is 1,391 square feet in size, which equates to approximately 58.5% of the total main floor. Multiplying 58.5% by the main floor's total value of \$\$\$\$ results in a completed value for the new addition of \$\$\$\$. The Commission has determined earlier that approximately 20% of the new addition was incomplete as of the lien date. Multiplying the new addition's completed value of \$\$\$\$ by 20% results in a value of approximately \$\$\$\$ that should be deducted from the subject's total completed value. The Commission notes that \$\$\$\$ is approximately 5% of total value and 100% of the improvements value. Subtracting \$\$\$\$ from \$\$\$\$ results in a final fair market value of approximately \$\$\$\$ for the subject property as of the lien date. For these reasons, the Commission finds that the subject's 2008 value should be reduced to \$\$\$\$.

Equalization. The Commission has found that the subject's fair market value is \$\$\$\$ as of January 1, 2008. However, the property owners believe that the subject's value should be reduced to \$\$\$\$ in order for it to be equitably assessed with the assessed values of other nearby homes. 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 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 property owners proffer evidence concerning six properties located on the same street as the subject. These six properties have 2008 assessed values of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. The property owners have divided the assessed "improvements value" of each property by its total finished living space to determine a "square foot value" for its improvements. Using this methodology, the

highest square foot value for the improvements of any of the six comparables is \$\$\$\$\$ per square foot. Given the subject's revised fair market value of \$\$\$\$\$, the square foot value of the subject's improvements using the property owners' methodology is \$\$\$\$\$ per square foot. On this basis, the property owners believe that the subject is inequitably assessed and asks for its value to be reduced to \$\$\$\$\$.

The Commission is not convinced that the property owners' methodology shows that the subject's value of \$\$\$\$\$ is inequitably high in comparison to these other properties. First, the methodology attributes no value to the subject's unfinished basement. Second, the subject has a larger garage and lot than almost all the other properties. The methodology does not take such factors into account. Third, the subject's main floor is either new or has been extensively remodeled. For the methodology to be valid, the quality of the finished living space of all six properties would need to be equal to the quality of the subject's newly remodeled main floor. For these reasons, the Commission does not find the property owners' analysis to be persuasive. In this case, the Commission believes it is preferable to compare the individual characteristics of the six properties to the subject to determine if there is an equity issue.

The Commission finds that the two homes assessed at \$\$\$\$\$ and \$\$\$\$\$ are not comparable to the subject property. Their lots and homes are significantly smaller than the subject's lot and home. In addition, additions were being added to these homes as of the lien date, and the property owners did not know the percentage of construction that had been completed as of the lien date.

The property assessed at \$\$\$\$\$ has a lot and home that are approximately the same size as the subject's lot and home. In addition, this property has a garage that is similar in size to the subject's four-car garage. This home, like the subject, has been enlarged. However, this property's exterior is different in style from the subject's exterior and may be inferior in appeal. In addition, no party has submitted evidence to show whether the "original" portion of this home was remodeled and, if so, whether it was remodeled to the extent the original portion of the subject's home was remodeled. Given the information currently before the

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Commission, it is arguable that the subject property has a higher fair market value than the property currently assessed at \$\$\$\$\$. As a result, the \$\$\$\$\$ value the Commission has established for the subject does not appear to be inequitable with the assessed value of this property.

The property assessed at \$\$\$\$\$ appears at least equal to and perhaps superior to the subject in regards to its exterior style and appeal. However, this property is a two-story home, while the subject is a one-story home. Although this home has more square footage than the subject and has been completely remodeled, it has a smaller lot and a much smaller garage. Given this information, it is possible that this property, which is assessed at \$\$\$\$\$, is worth more than the subject, which we have determined to have a fair market value of \$\$\$\$\$.

The remaining two properties, which are assessed at \$\$\$\$\$ and \$\$\$\$\$, appear inferior in exterior style and appeal than the subject. Each of these properties also has a smaller lot than the subject. In addition, it appears that these homes have either not been enlarged or have not been enlarged to the extent that the subject was enlarged. Finally, no evidence was proffered to show that the "original" portions of these homes have been remodeled. Given this information, it appears that the subject property is superior to these properties and its fair market value of \$\$\$\$\$ is not inequitable when compared to the assessed values of these homes.

It is difficult to determine whether homes of different styles are comparable for equalization purposes. It is especially difficult in older neighborhoods where some homes have been remolded and others have not been remodeled, especially when the quality and extent of the remodeling are unknown. Given the information provided at the Initial Hearing, it appears that the subject's value of \$\$\$\$\$ may be inequitable with the assessed value of only one of the six properties, specifically the one assessed at \$\$\$\$\$. However, the correct fair market value of this property, if it is in fact different from its \$\$\$\$\$ assessed value, is unknown. As a result, no evidence was proffered to show that there is a 5.0% discrepancy between values, as required for



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equalization purposes under Section 59-2-1006(4)(b). In addition, one example of a disparity at 5.0% would be insufficient to require equalization. In *Mountain Ranch Estates v. Utah State Tax Commission*, 2004 UT 86 (2004), the Utah Supreme Court found that a property owner whose property was assessed at fair market value could not establish a violation of its constitutional right to a uniform and equal assessment without providing evidence of more than one comparable property with a valuation disparity.

For these reasons, the Commission finds that the subject's fair market value of \$\$\$\$ does not appear to be inequitable. In summary, the Commission finds that the subject's value should be reduced to \$\$\$\$ for the 2008 tax year.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$ 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.

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.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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