

09-3465  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2009  
SIGNED 07-29-2010  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER	<b>INITIAL HEARING ORDER</b>
Petitioner,	Appeal No. 09-3465
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed Tax Year: 2009
Respondent.	Judge: Dixon Pignanelli

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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner

**Appearances:**

For Petitioner: PETITIONER, Pro Se, by phone

For Respondent: RESPONDENT REP., Assessor, RURAL County

STATEMENT OF THE CASE

The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of RURAL County (the "County"). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on April 22, 2010. 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, 2009. The subject parcel, #####, and is located at ADDRESS 1, SUBDIVISION, CITY, RURAL County, Utah. The County Assessor had set the value of the subject property as of the lien date at \$\$\$\$\$, and the Board of Equalization (BOE) sustained the value. The Taxpayer requests the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization is 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).

All construction work in progress shall be valued at "full cash value" as described in Utah Administrative Rule R884-24P-20. (Utah Admin Rule R884-24P-20(B).)

For purposes of Utah Administrative Rule R884-24P-20, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions. (Utah Admin Rule R884-24P-20(C).)

On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine . . . the following:

- a) The full cash value of the project expected upon completion.
- b) The expected date of functional completion of the project currently under construction.
  - (1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

- 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.

(Utah Admin Rule R884-24P-20(E)(2).)

Upon determination of the . . . full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

- a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,
- b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;
- c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

(Utah Admin Rule R884-24P-20(E)(3).)

#### DISCUSSION

The subject parcel is a 0.15 acre lot (6600 sq. ft.) with a structure under construction as of the lien date. The building under construction was two stories with 1,100 sq. ft. on the main level and 2,038 sq. ft. on the second level for a total of 3,218 sq. ft. of living space. When completed it would have six rooms, with one being a bedroom and one a bathroom, and a 1,210 sq. ft. built-in garage where part of the 2,038 living space on the second level is above the garage. The subject property is in a subdivision with ( # ) other lots.

The Property Owner said on the lien date the structure was enclosed with windows, doors, a garage door, and a roof with the shingles, but nothing had been done on the interior,

except some rough framing with 2x4 and 2x6 boards. He verified this by saying the framing inspection was not done until March 2009. There was no wiring, plumbing, or drywall.

In support of lower value for the lot, he said he bought the last lot in the project in 2005 for \$\$\$\$\$. He said he immediately had to spend \$\$\$\$\$ to raise four power lines that went over his property and limited his ability to build. In addition, he felt access to the lot was too restrictive by being in a gated community, and felt this would deter buyers as well as the lack of curb, gutter and sidewalk. He subtracted \$\$\$\$\$ total from the land value of \$\$\$\$\$ for these three items, asking for \$\$\$\$\$ for the value of the land.

In terms of the structure under construction, the Property Owner felt the materials and labor valued by the County at \$\$\$\$\$ were overvalued. The Property Owner gave a total estimated investment value with materials and labor of \$\$\$\$\$.

The County provided an appraisal of value of the subject property as of the lien date January 1, 2009. The appraisal considered the structure to be of good quality construction and in good condition on the lien date. The County valued the structure at 30 percent complete as of January 1, 2009 lien date.

Because the property was under construction at the time of the lien date, the Assessor determined the full cash value of the project expected upon completion and multiplied it by the percent of the project completed as of the lien date to determine the value of the improvements. The County valued the above 3,218 above grade square footage improvements at \$\$\$\$\$/ sq. foot for a total of \$\$\$\$\$. The garage with 1,210 sq. ft. was valued at \$\$\$\$\$/ sq. ft. for a total value of \$\$\$\$\$. The County's appraisal notes the dollar value of improvements was based on Marshall and Swift Valuation Service Cost Tables and "adjusted for local market conditions". This gave the improvements at completion a value of \$\$\$\$\$. This value was then multiplied by 0.30 (30%) deriving a value of \$\$\$\$\$ for the improvements as of the lien date.

The Assessor determined the value of the site was \$\$\$\$\$ for the 0.15acre lot. The appraisal states, "the site value is determined based on recent sales of comparable vacant sites in the immediate area."

The total cost value of the subject property as of the lien date was \$\$\$\$\$ for improvements and \$\$\$\$\$ for the lot for a total of \$\$\$\$\$. To determine a market value for the subject property, the County did a sales/market approach with five comparable properties. These sales are summarized in the chart on page 5.

The County gave positive adjustments to the sales comparables of \$\$\$\$\$ to \$\$\$\$\$ for location. The appraisal states the adjustments made were based on recent vacant sales in the

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AREA. The County also gave adjustments for design or number of stories, age of improvements, above grade square footage, basement area and % finished, size of garage, and a deck/porch area. Four of the comparable sales were adjusted down 70% to be 30% complete. One comparable was 50% complete at the time of sale and was adjust down 20% to be 30% complete. With these adjustments the County arrived at a final adjusted sales price value of the comparables (see table below).

comp	sale date	sale amount	adj. sales amount	age of improvs.	proximity to subject & location adjustment	acres	details Gross living area above grade sq ft basement / finished
Subject	NA	NA	\$\$\$\$\$	1 year	NA	0.15	2 stories 3218 GLA 3218 above grade none
comp1	4/15/08	\$\$\$\$\$	\$\$\$\$\$	8 years	.8 miles +\$\$\$\$\$	0.28	1 story 1008 GLA 480 above grade 528 finished
comp2	6/1/08	\$\$\$\$\$	\$\$\$\$\$	2 years	.9 miles +\$\$\$\$\$	0.28	2 stories 2492 GLA 1232 above grade 1260 finished
comp3	4/18/08	\$\$\$\$\$	\$\$\$\$\$	2 yrs	1.10 miles +\$\$\$\$\$	0.33	2 ½ stories 2352 GLA 2352 above grade none
comp4	7/30/08	\$\$\$\$\$	\$\$\$\$\$	1 year	1.11 miles +\$\$\$\$\$	0.11	1 ½ stories 1260 GLA 504 above grade 756 finished
comp5	7/25/08	\$\$\$\$\$	\$\$\$\$\$	2 years	.81 miles +\$\$\$\$\$	0.11	1 story 1131 GLA 638 above grade 493 unfinished

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. The Property Owner felt the land was overvalued and should be reduced from \$\$\$\$\$ to \$\$\$\$\$. The Taxpayer has not provided any land sales to call into question the value placed on the lot, therefore the Commission holds there is no basis for considering a lower value for the lot.

The Property Owner felt the costs for construction of the structure were overvalued by the County and should be lowered from \$\$\$\$\$ to \$\$\$\$\$, which is the value he placed on the materials and labor. The Taxpayer has not presented any cost information on materials and labor to counter the value of the Marshall and Swift Cost Tables; however, the value the taxpayer is requesting for the improvements, \$\$\$\$\$, is almost exactly the cost value of the improvements the assessor determined in the County's appraisal--\$\$\$\$\$. The Assessor determined a total cost approach for the subject property of \$\$\$\$\$. The Taxpayer is requesting \$\$\$\$\$, which includes \$\$\$\$\$ less for the land. The Taxpayer is questioning whether the total assessed value of \$\$\$\$\$, which is \$\$\$\$\$ above the cost value, is correct. The Commission finds the taxpayer has called into question the value placed on the improvements by the Board of Equalization, and thus the total value of the subject property. The Commission now considers all the evidence.

Utah law requires that the Commission value property at the "amount at which property would change hands between a willing buyer and a willing seller." *See* Utah Code Ann. 59-2-102(11). Consistent with that provision of Utah law, Tax Commission administrative rules specifically direct that property under construction be valued at a portion of its completed value. To consider the value of the residence under construction it is necessary to determine the state of completion of the residence as of January 1, 2009. Tax Commission Rule R884-24P-20(E)(2)(c)(1) governs this determination and indicates that if a residence has rough lumber and rough labor it is 30% complete. The Property Owner testified that the structure was enclosed with a roof, but nothing had been done on the interior except framing, and said the framing inspection was done three months after the lien date. Although there was a roof on the structure, which could push valuation of the structure closer to 50% complete, there was no rough plumbing, electrical or heating. The Commission holds the County correctly valued the subject property at 30% complete as of the January 1, 2009 lien date.

While cost information may sometimes be useful in helping to establish what a market price between a willing buyer and a willing seller would be, it cannot substitute for a market analysis of comparable sales when one is available. To support a market value, the County relied on the sales of five comparable properties with sales dates from April 2008 to July 2008. The comparable sales were between .08 and 1.11 miles from the subject, and lot sizes ranged from .11 to .33 acres. The appraiser made adjustments to values to compensate for differences between the subject and the comparable properties for factors such as lot size and home attributes.

After taking these adjustments and percent complete into account, the comparable sales indicate a market value range from \$\$\$\$\$ to \$\$\$\$\$ with a mean adjusted sales price of \$\$\$\$\$.

The County's appraisal determined a market value for the subject property of \$\$\$\$\$, but the assessed value placed on the subject property was \$\$\$\$\$, a value that was sustained by the BOE, but is higher than the highest sales price of \$\$\$\$\$ for the County's Comp 5.

By the proximity of the five comparables to each other, the comparable sales appear to be in the same development; however, there was no explanation given as to why some comparables received a \$\$\$\$\$ adjustment versus a \$\$\$\$\$ adjustment. In particular, Comp 1 a 0.28 acre lot 0.80 miles from the subject was given a \$\$\$\$\$ adjustment, but Comp 5, a 0.11 acre lot 0.81 miles from the subject was given a \$\$\$\$\$ adjustment.

The appraisal indicated Comp 5 was most comparable to the subject property in that it had the least adjustments. Comp 5 had a smaller lot size than the subject (0.11 acres vs. 0.15 acres), it was only one story, while the subject property was two, and it had over 2,100 less square feet than the subject property, but had the highest adjusted sales price of the five comparables at \$\$\$\$\$ which included a lot location adjustment of \$\$\$\$\$. Although Comp 3 had a larger lot than the subject property (0.33 acres vs. 0.15) it was also given a positive \$\$\$\$\$ location adjustment. Finally Comp 3 sold for a higher price than all the comparables (\$\$\$\$\$), but adjusted to a lower sales price than Comp 5. The adjusted sales price for Comp 3 of \$\$\$\$\$ fell within the middle of the range of the all the comparable sales--\$\$\$\$\$ to \$\$\$\$\$. Comp 3 at \$\$\$\$\$ best supports the market value of \$\$\$\$\$ indicated in the County's appraisal for the subject property.

The County's appraisal provides an acceptable cost approach for the subject property. The appraisal also shows comparable sales information was available for the subject for the January 1, 2009 lien date. The comparable sales corroborate the cost approach, support the market value indicated in the County's appraisal for the subject property and support a value lower than the one set by the Board of Equalization. The only difference between the Property Owner's requested value and the market value determined by the County's Appraisal is an estimated \$\$\$\$\$ lot reduction requested by the Property Owner, and the Property Owner did not meet his burden of proof.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of Parcel No. ##### as of January 1, 2009, is \$\$\$\$\$. The County Auditor is hereby 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

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Formal Hearing. Such a request must include the Petitioner's name, address, and appeal number and be mailed to the address listed below:

Appeals Division  
Office of the Commission  
Utah State Tax Commission  
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

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