

09-3784
LOCALLY ASSESSED PROPERTY
SIGNED 10-14-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF UINTAH
COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3784

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009

Judge: Dixon Pignanelli

Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER, Pro Se

For Respondent: RESPONDENT REP., Assessor, Uintah County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the Uintah County Board of Equalization (BOE). The County Assessor set the value of the subject parcel at \$\$\$\$\$. The County BOE sustained the value.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an Initial Hearing was held on June 3, 2010 in the Uintah County Offices in CITY, Utah with the Petitioner and Respondent participating in person. The Property Owner requested the value of the subject parcel be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested the value of \$\$\$\$\$ set by the BOE be sustained.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 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.

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 must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *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, 335 (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).

INFORMATION

The subject property Parcel #####, is a 1.01 acre lot improved with a custom ranch rambler style residential home and located at ADDRESS, CITY Utah. The home has 1,365 square feet (sf) above grade, and 1,365 in the basement¹ for a total of 2,730 sf. There are two bedrooms and two bathrooms above grade, a 552 sf two car attached garage, and three concrete

¹The sketch used in the County’s appraisal shows 1366.9 square feet (sf) on both the main floor and basement (2,733.8 total sf). The County’s appraisal uses 1,365 sf for each level (2,730 total sf). A sketch was provided that showed 1,365 sf for each level. The Property Owner used 2604 total square footage for

covered areas, the front entry and two back patios. As of the lien date January 1, 2009, the basement was unfinished. Additional improvements include a vinyl fence around the home and to the street, but not around the total 1.01 acre lot.

Property Owner: The Property Owner stated the subject property is not in a subdivision, but on a rural road so there is no curb or sidewalk. The lot is flat, except 10 feet beyond the house it drops down a steep hill. There is a good view and it is landscaped. There is power, water, and gas, but no sewer; it is on a septic system. The Property Owner testified the improvements were completed by January 1, 2009 except the basement. The Property Owner concluded by saying the market started to soften by January 1, 2009 and provided three methods to support a reduction in value to \$\$\$\$\$.

Property Owner Method One: Total cost of land and cost to construct improvements. The Property Owner stated he purchased the 1.01 acre lot in September 2008 for \$\$\$\$\$. He then provided a two-page sheet of expenses to construct the custom home on the property. The expenses included \$\$\$\$\$ to purchase the land and \$\$\$\$\$ for "labor", which the Property Owner stated was what he considered to be his "contractor" labor costs and profit for constructing the improvements. His stated his total investment was \$\$\$\$\$.

Property Owner Method Two: Average square foot selling cost of six comparable sales multiplied by the total square footage of the subject. The Property Owner provided six Multiple Listing Service (MLS) sheets for six sales he considered comparable to the subject property. The Property Owner considered them comparable because they were ranch/rambler style, had the same or nearly the same square footage on the above grade main floor as the basement, and five of the six had unfinished basements (one was 35% complete). At the hearing he noted three of the sales were approximately three miles away from the subject and in a subdivision; three were near the subject. For each of these listings he took the selling price, subtracted the concessions, and computed the selling price per square foot. He then computed an average selling price per square foot of \$\$\$\$\$ and multiplied that by the total square footage of subject improvements, which he showed as 2,604 sf, to reach the requested value of \$\$\$\$\$.

Property Owner Method Three: Residential Brief Report. At the hearing the Property Owner submitted 23 more comparable sales on a two page Wasatch Front Regional MLS – Residential Brief Report. Of the 23 sales, the Property Owner selected 18 sales he

his calculations or 1,302 on both the main floor and the basement. The square footage was not raised as an issue in the hearing.

considered comparable. As with the previously submitted comparables, he computed an average selling price per square foot and multiplied it by the square footage of the subject property. He said the resulting value further demonstrated the BOE value was too high.

The County: The Assessor speaking for the County stated her office does mass appraisals and based on the data valued one-acre lots at \$\$\$\$\$. She said her office saw one-acre lots that sold for \$\$\$\$\$ in 2008. She said the market of 2008 was in high growth. Towards the last month of 2008 there was only a “whisper of bending”. The market started to soften after the first three months of 2009.

In dispute of the Property Owner’s information, the County stated that most of the sales comparables were after the lien date of January 1, 2009 and were manufactured homes instead of frame custom built homes like the subject property. The County questioned the “labor” costs of \$\$\$\$\$ as contractors’ costs stating the market would support 12 to 18 percent for labor costs and contractor profit to build improvements similar to the subject property. She also stated she must consider seller concessions of 3%.²

In support of a value of \$\$\$\$\$, the County prepared and submitted a residential summary appraisal report with three comparable sales (Comps). The County stated all comps were in the same subdivision as the subject property. The County did not include a value for the vinyl fence and there were no higher values given for the brick and rock exterior of the subject property versus the predominant vinyl exteriors of the comparables. The County also noted sewer and septic are valued the same. The County’s Comps are summarized below³:

	Subject	Sale #1	Sale #2	Sale #3
Address	ADDRESS CITY, UT	ADDRESS CITY, UT		
Proximity to Subject	NA	1.04 miles	.25 miles	.83 miles
Sales Date	NA	11/21/2008	11/13/2008	10/02/2008
Sales Price	NA	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Adj. Sales Price	NA	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Net Adj		2,300	10,970	1,215
Net adj		.98%	4.65%	.49%
Gross adj		5.22%	8.04%	6.81%
Lot size	1.01 acre	.28	.20	.18

² The Commission recognizes seller concessions as usually the costs to close on a home and offered as an incentive from the seller to the buyer to purchase the home.

³ The Commission notes there were some minor calculation errors in the appraisal report. The errors would change the final adjusted values of two sales comparables by less than \$\$\$\$\$.

Design style	One story w/ basement	One story w/ basement	One story w/ basement	One story w/ basement
Above Grade gross living area (GLA); Total Rooms; beds, baths	1367 Total Rooms: 5 2 beds, 2 baths	1319 Total Rooms: 7 3 beds, 2 baths	1225 Total Rooms: 5 2 beds, 1 bath	1456 Total Rooms: 7 3 beds, 2 baths
Basement area	1367 unfinished	1319 unfinished	1225 unfinished	1456 unfinished
Quality construction / Condition	Avg +	Avg +	Avg +	Avg +
Garage	2 -car attached	2-car attached	2-car attached	2-car attached
Seller Concessions	NA	Seller paid \$\$\$\$\$	Seller paid \$\$\$\$\$	Seller paid \$\$\$\$\$

PRELIMINARY MATTERS

At the hearing the Property Owner provided sales, which had not been submitted or exchanged prior to the hearing. As such, the County was provided ten days to review and respond in writing to the material. The County's response was received in the Commission office on June 7, 2010. The Property Owner submitted a subsequent response, which was received in the Commission office on June 15, 2010. All information in both submittals was considered and taken under advisement where it pertained to the additional evidence submitted at the Initial Hearing held on June 3. However, the Property Owner raised a new issue in his June 15 response that was not raised at the hearing. The Property Owner stated the subject improvements were not completed until February 6, 2009, which was the date of the Certificate of Occupancy. The Commission notes that the Property Owner testified at the Initial Hearing the subject was 100% completed except the basement. The Commission considers the Subject Property complete for the purposes of this order.

DISCUSSION

In seeking a value lower than the value established by the County BOE, the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE has the presumption of correctness at a Tax Commission Hearing. The Commission now reviews the evidence.

The Property Owner submitted his costs to construct the improvements on the subject property. He testified to the price paid for the lot, and what he claimed as contractor profit. He stated his total investment costs were \$\$\$\$\$. The Property Owner also submitted 29 comparable

sales. He used six of the sales to compute an average selling price per square foot and a market value for his property of \$\$\$\$\$. The Commission finds the Property Owner has submitted enough cost and sales information to call into question the value placed on the subject property by the BOE. The Commission now considers all the evidence.

The Property Owner submitted a two-page table of materials and labor costs to build the improvements. The County disputed some of the cost information. It called into question the \$\$\$\$\$ for labor, which the Property Owner said was his profit for contractor costs. The County stated most contractors looked to a profit of 12 to 18 percent. The Commission notes the \$\$\$\$\$ calculated to only 3% of the costs. The County stated seller concessions of 3% should also be added.

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. The Property Owner submitted six comparable sales from which he computed an average cost per square foot selling price of \$\$\$\$\$. He then multiplied the average price per square foot with the square footage of his home to determine the requested value of \$\$\$\$\$. The County disputed the comparability of these six sales stating many were manufactured homes instead of custom-built frame homes like the subject. The County also questioned the use of these sales, as they were all post lien date sales ranging from February 2009 to August 2009. The Property Owner submitted 23 more Comps, and using only 18 of those, again calculated an average selling price per square foot of \$\$\$\$\$, which he said also supported a lower value than the BOE value. The County also disputed the comparability of these sales.

To facilitate use and comparison of sales comparables, appraisal principals have been established. According to these practiced principals there are flaws to the Property Owner's method for determining a value for the subject property based on an average selling price per square foot. The comparables have not been adjusted for location or proximity to the subject property, square footage, grade of materials and quality of construction, design, or age of improvements. In addition, above grade and below grade (basement area) and finished and unfinished are all valued at different costs per square foot. The Property Owner's methodology has not provided a sound value for the subject property.

The Hearing Officer asked the Property Owner to review the sales comparables he submitted, which at count were 29 (with one duplicate), prioritize five sales the Property Owner would like the Commission to consider, and tender them within ten days after the hearing. To the

Commission's knowledge, this was not submitted. The Commission, in reviewing all 29 sales, determined 18 of the sales were after the lien date of January 1, 2009. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore "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(12))

The Commission reviewed and reached the following conclusions on the Property Owner's remaining 11 of 29 comparables. Two sales were from 2007 and not relevant to the lien date of January 1, 2009. Four sales are several miles away and may not be in a comparable area or subdivision. At the hearing the Property Owner agreed two sales were not similar to the subject and one sale the County disputed as having \$\$\$\$ in seller concessions and not usable. Two sales were used as Comps by the County in its appraisal; in addition to these, only two other sales may be comparable. These are comps four and five on page two of Property Owner's residential brief report. The Property Owner said these were three blocks from the subject property. They had 2,912 total sf on .22-acre lots and were built in 2007. One sold on November 13, 2008 for \$\$\$\$ and one November 24, 2008 for \$\$\$\$--so within six weeks of the lien date. The County disputed the sales were comparable to the subject property holding they were tract-type housing and inferior to the quality of the subject improvements.

To support the requested market value of \$\$\$\$\$, the County relied on the sales of three comparable properties with sales dates of October 2, 2008, November 13, 2008 and November 21, 2008. The comparable sales were between .25 and 1.04 miles from the subject. The County made adjustments to the comparables for lot size, number and type of rooms, above grade gross living area, basement area and seller concessions. After taking these adjustments into account, the comparable sales indicate a market value range between \$\$\$\$\$ and \$\$\$\$\$. The County asked the appraisal be used to support the value of \$\$\$\$\$ placed on the subject property by the BOE.

The Property Owner did submit a lot of evidence to support his requested value; however, the County disputed the labor value as comparable to what a contractor would charge for labor and profit. A more reliable total investment would need to be established in order to corroborate it with a sales/market approach. The Property Owner's sales comparable approach, using an average selling price per square foot, was not an accepted appraisal method. Finally, although the Commission saw two sales that may be comparable, there was not enough detailed information on the sales, with appropriate adjustments made, for them to be considered. The

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Commission finds the Property Owner has not provided an evidentiary basis to support a new value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009 is \$\$\$\$\$. The County Auditor is hereby ordered to assure its records are 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 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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