

10-0144
PROPERTY TAX
SIGNED 07-08-1010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF
DAVIS COUNTY, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 10-0144

Parcel No. #####

Tax Type: Property Tax / Locally Assessed

Tax Year: 2009

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer
PETITIONER REP., Real Estate Agent

For Respondent: RESPONDENT REP. 1, from Davis County Assessor's Office
RESPONDENT REP. 2, from Davis 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 May 24, 2010.

At issue is the fair market value of the subject property as of January 1, 2009. The subject is a single-family residence located at ADDRESS in CITY 1, Utah. The Davis County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject was assessed for the 2009 tax year. The taxpayers ask the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §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

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otherwise provided by law.”

UCA §59-2-1006 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.”

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 subject property consists of a 0.31-acre lot and a one-story home that was built in 2003. The home contains 1,907 square feet of living space on the main floor and a basement that is 1,883 square feet in size (approximately 60% complete). The home has a three-car garage. The taxpayers assert that the subject property needed new carpet when they purchased it in October 2008 and that they had to put a railing on the front steps. They also assert that the granite tile in their kitchen is less desirable than the solid granite countertops that many homes in their neighborhood have.

Taxpayers’ Information. The taxpayers purchased the subject property for \$\$\$\$\$ in October 2008, less than three months prior to the lien date. The taxpayers also proffer an appraisal that was prepared for their purchase of the subject property, in which the subject’s value is estimated to be \$\$\$\$\$ as of September 25, 2008. Lastly, the taxpayers proffer 19 comparable sales of homes in CITY 1 that sold between

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December 2008 and November 2009 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Based on this information, the taxpayers ask the Commission to reduce the subject's 2009 value to \$\$\$\$\$.

The taxpayers explain that the subject property was listed with a real estate agent for 11 or 12 months before they purchased it. Although originally listed at \$\$\$\$\$, the listing price was reduced to \$\$\$\$\$ approximately 2 months before the taxpayers purchased it. The County contends that the sale of the subject property was a distressed sale. The County states that it called the agent who listed the subject property. The County indicates that the agent told it that the prior owners were divorcing and that the home "went back" to the title company before it was sold. The County stated that it has also discovered that an order of default was entered on the prior owners' loan about the time the subject's list price was reduced to \$\$\$\$\$. The circumstances suggest that the prior owners may have been willing to sell the subject property below its fair market value. Further analysis of the appraisals and comparables submitted by both parties is needed to determine whether the subject's purchase price of \$\$\$\$\$ reflects its fair market value as of the lien date.

In the taxpayers' appraisal, the subject property is compared to two comparables that sold in CITY 1 and one that sold in CITY 2. The three sales occurred between June 2008 and September 2008 and sold for prices of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. The appraiser stated in the appraisal that the comparable that sold for \$\$\$\$\$ was the only sale that occurred within the three months prior to the appraisal and that was located within one mile of the subject. This comparable is located on the same street as the subject and sold in September 2008. The appraiser adjusted it to \$\$\$\$\$ and placed the most weight on this comparable when he estimated the subject's value to be \$\$\$\$\$. However, the County indicates that this comparable's sale price may be distressed because it was a "short sale." It is possible that taxpayers' appraiser used a "short sale" comparable in his appraisal because he believed that distressed comparables were establishing fair market value in September 2008. However, he states that in his appraisal that the market was stable at the time of the appraisal. Accordingly, it appears more likely that he used the comparable without knowing that it was a

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distressed sale. The remaining two comparables, which are both more than a mile from the subject, show adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$.

Of the taxpayers' 19 comparable sales, the best comparable is one that sold in December 2008 for \$\$\$\$\$. This comparable is located on the same street as the subject and has a similar amount of above-grade square footage. Its basement did not have any flooring installed at the time of sale, but four rooms in its basement had been sheetrocked and painted. As a result, this comparable appears to have a reasonably similar amount of basement finish as the subject, whose basement is 60% finished. The County spoke to the selling agent of this property, who told the County that the comparable needed \$\$\$\$\$ of "work" in the upstairs room at the time of sale. If this \$\$\$\$\$ adjustment and the other adjustments found in the County's appraisal are applied to this comparable, it would have an adjusted sales price of approximately \$\$\$\$\$.

The taxpayers' best comparables appear to be the one that sold for \$\$\$\$\$ and adjusted to \$\$\$\$\$. However, the other comparables that sold in 2008, which are found in the taxpayers' appraisal, adjust to values ranging between \$\$\$\$\$ and \$\$\$\$\$. It is difficult to determine from this information whether the subject's current value of \$\$\$\$\$ is incorrect as of January 1, 2009.

County's Information. The County proffered an appraisal in which it estimated the subject's value to be \$\$\$\$\$ as of the lien date. The County proffered the appraisal to support the subject's current value of \$\$\$\$\$. The County does not ask the Commission to increase the subject's value.

In the appraisal, the County compared the subject property to three comparables that sold between May 2008 and December 2008 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The County adjusted all three comparables to prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Comparable #1, however, appears to be located in a superior location. Accordingly, this comparable will be given relatively little weight.

In addition, the County made no time adjustments to the remaining two comparables that sold in May and June 2008, even though it admitted that prices fell in the latter half of 2008 by 6% to 8%. If a

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negative 7% time adjustment were applied to these comparables, the County's revised adjusted sales prices for these two comparables would be \$\$\$\$\$ and \$\$\$\$\$.

The two County comparables with revised adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$ are located within one mile of the subject, as is the taxpayers' comparable that sold for \$\$\$\$\$ and adjusted to \$\$\$\$\$. These three comparables show a wide range of values for the subject property. However, they all adjust to values that are below the subject's current value of \$\$\$\$\$, but above the \$\$\$\$\$ price at which the taxpayers purchased it. For these reasons, the \$\$\$\$\$ value at which the subject property was appraised in late 2008 appears to be a reasonable value for the subject for 2009. The subject's value should be reduced to \$\$\$\$\$.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission reduces the subject's value to \$\$\$\$\$ for the 2009 tax year. The Davis 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

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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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