

10-0151  
LOCALLY ASSESSED PROPERTY  
SIGNED 07-08-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF  
DAVIS COUNTY, STATE OF UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 10-0151

Parcel No. #####

Tax Type: Property Tax / Locally Assessed

Tax Year: 2009

Judge: Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, Taxpayer

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") reduced the \$\$\$\$ value at which the subject was originally assessed for the 2009 tax year to \$\$\$\$\$. 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 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.

. . . .

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 0.98-acre lot and a two-story home that was built in 2007. The home contains 6,531 square feet of “above-grade” living space on the main and second floors. The subject property does not have a basement. The home has a three-car garage.

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The taxpayers proffer that the subject property is not finished as nicely as many other homes in the neighborhood. For example, the taxpayers state the subject property's kitchen and baths were finished with laminate and formica countertops, while many surrounding homes have granite countertops.

The taxpayers submit both valuation and equalization arguments to contest the subject's current assessed value of \$\$\$\$\$. The arguments will be addressed separately.

Fair Market Value. The County proffers that the taxpayer purchased the subject property for at least \$\$\$\$\$ in November 2007, which is the amount shown on a trust deed filed with the County. The taxpayers provide several pages of an appraisal that confirms that the subject property was purchased on November 30, 2007. The portion of this particular appraisal that was proffered does not show when the appraisal was prepared or who prepared it. However, it does show that sometime between November 30, 2007 and January 15, 2009, the subject's value was estimated to be \$\$\$\$\$.

*County Appraisal.* The County proffered an appraisal in which it estimated the subject's value to be \$\$\$\$\$ as of the January 1, 2009 lien date. On the basis of this appraisal, the County asks the Commission to sustain the subject's current value of \$\$\$\$\$. In the appraisal, RESPONDENT REP. 2, a County appraiser, compared the subject property to six comparables that are located within 2/3 mile of the subject. The six comparables sold between January 2008 and January 2009 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. RESPONDENT REP. 2 explained that the subject property is "overbuilt" for the neighborhood because of its large size. The comparables all have significantly less above-grade living space than the subject. To account for the subject being overbuilt for the neighborhood, RESPONDENT REP. 2 adjusted above-grade square footage differences at a relatively low \$\$\$\$\$ per square foot. After adjustments, Mr. Bybee derived adjusted sales prices for the six comparables that ranged between \$\$\$\$\$ and \$\$\$\$\$.

County Comparable #1 appears to be most similar to the subject property. With 4,200 square feet of above-grade living space, this comparable is the closest to the subject in above-grade square feet. Also

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like the subject, this comparable does not have a basement. However, the comparable has a 2.00-acre lot, which is double the size of the subject's 0.98-lot. This comparable sold for \$\$\$\$ in July 2008 and adjusted to \$. The taxpayer, however, believes that this comparable is an "outlier" because it sold for \$\$\$\$ more than any other comparable in the appraisal and because the persons who purchased it mistakenly thought they could subdivide the comparable's 2.00-acre lot and sell half of it. For these reasons, the taxpayers ask the Commission to give this comparable little weight in its analysis.

County Comparable #1, however, is the only comparable that has at least half the above-grade square footage of the subject. The County's appraisal suggest that the additional acre of land associated with County Comparable #1 would have had a value of \$\$\$\$ had it been sold off. If the County's appraisal were revised to reflect a value of \$\$\$\$ for the additional acre, County Comparable #1's revised adjusted sales price would be \$\$\$\$.

Most of the remaining comparables have less than half the above-grade square footage of the subject and have unfinished basements or no basements at all. Most of these sold for values below \$. These comparables are not similar enough to the subject to receive much weight. The only other comparable is County Comparable #2, which has 3,018 above-grade square feet and a finished basement that is 1,998 square feet in size. County Comparable #2 sold in January 2009 for \$\$\$\$ and adjusts to \$. Based on the most similar comparables in the County's appraisal, it appears that the subject's value as of the lien date is somewhere between \$\$\$\$ and \$\$\$\$.

*Taxpayers' Appraisal.* The taxpayers proffer another appraisal in which the subject's value is estimated to be \$\$\$\$ as of January 1, 2009. The taxpayers ask the Commission to reduce the subject's value to \$\$\$\$ on the basis of this appraisal. In the appraisal, the subject is compared to five comparables. Four of the comparables are located in CITY 1, where the subject is located. The fifth comparable is located in CITY 2.

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Of the four comparables in CITY 1, three sold between September 2008 and December 2008 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The fourth comparable in CITY 1 is a listing of a home in the subject's subdivision for \$\$\$\$\$. The comparable in CITY 2 sold in December 2008 for \$\$\$\$\$. The four comparables that sold were adjusted to adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Based on a "mid-range value" of these four adjusted sales prices, the appraiser estimated the subject's value to be \$\$\$\$\$.

The subject has more than twice the above-grade square footage of any comparable used in the taxpayers' appraisal. In addition, all of the comparables have basements, while the subject does not. The taxpayer's appraiser states that the unique size of the subject property made it impossible to "bracket" the upper end of gross living area in the appraisal. In addition, the appraiser states that Taxpayer Comparable #1, which sold in December 2008 for \$\$\$\$\$ and adjusted to \$\$\$\$\$, is a "short sale," but was used because of the short supply of comparables and because its sales price was likely near its fair market value due to the high number of foreclosures on the market at the time of sale. The taxpayer also indicated that of the 18 homes in the subject's subdivision, half sold as short sales. He believes that the distressed properties started selling the subject's neighborhood in late 2008 and became pervasive in early 2009.

Taxpayer Comparable #1, which was a short sale, sold for a significantly lower value than the other comparable sales in the taxpayer's appraisal. The taxpayer's appraiser did not indicate that distressed properties were setting the market as of the lien date. He indicated that he believes Taxpayer Comparable #1, though a short sale, "most likely sold near market value." In addition, the taxpayer stated that distressed properties had not become "pervasive" until early 2009. Without additional evidence to show otherwise, it does not appear that foreclosures and short sales were setting the market as of the lien date.

Taxpayer Comparable #3 is located in another city, and Taxpayer Comparable #5 is a home with a listing price approximately one year after the lien date. Taxpayer Comparables #2 and #4, though located one to two miles away from the subject, are located in the same city as the subject and were not short

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sales. Once adjusted, they show adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$ for the subject property. However, they are further away from the subject than County Comparable #1, which shows a revised adjusted sales price of \$\$\$\$\$, and County Comparable #2, which adjusted to \$\$\$\$\$. As a whole, the two County Comparables that adjust to \$\$\$\$\$ and \$\$\$\$\$ appear more similar to the subject. Because the subject is unique, it is difficult to tell where in the \$\$\$\$\$ to \$\$\$\$\$ range of values the subject's value would be. The parties' respective appraisals do not show that the subject's current value of \$\$\$\$\$ is incorrect.

*Taxpayers' Remaining Evidence.* The taxpayers also proffer that a real estate valuation program at WEBSITE estimated the subject's value to be \$\$\$\$\$ on November 16, 2009. Evidence of a value produced by an internet program is not convincing. The Commission does not know what information the program uses to estimate real estate value or whether the program produces accurate values in all instances.

The taxpayers also provided a listing of a neighbor's home that was listed for sale in 2009. As of November 4, 2009, the home was listed for sale at \$\$\$\$\$. The home has 3,241 square feet of above-grade living space and a basement that is 2,357 square feet in size (95% finished). Together, the basement and upper floors have 5,598 square feet of living space. Because a portion of the basement is exposed, the taxpayers contend that this home's basement space is as valuable as the subject's above-grade space. The taxpayers also contend that this home's interior and exterior are better quality than the subject. This property was marketed for sale after the lien date, at a time when after which foreclosures had become pervasive and prices had dropped. In addition, this comparable's basement space is still considered basement space for valuation purposes, regardless of whether a portion of it "exposed." If a 1% month upward time adjustment and square footage adjustments were made to the \$\$\$\$\$ listing price of this comparable, it would show a value for the subject in excess of \$\$\$\$\$.

The taxpayers also provide a number of comparable sales of homes in a number of cities in Davis County that sold in 2008 and 2009. The best of these comparables are located in CITY, where the

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subject is located, and include much smaller homes that sold for \$\$\$\$\$ in September 2008 and \$\$\$\$\$ in August 2008. The best of the taxpayers' comparables support the subject's current value of \$\$\$\$\$. Given the evidence submitted at the Initial Hearing, the subject's current value of \$\$\$\$\$ appears to be a reasonable fair market value for the subject property as of the lien date.

Equalization. The taxpayers have not shown that the subject's fair market value, as of January 1, 2009, is less than its current value of \$\$\$\$\$. Nevertheless, 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 taxpayers provided evidence to show that the County has undervalued all six comparables that the County used in its appraisal for the 2009 tax year, as follows:

<b>Col. A</b>	<b>Col. B</b>	<b>Col. C</b>	<b>Col. D</b>	<b>Col. E</b>	<b>Col. F</b>
<b>Property Address</b>	<b>Date of Sale</b>	<b>Sales Price</b>	<b>Sales Price Adjusted for Time of Sale (Per County Appraisal)</b>	<b>2009 Assessed Value</b>	<b>Underassessment % ((Col. D – Col. E) / Col. D)</b>
ADDRESS 2	07/07/08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	35.2%
ADDRESS 3	01/15/09	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	34.8%
ADDRESS 4	08/25/08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	12.5%
ADDRESS 5	11/04/08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	7.9%
ADDRESS 6	04/16/08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	21.1%
ADDRESS 7	01/15/08	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	14.5%

The County contends that the subject's current assessed value of \$\$\$\$\$ is equitable when compared to the assessed values per square foot at which other properties are assessed. Specifically, the County contends that the subject's value at \$\$\$\$\$ represents the lowest value per square foot at which a home without a basement is assessed. The County's equalization argument, however, does not show that an

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equalization issue does not exist. First, larger properties often sell for less per square foot than smaller properties. If the subject property is the largest home without a basement, it is plausible that its value per square foot should be less than other homes. Second, the taxpayers' evidence shows that the six homes that the County compared to the subject in its appraisal were underassessed for the 2009 tax year at rates ranging between 8% and 35%. The six properties are relatively new, like the subject, and are located within 2/3 mile of the subject. The three most valuable of these comparables were underassessed at rates ranging between 12% and 35% for the 2009 tax year. The County has proffered no evidence to show that any homes were assessed at their fair market values for 2009.

The evidence available at the Initial Hearing shows that comparable homes were assessed at rates between 8% and 35% below their fair market value. These rates are greater than the 5% deviation in value that gives rise to equalization pursuant to Section 59-2-1006(4). As a result, the evidence proffered at the Initial Hearing shows that it would be inequitable to assess the subject at its fair market value of \$\$\$\$\$. The taxpayer has requested a value of \$\$\$\$\$, which is 17.8% less than its current value of \$\$\$\$\$. The taxpayer's proposed reduction in value appears reasonable, because the more valuable homes, such as the subject, are generally the ones with the higher rates of underassessment.

In summary, the taxpayers have not shown that the subject's fair market value is less than its current assessed value of \$\$\$\$\$. On the other hand, the taxpayers have shown that the current value of \$\$\$\$\$ is inequitable when compared to the assessed values of other homes. For purposes of equity, the subject's current value should be reduced to the taxpayers' proposed value of \$\$\$\$\$.

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Kerry R. Chapman  
Administrative Law Judge



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DECISION AND ORDER

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

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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