

10-1397
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 12-30-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 10-1397 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: RETITIONER REP., Representative
 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 November 22, 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 1(approximately ADDRESS 2) in CITY 1, Utah. The County BOE reduced the \$\$\$\$\$ value at which the subject was originally assessed for the 2009 tax year to \$\$\$\$\$. The taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$ or below. 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

otherwise provided by law.”

UCA §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”

Utah Admin. Rule R884-24P-20 (“Rule 20”) provides guidance on valuing real property that is under construction as of the lien date, as follows in pertinent part:

....

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

....

E. Appraisal of Properties not Valued under the Unit Method.

....

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, 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.

....

3. 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; . . .

....

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 0.80-acre lot and a two-story home that was built between 2006 and 2009. The home contains 2,497 square feet of living space on the main floor and 1,341 square feet of living space on the second floor, for a total of 3,838 “above-grade” square feet. The home also has a finished basement that is 2,639 square feet in size. The home has a six-car garage.

Although construction on the subject property began in 2006, it was not completed as of the January 1, 2009 lien date. The home was completed in late 2009. The taxpayer explains that as of lien date, the subject’s carpeting had not been installed. In addition, the “finish plumbing” had not been completed. Finally, the water heater, blinds, appliances and exterior concrete had not been installed as of the lien date.

Rule 20 provides that the value of a residential property under construction is based on its “full cash value expected under completion” multiplied by the “percent of the project completed as of the lien date.” The County determined that the subject’s total value, if completed, would be \$\$\$\$\$, of which \$\$\$\$\$ represented the value of the subject’s 0.80-acre lot. The remaining value, \$\$\$\$\$, was considered the

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completed value of the subject's improvements. The County also determined that the improvements were 75% complete as of the lien date. In accordance with Rule 20, the County multiplied the \$\$\$\$ value of the completed improvements by 75% to derive a value of \$\$\$\$ for the improvements under construction. The \$\$\$\$ value of the improvements under construction was added to the \$\$\$\$ land value to derive the County BOE's total value of \$\$\$\$ for the subject property as of the lien date.

The taxpayer contends that the subject's 2009 fair market value, as a property under construction, was \$\$\$\$ or less and asks the Commission to reduce the subject's value accordingly. To support this value, the taxpayer submitted two comparable sales of homes that were incomplete at the time of sale. The taxpayer proffered evidence of an incomplete, bank-owned property located approximately 19 blocks from the subject, which sold for \$\$\$\$ on January 2, 2009. In addition, the taxpayer proffered evidence of a "short-sale" property that was 80% complete when it sold for \$\$\$\$ on May 5, 2009. This comparable is located approximately 18 blocks from the subject. The taxpayer asserts that these two sales show that the subject property would have likely sold for \$\$\$\$ or less on the lien date.

These two comparables do not convincingly show that the subject's value was less than \$\$\$\$ as of the lien date. First, the subject property is located in CITY 1 on a lot that the County estimates to have a value itself of nearly \$\$\$\$\$. The two comparables are located several miles from the subject property and are located south of I-215, while the subject is located north of I-215. Second, it is unusual that a home has been "abandoned" and sold prior to being completed, which may explain why these two comparables sold for relatively low amounts. The subject, though incomplete as of the lien date, had not been abandoned and was in the process of being completed. Rule 20 has been adopted to determine the value of incomplete properties such as the subject. Under Rule 20, it is critical to determine, 1) the estimated total value of the home as though complete; and 2) the percentage of the project completed as of the lien date.

1. Value of Subject Property as Though Complete. The subject's current value is based on its "completed" value being \$\$\$\$\$. The taxpayer proffered six completed comparables that sold in 2008 and 2009. Five of the six comparables sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. However, these comparables are in different neighborhoods from the subject property, and two of the comparables sold in late 2009, nearly a year after the lien date. In addition, none of these comparables have a lot that is greater than 0.33 acres in size.

The sixth comparable, however, is more similar to the subject property. It is located within a couple of blocks of the subject. Its lot is 0.85 acres in size, in comparison to the subject's 0.80-acre lot. This comparable sold for \$\$\$\$\$ on December 30, 2008, two days prior to the lien date. The taxpayer also proffered a "comparison report" on which this comparable is adjusted to show that the subject's completed value would be \$\$\$\$\$, based on this comparable sale.

Furthermore, the County proffers a number of completed comparable sales that are, in general, closer to the subject in location than the taxpayer's comparables. Three of the comparables are located within a few blocks of the subject property and sold in mid to late-2008 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The County also submitted information to show that these three comparables, all of which have less square footage than the subject, would adjust to prices ranging between \$\$\$\$\$ and \$\$\$\$\$.

Lastly, the taxpayer had listed the subject property for sale at \$\$\$\$\$ throughout most of 2008 and 2009, with the exception of two weeks in December 2008 when the listing price was reduced to \$\$\$\$\$. These listing prices were based on the subject property being completed.

The totality of the information appears to support the County's estimate that the subject property, if completed, would have had a value of \$\$\$\$\$ as of the lien date. The information does not show that this completed value is incorrect.

2. Percentage Completed as of the Lien Date. The County BOE's current value is also based on the subject home being 75% complete as of the lien date. As of the lien date, the taxpayer indicated that the following items were incomplete: carpeting, finish plumbing, water heater, blinds, appliances and exterior concrete. Based on the percentages of completion shown in Rule 20(E)(2)(c), the home's percentage of completion appears to be at least 75% as of the lien date. It appears that all items listed in Subsection (E)(2)(c)(1)(e) (showing 75% completion) had been completed as of the lien date and that a few of the items listed in Subsections (E)(2)(c)(1)(f) (showing 90% completion) had been completed. As a result, the information proffered at the Initial Hearing does not show that this component of the County BOE's value is incorrect.

Conclusion. The information proffered at the Initial Hearing is insufficient to show that the subject's completed value would have been less than \$\$\$\$ as of the lien date or that the subject home's percentage of completion was less than 75% as of the lien date. As a result, the County BOE's value of \$\$\$\$ appears to have been properly derived with the methodology set forth in Rule 20. The information proffered at the Initial Hearing does not convincingly show that the subject's value, in its incomplete state as of the lien date, was less than this amount. Accordingly, the subject's current value of \$\$\$\$ should be sustained.

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 sustained for the 2009 tax year. 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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