

10-1610
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 05-31-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal No. 10-1610

Parcel No. #####-1

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009

Judge: Jensen

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2, Taxpayer
 PETITIONER 1, Taxpayer
For Respondent: Russell Cope, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 1, 2011. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The-above-named Petitioner ("the Taxpayer") is appealing the assessed value of the subject property as set by the Salt Lake County Board of Equalization (the "County") for the lien date January 1, 2009.
2. The subject property, parcel no. #####-1, is located at ADDRESS 1 in Salt Lake County. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The County Board of Equalization reduced the value to \$\$\$\$\$. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization be reduced to \$\$\$\$\$.
3. The subject property consists of a .31-acre lot improved with a rambler style residence. The residence was new and under construction as of the lien date and built of good quality construction. It has

3,356 square feet above grade and an unfinished basement of 2,494 square feet. There is also an attached three-car garage. The County considered the residence to be in excellent condition. It was new construction and was 60% complete as of the lien date.

4. The Taxpayer submitted evidence of the sales of five comparable properties. The subject property and the comparable sales are as follows:

	Address	Lot Size	Sq. Ft.	Bsmt.	Garage	Sale Date	Sale Price
Subject	ADDRESS 1	0.31	3,356	2,494	3-car		
Sale #1	ADDRESS 2	0.23	3,393	2,668	3-car	1/2/09	\$\$\$\$\$
Sale #2	ADDRESS 3	0.18	2,391	1,610	2-car	7/22/09	\$\$\$\$\$
Sale #3	ADDRESS 4	0.22	2,693	3,229	2-car	8/24/09	\$\$\$\$\$
Sale #4	ADDRESS 5	0.23	3,942	1,812	3-car	7/30/09	\$\$\$\$\$
Sale #5	ADDRESS 2	0.23	3,435	2,896	3-car	6/1/09	\$\$\$\$\$

The Taxpayer's first four comparable sales were short sales or foreclosures. Only the fifth was free from these types of sale conditions.

5. To arrive at a requested value of \$\$\$\$\$, the Taxpayer relied on the first comparable with a selling price of \$\$\$\$\$. The Taxpayer divided the sales price by the total square footage and determined a price per square foot of \$\$\$\$\$. The Taxpayer estimated this home was 50% complete at the time it sold, so the Taxpayer divided the selling price by 50% to arrive at a price per square foot to \$\$\$\$\$ if fully finished. The Taxpayer then multiplied this figure by the square footage of the residence on the subject property to arrive at a rounded value of \$\$\$\$\$ if the subject property were completed. The Taxpayer multiplied this by the 60% completion percentage for the subject property to arrive at \$\$\$\$\$.

6. The Taxpayer presented a request to equalize the value of the subject property with two properties. One was the Taxpayer's first sales comparable, which had a 2009 assessed value of \$\$\$\$\$. The second was a property approximately 0.5 of a mile from the subject property and had a 2009 assessed value of \$\$\$\$\$. In addition to these 2009 values, the Taxpayer presented values for 2008, 2010, and 2010. The Taxpayer chose these properties because both had older homes that owners razed to replace with new construction as the Taxpayer had done in 2008. The Taxpayer provided testimony regarding the timing of demolition and construction for both of the equalization comparables.

7. The County submitted evidence of the sales of nine comparable properties. The subject property and the comparable sales are as follows:

	Address	Lot Size	Sq. Ft.	Bsmt.	Garage	Sale Date	Sale Price
Subject	ADDRESS 1	0.31	3,356	2,494	3-car		
Sale #1	ADDRESS 6	0.22	1,756	1,710	2-car	7/30/08	\$\$\$\$\$
Sale #2	ADDRESS 7	0.26	2,720	1,430	3-car	2/23/09	\$\$\$\$\$
Sale #3	ADDRESS 8	0.19	2,836	1,587	3-car	10/10/08	\$\$\$\$\$
Sale #4	ADDRESS 9	0.23	3,103	1,485	3-car	7/9/08	\$\$\$\$\$
Sale #5	ADDRESS 10	0.20	2,479	914	2-car	7/17/08	\$\$\$\$\$
Sale #6	ADDRESS 11	0.27	3,057	1,685	3-car	12/16/08	\$\$\$\$\$
Sale #7	ADDRESS 12	0.24	3,205	1,815	3-car	12/19/08	\$\$\$\$\$
Sale #8	ADDRESS 13	0.19	2,577	1,746	3-car	10/7/08	\$\$\$\$\$
Sale #9	ADDRESS 14	0.27	1,967	2,138	3-car	12/16/08	\$\$\$\$\$

Neither party argued that any of the County’s comparable sales were short sales or foreclosures.

8. The County’s representative relied on the County’s sales of comparable properties to arrive at a final indicated value for the subject property of \$\$\$\$\$ if the residence were fully completed. The County’s representative testified that the subject property had a bigger lot and had a newer and bigger home than most of the comparable properties and therefore should be reconciled to a value toward the higher end of the sales comparables presented.

9. To arrive at a value for the subject property with a residence 60% finished, the County’s representative removed the County’s \$\$\$\$\$ land value from the total value of \$\$\$\$\$ to arrive at a value for improvements, if complete, of \$\$\$\$\$. The County’s representative then took 60% of the improvement value for the 60% completion as of January 1, 2009 to arrive at a rounded value for improvements of \$\$\$\$\$. To this, the County added back the \$\$\$\$\$ land value to arrive at a final indicated value of \$\$\$\$\$.

10. The Taxpayer did not dispute that \$\$\$\$\$ was a reasonable land value for purposes of overall valuation, but did argue that the completion percentage should be applied to both land and building.

APPLICABLE LAW

1. 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 provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. Utah Code Ann. §59-2-103.

2. “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. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. Utah Code Ann. §59-2-102(12).

3. Utah Administrative Rule R884-24P-20(A)(1) indicates that for purposes of applying a completion percentage to value incomplete construction work in progress, “[c]onstruction work in progress means improvements as defined in Section 59-2-102.”

4. Utah Code Ann. §59-2-102(19) defines an “improvement” as “a building, structure, fixture, fence, or other item that is permanently attached to land.”

5. 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. 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. Utah Code Ann. Sec. 59-2-1004(4). The evidence required for adjustment on the basis of equalization under Utah Code Ann. §59-2-1004(4) is a showing that there has been an “intentional and systematic undervaluation” of property that results in “preferential treatment” to the property owners receiving the lower valuations. *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 16.

CONCLUSIONS OF LAW

Under Utah law, a party seeking a value different from that established by the 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*, 590 P.2d. 332 (Utah 1979). In this case, the evidence shows error in the board of equalization value of \$\$\$\$\$.

Utah Code Ann. §59-2-103 requires that property be taxed on the basis of its fair market value. Utah Code Ann. §59-2-102(12) provides that “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.” Four of the Taxpayer’s comparables are short sales or foreclosures. These types of sales involve distress conditions that cause concern under Utah law requiring that property be valued on the basis of a sale involving a buyer and seller “neither being under any compulsion to buy or sell.” The Taxpayer presented one sale that did not involve distress conditions, but it was more than six months after the valuation date. Buyers and sellers acting after the lien date or appraisal have knowledge that goes beyond what could have reasonably been known as of the lien date. Such sales raise concerns regarding market information that would be considered “reasonable knowledge” as required under Utah Code Ann. 59-2-102(12). The Commission, consistent with appraisal practice, typically prefers pre-lien date sales to post-lien date sales.

There is no evidence that the County’s sales of comparable properties involved distress conditions. All but one were pre-lien date sales. Ignoring the one sale with a post-lien sale date does not alter the value suggested by the County’s comparable sales. On the basis of the County’s comparable sales, there is good cause to find that the value of the subject property was \$\$\$\$ if construction was complete as of the lien date.

Having determined that the value of the subject property was \$\$\$\$ if its improvements were complete, it is necessary to determine a value with a residence that was 60% complete on the lien date. Utah Administrative Rule R884-24P-20(A)(1) requires application of a completion percentage to “[c]onstruction work in progress” and defines that term to mean “improvements as defined in Section 59-2-102.” Utah Code Ann. §59-2-102(19) defines an “improvement” as “a building, structure, fixture, fence, or other item that is permanently attached to land.” The Taxpayer’s methodology of applying a percentage complete figure to land and improvements does not comply with Utah law. The County’s methodology for calculating a percentage complete for improvements is correct and provides a sound evidentiary basis to value the subject property at \$\$\$\$ as of the lien date.

Although the evidence supports the County’s requested value of \$\$\$\$\$, the Commission considers the Taxpayer’s request to equalize the value of the subject property with the values of two other properties. The evidence required for adjustment on the basis of equalization under Utah Code Ann. §59-2-1004(4) is a showing that there has been an “intentional and systematic undervaluation” of property that results in

“preferential treatment” to the property owners receiving the lower valuations. *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 16. The Taxpayer presented evidence of the assessed values of two properties. One had a higher assessed value for 2009 than the subject property; one had a lower assessed value. This does not show a pattern of intentional and systematic undervaluation. Even if it did, two comparable properties some distance from the subject property would be insufficient to show a pattern of lower valuations in a given area. The Taxpayer discussed changes in assessed values over time as construction progressed on the three homes. However, Utah Code Ann. Sec. 59-2-1004(4) requires direct comparison of properties rather than comparisons over time. For these reasons, the Taxpayer has not presented a valid claim for equalization of the subject property.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2009 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit in accordance with Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63G-4-302 et. seq.