

11-361
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2010
DATE SIGNED: 10-25-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 and PETITIONER-2, Petitioners, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 11-361 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010</p> <p>Judge: Phan</p>
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Presiding:

R. Bruce Johnson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1
For Respondent: RESPONDENT, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et seq., on August 21, 2012. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “Property Owner”) is appealing the assessed value of the subject property for the lien date January 1, 2010.
2. For the lien date the County Assessor had valued the property at \$\$\$\$\$ and the County Board of Equalization (the “County”) sustained the value. At the hearing the Property Owner had stated that he would agree to a value of \$\$\$\$\$. The County submitted an appraisal and recommended a reduction to the appraisal value which was \$\$\$\$\$.
3. The property at issue is Parcel No. #####, located at ADDRESS-1, CITY-1, Utah.

4. The property consists of ##### acres of land improved with a rambler style residence. The residence is ##### years old, of average grade of construction and in average condition. It has 1,814 square feet above grade. There is 1,800 square feet in the basement which is fully finished. On the property there is an attached two-car garage. There is also a shed, a barn and a gazebo. The County records indicated that the residence had 1 full bathroom upstairs and 2.5 bathrooms in the basement. The Property Owner testified that this is incorrect. He stated that there were 1.5 bathrooms on the main level and 1 full bathroom in the basement.

5. The subject is located in a residential area with homes built on large lots, on the west side of CITY-1.

6. The Property Owner requested a reduction to \$\$\$\$\$ based on three comparable sales, including a neighboring property that had sold for that amount.¹ This neighboring property was located on the same street as the subject and only 0.18 of a mile away in distance, at ADDRESS-2, CITY-1, Utah. It had sold for \$\$\$\$\$, with \$\$\$\$\$ in concessions, on June 2, 2009. This comparable has 1 acre of land and was improved with a two-story style residence. The subject is a rambler, but the Property Owner pointed out that the second floor of this comparable was only 595 square feet and the main floor level of this comparable had 1,786 square feet, nearly as large as the subject property's main floor. This comparable had a detached three car garage and a shed. Of all the comparables submitted by either party, this comparable was the nearest in location to the subject.

7. The Property Owner's other comparables were further in distance and not in the same city as the subject. A property at ADDRESS-3, CITY-2, had sold for \$\$\$\$\$ in August 2009. This also has a large lot, at 1.04 acres. The residence had been constructed in 1995 and was a rambler with 1,947 square feet above grade and a basement of the same size that was mostly finished. The MLS report provided by the Property Owner did state "SELLER MOTIVATED!!! PRICED REDUCED WILL CONSIDER ALL OFFERS." The County's position was that this indicated a duress sale.

8. The Property Owner's third comparable was located in CITY-3, at ADDRESS-4. This had 1.30 acres of land and a rambler style residence constructed in 2004. There was 1,771 square feet above grade and a finished basement of the same size. This property had an attached 4 car garage. The County argued that CITY-3 had lower values generally than CITY-1, even including the west side of CITY-1.

¹ Property Owner's three comparable sales were received as Petitioner's Exhibit 1.

9. The County submitted two appraisals at the hearing. The first had been prepared by NAME-1 on June 13, 2011.² It had been NAME-1 conclusion that as of January 1, 2010 the value of the subject property was \$\$\$\$\$. In the appraisal, NAME-1 considered five comparable sales, four of which were located in CITY-1 like the subject. However, only one of his comparables was 1 acre in size. The rest were just over one-half acres or less. The comparable with 1 acre of land was located at ADDRESS-5, CITY-1. This was 1.65 miles from the subject property. It had sold for \$\$\$\$\$ on June 13, 2009. It was NAME-1 conclusion that this sale indicated a value for the subject of \$\$\$\$\$. NAME-1 other comparables had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. After making appraisal adjustments for the differences, including an adjustment for the acreage, his indicated value conclusion from these comparables had been a range from \$\$\$\$\$ to \$\$\$\$\$ and his reconciled conclusion for the property had been \$\$\$\$\$.

10. The County submitted a second appraisal at the hearing.³ This appraisal had been prepared by RESPONDENT, Licensed Residential Appraiser. It was RESPONDENT'S conclusion that as of the lien date January 1, 2010, the value of the subject property was \$\$\$\$\$. In his appraisal he considered six comparable sales. He had found three comparables which were 1 acre or more in size, like the subject and three comparables around 0.50 acres in size. However, to find comparables with the larger residential lots he had gone further in distance; four out of the six comparables were located in CITY-4, CITY-3 and CITY-5. Two of the comparables presented were located near the subject property and had lot sizes of 1 acre or more like the subject.

11. In his appraisal RESPONDENT considered the comparable that had been offered by the Property Owners on the same street as the subject. This was the property at ADDRESS-2 which had sold for \$\$\$\$\$ minus concessions of \$\$\$\$\$ in June 2009. This property was 1 acre in size and only 0.18 miles from the subject. The residence was comparable in age to the subject residence. It was RESPONDENT'S conclusion after making appraisal adjustments for differences that this property indicated a value for the subject of \$\$\$\$\$. However, RESPONDENT testified that he did not give this sale any weight because he had concluded that there must have been duress in the sale. He provided the listing history for this property with his appraisal. It had originally been listed in 2008 according to this history. Then on January 9, 2009 it was listed for \$\$\$\$\$. The price was dropped on January 23, 2009 to \$\$\$\$\$. It was reduced again on February 26, 2009 to \$\$\$\$\$.

2 Received as Respondent's Exhibit 2.

3 Received as Respondent's Exhibit 1.

He indicated that the price was reduced again four months later to \$\$\$\$\$ and then sold for the \$\$\$\$\$ in June 2009. It was his contention that this history showed duress. He also pointed out that there was a margin of difference in the price between this sale and all of the other comparables as all the other comparables indicated values near \$\$\$\$\$ for the subject, while this one indicated a value for the subject of only \$\$\$\$\$.

12. Another comparable used by RESPONDENT that was also located near the subject property was at ADDRESS-6, CITY-1. This was 0.51 miles from the subject. It had 1.09 acres of land and had sold for \$\$\$\$\$ in July 2009. This property had an older and smaller residence than the subject. It did not have a barn, but did have a 2,000 square foot shop building in the back with access from the I-15 frontage road. This shop was insulated and had power and water. It was RESPONDENT'S conclusion that this shop was equivalent to the barn, shed and gazebo on the subject property. In his appraisal, this comparable indicated a value for the subject of \$\$\$\$\$. The Property Owner argued that the shop would be superior to the barn, but did not provide evidence of the cost to construct or other sales information regarding the value of the subject barn.

13. Of these two comparables from RESPONDENT'S appraisal that are the nearest in location to the subject, one indicated the lowest value for the subject in the appraisal and the other the highest indicated value for the subject in the appraisal.

14. The other four comparables were considerably distant from the subject, more than 3 miles away to 5.72 miles away. They had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. After making appraisal adjustment's it was RESPONDENT'S conclusion that these four comparables indicated values for the subject ranging from \$\$\$\$\$ to \$\$\$\$\$.

15. Because RESPONDENT had not exchanged his appraisal ten business days prior to the hearing, the Property Owner was given the opportunity to respond in writing to the appraisal. The Property Owner did submit a posthearing response on September 4, 2012. In the response he stated that the County had erred regarding the number of bathrooms in the subject. RESPONDENT had indicated that the subject had 3.5 bathrooms in total. The Property Owner stated that there were only 2.5 bathrooms in total. He noted that in the appraisal RESPONDENT had stated that he adjusted \$\$\$\$\$ for an additional full bathroom. The Property Owner also stated that there was no wet bar in the subject property, but RESPONDENT had listed the subject as having a wet bar. The Property Owner argued that some of the appraisal adjustments made by RESPONDENT and NAME-1 were in error because the County record was not correct on these points.

16. While the Property Owner acknowledged that the subject property had a shed and a gazebo, he

argued that these were personal property and as such should not be included in the value. However, it is unclear whether these properties have foundations or how they are affixed to the ground. The Property Owner did not provide photographs of these structures. There had been small aerial satellite photographs in NAME-1 appraisal which shows a barn shaped shed with cement or asphalt pad out front. This shed has an extended roof on both sides which appears to provide covered storage and must be anchored or attached into the ground in some manner. Only the top of the roof is visible on the gazebo. In his appraisal, RESPONDENT adjusted \$\$\$\$\$ in total for the barn, shed and gazebo.

17. Upon review of the information submitted by the parties, there are a number of sales and two appraisals that do support a value for this property at \$\$\$\$\$. However, the one property that is the nearest in location to the subject and quite similar in a number of factors did sell for considerably less and supports the value that the Property Owner is requesting. The County's other comparable that was also near in location indicated a higher value for the subject. In totality the County has submitted a number of comparables that support the higher value with the exception for the adjustment for the bathroom count in the subject. The Property Owner testified and the County did not refute, that the subject had 2.5 bathrooms in total, not the 3.5 indicated by the County in the appraisals. This equates to an adjustment of \$\$\$\$\$ for each comparable. The County's value should be reduced by this amount.

18. Sheds, barns and other out buildings which may include gazebos that are attached to the real property are generally attached to the real property in such a manner that they will remain attached in the same place for their useful life and are bought and sold with the real property. These types of structures are included in the tax assessment. There was insufficient evidence provided to establish that the Property Owner's were not attached to the land in the same manner as the barn or a detached garage.

19. The Property Owner had expressed concerns in his posthearing submission that the County in its appraisal was adjusting both for the differences in square footage and the difference in bedroom count. This is not generally how adjustments are made. Adjustments are made for the square footage difference and not bedrooms. Separate adjustments are made for some features like bathrooms and kitchens as well as fireplaces, decks and porches. As there is a lump sum adjustment shown in RESPONDENT'S appraisal for the category of Basement & Finish/Rooms Below Grade, it is difficult to determine exactly what adjustments had been included in the total if any, for each item noted. In the section for Above Grade Room Count, the adjustment shown there in the appraisal is for only the bathroom count and Gross Living Area that is for size.

20. Based on the evidence submitted, the value should be lowered to \$\$\$\$ for the lien date January 1, 2010.

APPLICABLE LAW

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. Sec. 59-2-103.)

“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).)

“Personal Property” includes: (a) every class of property as defined in Subsection (28) which is the subject of ownership and not included within the meaning of the terms “real estate” and “improvements”, . . . (Utah Code Sec. 59-2-102(27).)

Except as provided in Subsection (19)(c), “improvement” means a building, structure, fixture, fence or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if: (i)(A) attachment to land is essential to the operation or use of the item; and (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item: or (ii) removal of the item would: (A) cause substantial damage to the item; or (B) require substantial alteration or repair of a structure to which the item is attached.

(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. . . (Utah Code Sec. 59-2-1006(1).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could

adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. Property tax is based on its “fair market value” pursuant to Utah Code Sec. 59-2-103. “Fair market value” is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. Although there were some comparables that had sold for less and supported more of a reduction, the weight of the evidence submitted in this case supports a value of \$\$\$\$ for the subject property.

2. The Property Owners had argued that the value of a shed and a gazebo should not be included in the assessment. If the Property Owner were to prove that these structures were not attached to the land in a manner that suggests they would remain in the same place over the useful life of the shed and gazebo, these items may be considered personal property and not an improvement. See Utah Code 59-2-102. However, the Property Owner has the burden of proof and on this issue the only photograph provided suggests that the shed is attached to the ground to support the extended roofs on both sides, like a carport.

Considering the evidence and the applicable law in this matter, the value of the subject property should be reduced to \$\$\$\$\$, for the lien date at issue in this appeal.

Jane Phan
Administrative Law Judge

Appeal No. 11-361

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2010, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

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 pursuant to Utah Code Sec. 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.