

11-881
TAX TYPE: PROPERTY TAX-LOCALLY ASSESSED
TAX YEAR: 2010
DATE SIGNED: 5-9-2013
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 11-881
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2010
	Judge: Phan

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1
REPRESENTATIVE FOR PETITIONER-2, Certified Appraiser
For Respondent: RESPONDENT, Certified Residential 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 February 19, 2013. 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 originally valued the property at \$\$\$\$ and the County Board of Equalization (the "County") reduced the value to \$\$\$\$\$. At the hearing, the Property Owner requests that the value be lowered to \$\$\$\$\$. The County offered an appraisal at the hearing that supported a value of \$\$\$\$\$, but recommended that the value remain as set by the County Board of Equalization at \$\$\$\$.

3. The property at issue is Parcel No. #####, located at SUBJECT ADDRESS (Approximately STREET), Salt Lake City.

4. The property consists of ##### acres of land improved with rambler style residence with 1807 square feet above grade and a basement of 1770 square foot. The original structure was 49 years old. There is also a detached two-car garage.

5. As of the lien date, the residence was under construction due to both a major remodel and addition. The interior above grade area was completely unfinished. The original portion of the building had been gutted back to the studs; the interior of the new addition was also only completed to the studs. The Property Owner testified that although the new addition had been constructed up to the point of the studs, the roof trussing in the new addition had structural problems that needed to be fixed. Additionally, he indicated that they had incurred a number of costs to retrofit the older portion of the structure because it was not constructed up to the same manner as is now required by code. The basement was mostly unfinished as of the lien date.

6. As of the lien date the exterior of the residence was completed. The roof, brick work and siding had been finished as well as landscaping.

7. The subject property backs onto a commercial retail center. The Property Owner testified that it is a nuisance because a restaurant and bar are located behind the subject residence and there are noise problems and issues with food smells.

8. The Property Owner testified that in 2002 they had thought that they would remodel the kitchen, but then as they started that project, they decided that they should do a whole remodel and addition at that time because the original structure was small. They had wanted to stay in the neighborhood. He stated that they had a neighbor who was a contractor and told them that he could do the remodel and addition for \$\$\$\$\$. So the project got started with the interior being gutted and the beginning of the addition, but then with costs “getting out of hand” the contractor walked off the job leaving the residence without a roof and the interior gutted.

9. Although the Property Owner had finished the roof and exterior after the contractor had walked off the job and prior to the lien date at issue, the interior was not finished for years and was in the state noted above as of the lien date. Photographs of the condition of the interior were provided that showed the state of the interior as of the lien date at issue in this appeal with no insulation or sheetrock.

10. After the lien date the Property Owner did start working on the interior. He testified that he has spent \$\$\$\$ in hard costs toward finishing the interior after the lien date. He also testified that much of the labor had been performed by himself or family members and this was not added into the costs. He testified that an additional \$\$\$\$ costs would be necessary to fully complete the residence. He indicated that part of the costs were due do to having to retrofit the old portion of the building and there were costs incurred because the original addition was not structurally sound. This resulted in an estimate of \$\$\$\$ in hard costs which did not include costs for much of the labor.

11. The Property Owner submitted an appraisal that had been prepared by REPRESENTATIVE FOR PETITIONER-2. REPRESENTATIVE FOR PETITIONER-2 was present and testified at the hearing regarding his appraisal conclusions. He indicated that and he and the County were not far apart on the value of the residence if it had been finished, but disagreed regarding the deduction to make for the unfinished state of this property. It was REPRESENTATIVE FOR PETITIONER-2 testimony that he has appraised a number of unfinished properties and he was trying to determine, not the cost to cure, but instead the market value of the property in its unfinished state. He pointed out that around the lien date at issue, January 1, 2010, mortgage financing was extremely restricted and it was his opinion that a buyer would not be able to obtain a mortgage to finance the purchase of the subject property in the condition that it was in at that time. The only buyer at that time would be a cash buyer. It was his contention that the cash buyers would only purchase a property as unfinished as the subject if they thought that they could obtain a profit, so the discount would be substantially more than just the cost to cure. REPRESENTATIVE FOR PETITIONER-2 calculated that the actual cost to cure or finish the residence would be \$\$\$\$ based on the Property Owner's hard costs of \$\$\$\$ and an additional amount for labor. It was REPRESENTATIVE FOR PETITIONER-2 contention that the reduction in value would be even higher than this amount to account for the entrepreneurial profit.

12. REPRESENTATIVE FOR PETITIONER-2 prepared an appraisal of the subject residence finding three comparable sales reasonably similar to the subject, but all had been fully finished. The three comparable properties had sold for prices ranging from \$\$\$\$ to \$\$\$\$. He testified that these sales indicated a value for the subject, if the subject was finished of \$\$\$\$\$. However, to determine the value of the subject as of the lien date in its unfinished condition he calculated an appraisal adjustment to make for the unfinished state of the subject, which was 60% of the purchase price of the comparables. After applying this adjustment as well as other adjustments for size, location and condition, it was his conclusion that the value range indicated

for the subject from these sales was from \$\$\$\$\$ to \$\$\$\$\$. It was his conclusion from this that for the lien date January 1, 2010, the value of the subject property was \$\$\$\$\$.

13. REPRESENTATIVE FOR PETITIONER-2 concluded the 60% adjustment using one property that had sold in an unfinished state. The sale that REPRESENTATIVE FOR PETITIONER-2 had relied on was a property at ADDRESS-1, CITY-2, Utah. This property had been listed for sale on Mach 18, 2009 for \$\$\$\$\$ and had gone under contract for the full list price two days later. The interior of this property had been more completed than the subject, as the insulation and sheetrock had been in, but that was it. The ADDRESS-1 property was listed as a cash only sale and as a bank owned property. In his appraisal,¹ REPRESENTATIVE FOR PETITIONER-2 compared this sale with the sale of two finished residences to conclude that if finished the ADDRESS-1 property would have sold for \$\$\$\$\$. He also noted that the buyer finished the property and resold it in October 2009 for \$\$\$\$\$ minus \$\$\$\$\$ in concessions. REPRESENTATIVE FOR PETITIONER-2 stated that the subject was in an even less finished state than this comparable and so concluded that it was appropriate to make a 60% adjustment off of the purchase price of the finished comparables to account for the lack of finish of the subject property.

14. For REPRESENTATIVE FOR PETITIONER-2 first comparable, a property at ADDRESS-2 which had sold for \$\$\$\$\$ in August 2009, the 60% adjustment was \$\$\$\$\$. REPRESENTATIVE FOR PETITIONER-2 explained that this amount would represent the actual cost to cure, of \$\$\$\$\$ and the difference of nearly \$\$\$\$\$ would be the entrepreneurial profits.

15. In his appraisal REPRESENTATIVE FOR PETITIONER-2 had calculated a cost approach but given it little weight. In that approach, REPRESENTATIVE FOR PETITIONER-2 had valued the land at \$\$\$\$\$.

16. The County's representative, RESPONDENT, submitted an appraisal of the subject residence which he had prepared. Like REPRESENTATIVE FOR PETITIONER-2, RESPONDENT used comparable properties that were finished residences in the general area of this subject, and then made an adjustment for the unfinished condition of the subject. The properties that RESPONDENT had relied on had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. RESPONDENT'S adjustment for the unfinished condition was based on \$\$\$\$\$ per square foot multiplied by the above grade square footage of the subject, an adjustment of \$\$\$\$\$ to each of the comparables. It was his conclusion after making this and other appraisal adjustments for the differences

¹ Petitioner's Exhibit 1, pg. 5

between the subject and comparables that his sales indicated a range for the subject from \$\$\$\$\$ to \$\$\$\$\$. He recommended that the value remain as set by the County Board of Equalization at \$\$\$\$\$.

17. RESPONDENT explained that he had used an adjustment of \$\$\$\$\$ per square foot for the unfinished interior of the subject based on conversations he had with some contractors. He testified that he explained the interior condition being to the studs and that he was told it would be around the \$\$\$\$\$ per square foot to finish the property.

18. RESPONDENT had also prepared a cost approach for the subject property but given it little weight. In his cost approach he had valued the land at \$\$\$\$\$.

19. RESPONDENT pointed out that REPRESENTATIVE FOR PETITIONER-2 conclusion of \$\$\$\$\$ was nearly as low as the value of the land and so allowed very little value for the improvement. RESPONDENT pointed out that the exterior of the residence had been finished and the structure would contribute value to the property.

20. The Property Owner and representative questioned the County's \$\$\$\$\$ per square estimate to finish the interior and the Property Owner indicated that the contractors he had talked to about finishing the residence would not do the work for that amount.

21. Assuming a land value for this property of \$\$\$\$\$ or \$\$\$\$\$ as indicated in the parties' cost approaches, valuing the property based on the rule for construction work in progress at Utah Admin. Rule R 884-24P-20 would result in a value around that set by the County Board of Equalization. The representative for the Property Owner had stated that the total value from both parties as if the property was completed was around \$\$\$\$\$ and this is supported by the Appraisals. Under provisions of Rule 20, the subject residence would be 50% complete. Subtracting the land value from the \$\$\$\$\$ leaves an estimate for the improvement when completed of \$\$\$\$\$ based on the Property Owner's land value and \$\$\$\$\$ based on the County's land value. Multiplying the improvement value by 50% and then adding back the land value would indicate a value of \$\$\$\$\$ based on the Property Owner's land value and \$\$\$\$\$ based on the County's land value.

22. Using Rule R884-24P-20, the resulting value would seem to support the Board of Equalization value of \$\$\$\$\$. However, upon review of the evidence submitted at this hearing, a cost to cure higher than the adjustment made by the County of \$\$\$\$\$ has been supported. The Property Owner has testified that his actual hard costs, not including much of the labor would be around \$\$\$\$\$ and REPRESENTATIVE FOR PETITIONER-2 estimated an actual cost to cure from this amount of \$\$\$\$\$. It appears that RESPONDENT'S

estimate does not include the costs to retrofit the old portion of the residence that was not up to current codes or correct structural errors in the new addition. The Commission concludes that the adjustment should be at least the \$\$\$\$ which is the best estimate of the cost to cure presented at the hearing. If the adjustment for the unfinished area is increased in RESPONDENT'S appraisal from \$\$\$\$ to \$\$\$\$\$, it would reduce the value conclusion from the \$\$\$\$ to \$\$\$\$\$.

23. The Commission acknowledges REPRESENTATIVE FOR PETITIONER-2 point that the market conditions around the lien date were such that the purchasers for this type of property would likely have to be cash buyers and likely would be motivated by investment potential. However, REPRESENTATIVE FOR PETITIONER-2'S 60% calculation is substantially based on one sale. Additionally calling that sale into question were factors that indicate duress. It was a bank owed property and had sold for the full listing price within two days of the listing. These factors do call into question the large 60% adjustment made by REPRESENTATIVE FOR PETITIONER-2 in his appraisal and indicate it is a rather speculative adjustment that allows for very little value for the improvements on the property.

24. The Commission does not find that a willing and knowledgeable buyer would pay more for the subject property than the adjusted value of \$\$\$\$ and the value should be lowered to that amount as of the lien date at issue.

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).)

(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. . . (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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

Utah Admin. Rule R 884-24P-20 provides the process for valuing construction projects that are in process on the lien date. The rule provides 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 follow: a) The full cash value of the project expected upon completion . . . 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 coverings, 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: (s) multiply the percent of the residential project completed by the total full cash value of the residential projected expected upon completion; . . .

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. Generally fair market value can be determined based on sales of comparable properties.

2. However, for properties under construction it is difficult to find sales of properties in the same situation that are comparable. The Commission has adopted Utah Admin. Rule R884-24P-20 as a guideline for County Assessors to determine a value based on the percentage a property is complete on the lien date and the expected value when the building is completed. This guideline does, in fact, support the value set by the County Board of Equalization. However, under the applicable statute and constitutional provisions, fair market value is controlling if there is evidence that it is something different from what would be derived from the formula in the rule. The evidence of market value presented at the hearing supports a value for this property of \$\$\$\$\$ and the value should be lowered to that amount.

Jane Phan
Administrative Law Judge

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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

Appeal No. 11-881

(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.