

13-2456
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 11-18-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-2456</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, *Pro Se* (via telephone)
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the Salt Lake County Board of Equalization (“the County”). This matter was argued in an Initial Hearing on June 19, 2014 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2013 lien date, which the Board of Equalization sustained. The County is asking the Commission to lower the value to \$\$\$\$\$. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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 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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (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.
- (5) 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.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. To prevail, a party must 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. The Commission relies in part on *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, parcel no. #####, is located at ADDRESS in CITY. It is a #####-acre parcel improved with a rambler/ranch style residence constructed in YEAR. The home has ##### square feet above grade, and a ##### square foot basement that is 98% finished. It has eight bedrooms, four full and one half bathrooms, and a three-car garage.

The Taxpayer stated that the subject property has a significant amount of space that should really be considered a “bonus room”. He explained that the ceiling in the upper areas of the home is so close to the roof that it is difficult to heat and cool, and that the sidewalls are short.

He stated it is more of a storage area than livable area. He believes contractors build the space because it is cheap to build and it is appealing to buyers, until they live in the space. He considers the home to be a Rambler with bonus space.

The Taxpayer stated that he purchased the property about three years ago for \$\$\$\$\$. He explained that the property was purchased from the bank in a potential flip, and then put back on the market. Those buyers purchased it as an investment, but put it right back on the market. He stated that he paid slightly more than the purchaser who bought it from the bank. That Taxpayer explained that the property had certain problems. He estimated that he has put into \$\$\$\$\$ into the home since he purchased it. He stated that there were a lot of holes in the walls, countertops that had to be replaced, the roof leaked, he had to replace all of the appliances, and the garage did not have an exterior “skin” on it. The Taxpayer noted that those repairs had been made prior to the lien date. In addition, he stated that there were structural problems with the retaining walls on the driveway. He stated that he did the work himself and spent about \$\$\$\$\$ to repair the retaining walls. He stated that if the retaining walls had given way, it would have cost \$\$\$\$\$ to repair. The Taxpayer stated that he believes the \$\$\$\$\$ he put into the repairs on the home have increased the value of the subject to about \$\$\$\$\$.

In support of his requested value, the Taxpayer submitted five comparables. He explained that he tried to use homes as close to the subject area as possible and were of a similar style. In addition to the sales price of the properties, the Taxpayer looked at the County’s assessed value. He explained that he left the County’s land value, and looked at the value allocated to the improvements on a price per square foot basis. He applied the average land value and average improvement value on a price per square foot basis to the subject to arrive at his requested value. Following are the Taxpayer’s comparables:

	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5	Average	Subject
Address	ADDRESS	LOT #1	LOT #2	LOT #3	LOT #4	Lot #5		
Sale Date	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
Lot Size	#####	#####	#####	#####	#####	#####	#####	#####
Year Built	YEAR							
Sq.Ft. Upper	#####	#####	#####	#####	#####	#####	#####	#####
Sq.Ft. Main	#####	#####	#####	#####	#####	#####	#####	#####
Sq.Ft. Basement	#####	#####	#####	#####	#####	#####	#####	#####
Basement Finish	%%%	%%%	%%%	%%%	%%%	%%%	%%%	%%%
Sales Price		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Sales Price/Sq. Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Assessed Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Land Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Land/Sq. Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Improvement Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Improvement/Sq. Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Total Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In support of his requested value, the County’s representative submitted a CMA report that determined a value of \$\$\$\$\$, which is below the Board of Equalization value. Following are the comparables used in the County’s CMA report:

	Address	Lot Size	Year Built	GL A	BSMT	Sales Date	Sales Price	Adjusted Price
Subject	ADDRESS	####	####	####	####			
Sale #1	LOT #6	####	####	####	####	####	\$\$\$\$\$	\$\$\$\$\$
Sale #2	LOT #7	####	####	####	####	####	\$\$\$\$\$	\$\$\$\$\$
Sale #3	LOT#8	####	####	####	####	####	\$\$\$\$\$	\$\$\$\$\$
Sale #4	LOT#9	####	####	####	####	####	\$\$\$\$\$	\$\$\$\$\$

The County’s representative stated that he felt it was important to find comparable properties that were on a lot size of about #####-acre. He stated that the subject property has a very large detached garage with a loft area, and noted that three of his comparables have some sort of detached garage or barn. The County’s representative noted that he also selected comparables that were in the same neighborhood as the subject, and that they were all listed on the open market and were not distressed sales. He stated that comparable two is the best comparable, in that it is most similar in terms of quality of construction, basement finish, and detached structures.

The County’s representative stated that 68% of the sales in the subject neighborhood were non-distressed. He argued that the Taxpayer’s first comparable should not be considered because it is only #####-acres and was a bank-owned property. He noted that the Taxpayer’s comparables two and five were short-sales. He also noted that comparable two did not have a detached structure; comparable three had no basement finish; and that comparable four was much smaller than the subject, and while it did have detached structures, they were inferior to the subject. He stated that when there is a large detached structure, like the subject has, there has to be some sort of adjustment.

In closing the Taxpayer stated that he did try to find comparables with similar acreage. However, the land value on the one-third acre lot of his first comparable was higher on a per square foot basis, and was bringing up the average. He stated that his comparables that are closer to #####-acre have a value very similar to his average land value. With regard to the detached garages, the Taxpayer proffered that an appraiser only gives about 25% of the cost to build as a value. He stated that unless you sell the property to someone who needs or wants that type of structure, he would not get the cost to build out of the structure. He noted that the appraisal he had done when he purchased the property put a value of \$\$\$\$\$ on the detached structure.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of

Equalization, but also provide a sound evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue, under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer submitted five comparables that sold between April 26, 2012 and August 13, 2013. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$. For the most part the comparables are inferior to the subject property, having less square footage, and being of inferior grade and/or condition. The most similar property is the Taxpayer’s comparable five, which sold for \$\$\$\$\$ in a short-sale transaction. The County’s representative submitted a CMA report with four comparables that sold between June 7, 2012 and February 20, 2013. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$, with adjusted sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The County’s representative requested a valued of \$\$\$\$\$, which is the average sales price of the four comparables used in his CMA report. However, only one of the comparables had an adjusted sale price higher than that, seemingly skewing the average. The adjusted sales prices of the remaining comparables ranged from \$\$\$\$\$ to \$\$\$\$\$, and with the sales price of the Taxpayer’s most similar comparable being \$\$\$\$\$, a value of \$\$\$\$\$ seems most appropriate.

By comparing the value of the subject to the assessed value of his comparable sales, the Taxpayer has effectively raised an equalization argument. To prevail, the Taxpayer must show that the value for the subject property deviates more than 5% from the assessed value of comparable properties. Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm’n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner’s assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner “singled out” for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

The Commission has determined a value of \$\$\$\$\$ for the subject property as of the January 1, 2013 lien date. The Taxpayer provided information comparing the assessed value of the subject property to the assessed values of the comparable sales he submitted. He looked at the average value per square foot using the total square footage, and the average value per square foot of the land. He determined an average land value of \$\$\$\$\$ per square foot and an average improvement value of \$\$\$\$\$ per square foot. Most of the comparables used by the Taxpayer were of inferior

grades and condition when compared to the subject. Additionally, the Taxpayer looked at the total square footage, typically when looked at on a price per square foot basis, only the above-grade square footage is used because basement square footage usually has a lower cost. When looking at the total value, the Taxpayer's comparables ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot, excluding the basement square footage. The average value per square foot is \$\$\$\$\$. The \$\$\$\$\$ value of the subject is \$\$\$\$\$ per square foot. This is in line with the comparables submitted by the Taxpayer, and well below that of the most similar comparable. There is not reasonable cause to reduce the value on an equalization value.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2013 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 Petitioner'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 _____, 2014.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner