

13-579  
TAX TYPE: LOCALLY ASSESSED PRPERTY  
TAX YEAR: 2012  
DATE SIGNED: 10-27-2014  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON

---

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,      Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,      Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No.    13-579</p> <p>Parcel No.    #####</p> <p>Tax Type:    Property Tax / Locally Assessed</p> <p>Tax Year:    2012</p> <p>Judge:        Chapman</p>
---	---

**Presiding:**  
Michael J. Cragun, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner:    TAXPAYER, Taxpayer  
For Respondent:    RESPONDENT, from the Salt Lake County Assessor’s Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 19, 2014.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.    The tax at issue is property tax.
2.    The tax year at issue is 2012, with a lien date of January 1, 2012.
3.    At issue is the fair market value of Parcel No. #####. The subject property is a recreational cabin property located at SUBJECT ADDRESS near TOWN, Utah. The subject property is owned by TAXPAYER (“Petitioner” or “taxpayer”).

4. The Salt Lake County Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2012 tax year. The taxpayer appealed the County BOE’s decision to the Tax Commission.

5. The Commission issued an Initial Hearing Order in this matter on January 31, 2014. The taxpayer timely requested to proceed to a Formal Hearing.

6. The taxpayer asks the Commission to reduce the subject’s 2012 value to \$\$. The County asks the Commission to sustain the subject’s current 2012 value of \$.

7. The subject property consists of a #-acre lot and a two-story cabin that was built around YEAR. The cabin contains #-square feet of “above-grade” living space. The subject property has one indoor bath, and it does not have a basement.

8. The subject property is located near the TOWN Ski Resort. However, it is not located on the ski slopes, and it is not a ski-in, ski-out property. A granite hill separates the subject property from ROAD, but there is a dirt or gravel road that is not on the plats that the taxpayer has been able to use to access the subject property for decades. The County contends that the taxpayer has a prescriptive easement to use this road to access the subject property, which the taxpayer did not refute.

9. The taxpayer explained that the subject property can only be used in the summer as the water is shut off in the winter because the water line is located near the surface of the ground and would freeze in the winter. The subject property is also not connected to a public sewer system. In addition, the taxpayer claims that the road to the subject property is not plowed all of the way to the subject property in the winter.

10. The taxpayer also claims that the subject’s value is diminished because a court has determined that the circular driveway on the subject property may also be used by a neighbor. The taxpayer submitted Findings of Fact and Conclusions of Law from a Utah Third District Court case that the taxpayer’s neighbor

filed against the taxpayer.<sup>1</sup> This document shows that the dirt road with which the subject property is accessed terminates at the circular driveway, which is located mostly on the subject property (Finding #15). However, the court also found that the neighboring property has used the circular driveway for access from at least YEAR until YEAR (Finding #27), until the taxpayer installed gates, rocks, and barricades to block the neighbor from using the circular driveway (Finding #39). The court concluded that the taxpayer's neighbor has a prescriptive easement to use the circular driveway for reasonable access and parking purposes (Conclusion #9), ordered the taxpayer to remove his barricades (Conclusion #10), and determined that neither the taxpayer nor his neighbor could block any users from ingress and egress from the two properties (Conclusion #13).<sup>2</sup>

11. The taxpayer submitted one page from the transcript of the Third District Court case discussed in the prior paragraph to show that a witness testified that the subject property's value would be significantly impacted in a negative manner if the taxpayer's neighbor were to block the taxpayer's access to the subject property.<sup>3</sup> There is no evidence, however, to show that the taxpayer's access to the subject property is or has been blocked. JUDGE order specifically precludes the taxpayer's neighbor from blocking the taxpayer's access to the subject property, as well as precluding the taxpayer from blocking the neighbor's access to the neighboring property.<sup>4</sup>

---

1 Exhibit P-5. The Findings of Fact and Conclusions of Law was signed by JUDGE on October 21, 2013. Although the Findings of Fact and Conclusions of Law was signed subsequent to the January 1, 2012 lien date at issue in this appeal, the lawsuit was initiated on August 23, 2011, prior to the 2012 lien date.

2 The conclusions are consistent with the court's Final Judgment and Award of Prescriptive Easement, which was served on November 6, 2013. Exhibit R-3.

3 Exhibit P-6. The taxpayer explained that the witness was a realtor who specialized in TOWN area properties.

4 Exhibit R-3 (Finding of Fact and Conclusion of Law #12).

12. Furthermore, the taxpayer's proposed value of \$\$\$\$ is based, in part, on appraisals<sup>5</sup> in which the taxpayer's own appraiser, APPRAISER, does not appear to have applied any negative adjustment to account for the taxpayer's access to the subject property being blocked. The evidence does not show that either the taxpayer's ingress or egress from the subject property is or has been blocked. Accordingly, the Commission finds that the subject property's 2012 value is not diminished because access to it has been blocked.

13. The taxpayer contends that the Third District Court's decision that awards a prescriptive easement to the neighbor to use the circular driveway must be considered when determining the subject's value. The Commission agrees. However, the taxpayer has not provided any evidence to show how this judgment affects the subject's 2012 value or how the neighbor's pending lawsuit would have affected value as of this lien date. Apparently, the neighboring property has used the subject's circular driveway for years. Furthermore, the taxpayer's neighbor filed the lawsuit in 2011, and the taxpayer's appraiser, APPRAISER, should have been aware of the pending litigation when he completed the 2013 appraisal on September 16, 2013. APPRAISER, however, does not mention the neighbor's historic use of the circular driveway or the pending litigation concerning this use and any effect it would have on the subject's value, even though he specifically addressed how the property's value was affected by external and functional obsolescence. In addition, RESPONDENT, the County's appraiser, opined that there is nothing showing that the subject's value is affected by the court's decision concerning the use of the circular driveway.

---

5 Exhibits P-2 and P-3. In Exhibit P-2, the taxpayer's appraiser estimated the subject's value to be \$\$\$\$ as of January 1, 2011 ("2011 appraisal"). In Exhibit P-3, the taxpayer's appraiser estimated the subject's value to be \$\$\$\$ as of January 1, 2013 ("2013 appraisal"). It is noted that the effective date of the 2011 appraisal is one year prior to the 2012 lien date at issue in this appeal, while the effective date of the 2013 appraisal is one year after the 2012 lien date. The taxpayer did not submit an appraisal with an effective date of January 1, 2012.

14. The taxpayer also asks the Commission to reduce the subject's 2012 value to \$\$\$\$\$, in part, because the County BOE reduced the subject's 2013 value from \$\$\$\$\$ to \$\$\$\$\$.<sup>6</sup> RESPONDENT indicated that the County Assessor's Office thought that the County BOE made a mistake when it reduced the subject's 2013 value to \$\$\$\$\$. He also indicated that the County Assessor's Office did not appeal the County BOE's 2013 decision to the Tax Commission because it had not been made aware of the decision in time to appeal.

15. In the taxpayer's 2011 appraisal, APPRAISER compared the subject property to five comparable sales that sold between February 2010 and February 2011. All but one of the comparables sold more than one year prior to the 2012 lien date, and two of them sold almost two years prior to this lien date. In the taxpayer's 2013 appraisal, APPRAISER compared the subject property to five more comparable sales, one of which sold in November 2011 (near the 2012 lien date) and four of which sold in 2013 (more than one year after the 2012 lien date).

16. Of the 10 comparables found in the taxpayer's 2011 and 2013 appraisals, the only comparable that sold within six months of the 2012 lien date is Comparable #1 from the 2013 appraisal. This comparable sold for \$\$\$\$\$ in November 2011 and is located near the subject property. However, it is questionable whether this comparable is useful in establishing the subject's fair market value because it appears to be a distressed sale. The County indicates that the November 2011 sale of this property was a short sale involving a bank and noted that this property had previously sold for \$\$\$\$\$ in 2006. The taxpayer did not provide evidence to show that the November 2011 sale was not a short sale. It is also unknown whether the taxpayer's appraiser knew that it was a short sale because he did not mention it or adjust for it in his appraisal. As a

---

<sup>6</sup> Exhibit P-1. This exhibit also includes documents showing that the County BOE reduced the subject's 2009 value from \$\$\$\$\$ to \$\$\$\$\$ and its 2010 value from \$\$\$\$\$ to \$\$\$\$\$. The Commission notes, however, that the Tax Commission established the value of the subject property in both 2008 and 2011, specifically sustaining its 2008 assessed value of \$\$\$\$\$ (*USTC Appeal No. 09-2086*, Formal Hearing Decision Jan. 31, 2011) and reducing its 2011 value from \$\$\$\$\$ to \$\$\$\$\$ (*USTC Appeal No. 12-1603*, Initial Hearing Order Jul. 12, 2013).

result, the Commission finds that this comparable should not be used to establish the subject's fair market value.

17. The Commission is also not convinced that two other comparables found in the taxpayer's 2011 appraisal are helpful in establishing a value for the subject property, specifically Comparables #3 and #4. Comparable #3 is located in CITY-1, Utah, and Comparable #4 is located in CITY-2, Utah near the mouth of CANYON. Both of these properties are located relatively far away from a ski resort, at least in comparison to the subject property and the other comparables. The Commission is aware that the market for properties near ski resorts is different from the market for properties not located in canyons or near ski resorts. Accordingly, the Commission finds that these two comparables should not be used to establish the subject's fair market value.

18. In addition, the Commission notes that one of the remaining comparables, Comparable #1 from the 2011 appraisal, sold for a price that is significantly less than the prices at which the remaining comparables sold. It sold for \$\$\$\$\$ in February 2010, nearly two years prior to the 2012 lien date at issue. It is possible that the sale is an anomaly. Regardless, because this comparable's sales price is such an outlier, it, too, will receive little or no weight when establishing the subject's fair market value.

19. The remaining six comparables found in the taxpayer's 2011 and 2013 appraisals sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The taxpayer's appraiser adjusted these six comparables and arrived at adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The County's appraiser explained that many of these comparables were located in inferior locations and did not have indoor baths. However, the taxpayer's appraiser has adjusted for these differences, and the County has provided no alternative adjustments for these differences.

20. The County also claims that the \$\$\$\$\$ per square foot adjustment used by the taxpayer's appraiser to adjust for differences in square footage is too low. The County stated that it usually sees

adjustments in the canyon areas in the range of \$\$\$\$\$ to \$\$\$\$\$ per square foot. The Commission finds this criticism of the taxpayer's appraisals to be convincing because canyon properties often sell for higher prices per square foot than non-canyon properties. In addition, the taxpayer's appraiser did not appear to explain why his \$\$\$\$\$ per square foot adjustment would be more appropriate. If the square footage adjustments made by the taxpayer's appraiser for the remaining six comparables in the 2011 and 2013 appraisals are revised to \$\$\$\$\$ per square foot, the adjusted sales prices of these six comparables would range between \$\$\$\$\$ and \$\$\$\$\$. It is noted that many of these comparables are older than the subject property and that the taxpayer's appraiser did not make adjustments for differences in "age," even though he specifically noted in his appraisals that the subject property has a "newer kitchen remodel." As a result, it would seem that the subject's value should be at the high end of this revised range of adjusted sales prices, specifically at \$\$\$\$\$.

21. Based on the foregoing, the Commission finds that the taxpayer's evidence best indicates a value of \$\$\$\$\$ for the subject property.

22. The County submitted three comparable sales<sup>7</sup> to support its request for the Commission to sustain the subject's current value of \$\$\$\$\$. These three comparables are all located within a mile of the subject property and, thus, are closer to the subject property than most of the comparables found in the taxpayer's appraisals. The County's three comparables sold between February 2011 and August 2012 for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

23. The County's three comparables show that properties near the subject property sell for prices that are higher than the subject's current value of \$\$\$\$\$. However, the County did not make any adjustments to its comparables, although it appears that all three comparables may be superior to the subject property.

---

7 Exhibit P-1.

Without such adjustments, it is unclear whether these comparables would support the subject's current value or if they would support a lower value for the subject property.

24. The County admits that the comparable that sold for \$\$\$\$\$ is superior to the subject property because it has year-round access and can be used in the winter. The County claims that its other two comparables, which sold for \$\$\$\$\$ and \$\$\$\$\$, are more similar to the subject property because they, like the subject, do not have sewer or winter water. However, the Multiple Listing Service ("MLS") information for these two comparables indicate that the one that sold for \$\$\$\$\$ is a log cabin, whereas the subject cabin is not, and that both of the comparables have "terrific views" of CANYON. There is no information to indicate that the subject property has such views. For these reasons, these comparables suggest that the subject's value is less than \$\$\$\$\$. However, without adjustments, they do not show whether or not the subject's current value is correct.

25. Based on the foregoing, the taxpayer's evidence is sufficient to demonstrate that the subject's current value of \$\$\$\$\$ is too high and that it should be reduced to \$\$\$\$\$. It is the most convincing evidence of value provided by either party. For these reasons, the subject's fair market value is \$\$\$\$\$ for the 2012 tax year.

#### APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll 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."

2. 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 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.

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, as follows in pertinent part:

(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. . . .  
. . . .

4. 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).

CONCLUSIONS OF LAW

1. For the 2012 tax year at issue, Section 59-2-103(1) provides for the subject property to be taxed on the basis of its “fair market value” as of January 1, 2012. Section 59-2-102(12) defines “fair market value” as “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.”

2. The County does not request a value that is different from the \$\$\$\$ value that was established by the County BOE. Accordingly, the \$\$\$\$ value has the presumption of correctness. As a result, the taxpayer has the burden not only to demonstrate that the \$\$\$\$ value is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject’s value to the \$\$\$\$ amount he proposes.

3. The most convincing evidence of the subject property's value is obtained from six of the comparables found in the taxpayer's 2011 and 2013 appraisals (as discussed earlier), which the taxpayer's appraiser adjusted. When the square footage adjustment made by the taxpayer's appraiser is revised to \$\$\$\$ per square foot, these comparables indicate that the subject's fair market value is \$\$\$\$ as of the January 1, 2012 lien date. The evidence, however, does not convincingly show that the subject's 2012 value is as low as the \$\$\$\$ value proposed by the taxpayer.

4. The taxpayer asked the Commission to consider the values that the County BOE established for the subject property for other years, specifically for 2009, 2010, and 2013. For the 2012 tax year at issue in this appeal, there was no Utah law requiring a consideration of a value reduction for other years.<sup>8</sup> Although the Commission is not required for this 2012 tax year appeal to consider the reductions established by the County BOE for 2009, 2010, or 2013, it notes that when evidence was presented to the Tax Commission to determine the subject's value in 2011 (the year *immediately* preceding the year at issue in this appeal), the Commission only reduced the subject's value to \$\$\$\$\$. The 2011 reduction in value is more consistent with a 2012 value of \$\$\$\$ than the lower values that the County BOE, not the Commission, established for 2009, 2010, and 2013.

5. Based on the foregoing, the taxpayer has submitted sufficient evidence to call the subject's current 2012 value of \$\$\$\$ into question and to show that the subject's value should be reduced to \$\$\$\$\$. However, the taxpayer's information is insufficient to show that the subject's 2012 value should be lower than this amount. For these reasons, the Commission should reduce the subject's 2012 value to \$\$\$\$.

---

<sup>8</sup> The Commission notes that beginning with the 2013 tax year, Utah law does provide for a reduction in value made within the three years prior to the year at issue to be considered. UCA §59-2-301.4 (2013). However, it is noted that even under the new law in effect for the 2013 tax year, a reduction for a year *subsequent* to the year at issue is not required to be considered. Only reductions for the three *prior* years are to be considered.

---

Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's value should be reduced to \$\$\$\$ for the 2012 tax year. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

John L. Valentine  
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 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 et seq. and 63G-4-401 et seq.