

12-828
TAX TYPE: PROPERTY TAX
TAX YEAR: 2011
DATE SIGNED: 4-29-14
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 12-828 Parcel No. ##### Tax Type: Property Tax Tax Year: 2011 Judge: Marshall
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Presiding:
Robert Pero, Commissioner
Jan Marshall, Administrative Judge

Appearances:
For Petitioner: TAXPAYER, *Pro Se*
REPRESENTATIVE FOR TAXPAYER, *Pro Se*
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 12, 2013, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Taxpayer”) is appealing the assessed value of the subject property located in Salt Lake County, Utah.
2. The Salt Lake County Assessor’s Office assessed the subject property at \$\$\$\$ as of the January 1, 2011 lien date, which the Board of Equalization sustained. The Taxpayer is requesting the

value be reduced to between \$\$\$\$\$ and \$\$\$\$\$. The County is requesting the value be lowered to \$\$\$\$\$.

3. The subject property is parcel no. #####, located at ADDRESS-1 in CITY. It is a #####-acre parcel improved with a multi-family dwelling, built in YEAR. It has ##### square feet above grade with a basement of ##### square feet. As of the lien date, the dwelling was legally a four-plex. The subject property does not have on-site parking, and tenants primarily park in an adjacent lot, which is owned by the city.
4. REPRESENTATIVE FOR TAXPAYER stated that she is a real estate broker, and in her opinion the subject property was not marketable as of the lien date.
5. Taxpayers received a letter dated November 3, 2010 from the Department of Community and Economic Development offering an administrative interpretation regarding the number of units at the subject property. It was their opinion that though the use of the subject as a five-unit dwelling had been authorized in 2002, that use had been discontinued and had undergone a change in use to a four-plex based on a building permit issued in 2005 to remove plumbing fixtures from the basement unit and use it as storage space. (Exhibit P-2).
6. On December 10, 2010 a "Certificate of Noncompliance" was recorded against the subject property indicating that the subject had an illegal fifth unit that was located in the basement. (Exhibit P-1).
7. REPRESENTATIVE FOR TAXPAYER stated that the property had non-compliance issues when they purchased it, and that even more issues arose regarding the fifth unit. She stated that they first received a non-compliance letter in September 2010 that indicated the subject was an illegal unit, as well as issues with the heaters not being in compliance. She stated that notices were posted of the units being closed for occupancy, and that the issue was not finally resolved until November 2011.
8. REPRESENTATIVE FOR TAXPAYER believes that the comparables she had originally submitted were not as relevant because the subject was considered a four-plex, rather than a five-plex as of the lien date. She noted that a 5-plex is harder to sell, as it requires commercial financing.
9. The Taxpayers submitted one comparable, located at ADDRESS-2 in CITY-1. It is a four-plex, built in 1973, with two-bedroom/two-bathroom units. It sold on January 14, 2011 for \$\$\$\$\$. (Exhibit P-3).

10. The County’s representative offered an income approach in support of his requested value. He had originally calculated a value of \$\$\$\$\$, treating the subject property as a five-plex. However, he adjusted his calculations to exclude the rents from the basement, as the subject was legally a four-plex as of the lien date. He noted that the actual rents, excluding the basement, were \$\$\$\$\$ per month. He used a gross rent multiplier of #####, to arrive at a value of \$\$\$\$\$. In his opinion, a 10% adjustment should be made to account for the necessary repairs, reducing his opinion of value to \$\$\$\$\$. (Exhibit R-1).
11. The County’s representative noted that he was surprised at the condition of the subject, and that made finding comparables difficult. He believes the 10% adjustment is reasonable to cover the repairs that would be necessary to maintain the level of income. He stated that he did not take into consideration the non-compliance letter in determining his adjustment amount, that it was based off of his inspection of the property and discussions with the Taxpayers.
12. The County’s looked at sales and rents from July 2009 through July 2011. He plotted the GRM on a graph based on date, and determined that the GRM would have been ##### as of January 1, 2011. (Exhibit R-1). Following are the properties the County relied upon:

	Address	Lot Size	Year Built	Total Sq.Ft.	Sales Date	Price/ Unit	Price/ Sq.Ft.	Rent/ Sq.Ft.	Adjusted Price	GRM
Subject	ADDRESS-1	###	###	###						
Sale #1	ADDRESS-3	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #2	ADDRESS-4	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #3	ADDRESS-5	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #4	ADDRESS-6	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #5	ADDRESS-7	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #6	ADDRESS-8	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #7	ADDRESS-9	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #8	ADDRESS-10	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #9	ADDRESS-11	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #10	ADDRESS-12	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #11	ADDRESS-13	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #12	ADDRESS-14	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #13	ADDRESS-15	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #14	ADDRESS-16	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #15	ADDRESS-17	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###
Sale #16	ADDRESS-18	###	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	###

13. REPRESENTATIVE FOR TAXPAYER argued that the County’s comparables one and four, along with the comparable she submitted are the most indicative of value for the subject. She stated that because they purchased the property in a distressed sale, that distressed sales would be a better indication of value. However, there is no indication that the comparables she considers to be most relevant were distressed sales.

14. TAXPAYER argued that the sales and income approaches submitted do not take into consideration the zoning and non-compliance issues. He estimated that they spent between \$\$\$\$ and \$\$\$\$ to bring the building to compliance. He noted that there were structural issues that required closing off part of the building while the work was done. He noted that it took them working ten to fifteen hours a week for three years to complete all of the work. REPRESENTATIVE FOR TAXPAYER noted that it took extraordinary efforts to get this property to where it is now.

APPLICABLE LAW

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

- (1) All tangible personal 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).

CONCLUSIONS OF LAW

In seeking a value lower than that established by the board of equalization, a party has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an 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. Both parties are requesting a reduction in the Board of Equalization value, and have provided evidence showing the Board value to be in error. The only remaining question is whether there is an evidentiary basis to support their requested values.

The Taxpayer submitted one sale of a four-plex that sold in January of 2011 for \$\$\$\$\$; as well as information on the non-compliance of the subject property and fifth unit being considered illegal. Taxpayers estimated they spent \$\$\$\$\$ to \$\$\$\$\$ on repairs to the subject property, but that it was a three-year process. No evidence was submitted as to what those expenses were and what work was required to bring the subject to the condition it was as of the lien date.

The County offered an income approach based on the actual rents of the four legal units, as of the lien date, and a GRM obtained from sales of other small income-producing properties in the area. He determined a value of \$\$\$\$\$ and then made a 10% adjustment for repairs, coming up with a final value of \$\$\$\$\$. Looking at the sales used to obtain the GRM, sales two, seven, and ten appear to be the most similar in terms of location, lot size, age, and square footage. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$. The median sales price of these comparables is \$\$\$\$\$, with the mean being \$\$\$\$\$. This is slightly lower than the \$\$\$\$\$ value the County arrived at using the income approach, and there is no indication that these properties had the same non-compliance or structural issues as the subject. If the same 10% adjustment for repairs were made to the indicated value of \$\$\$\$\$, it would result in a value of \$\$\$\$\$ for the subject property.

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, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this _____ day of _____, 2014.

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 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.