

12-829, 13-795
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED
TAX YEARS: 2011, 2012
DATE SIGNED: 2-11-14
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 12-829, 13-795 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011, 2012 Judge: Jensen
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This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Robert Pero, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, for the Taxpayer
Respondent: RESPONDENT, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 19, 2013. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the “Taxpayer”) brings this appeal from the decision of the Board of Equalization of Salt Lake County (the “County”) for lien dates January 1, 2011 and January 1, 2012.

2. The subject property, parcel no. #####, is located at ADDRESS in Salt Lake County. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$ for 2011. The County Board of Equalization reduced the value to \$\$\$\$ for 2011. For 2012, the assessed value and board of equalization value are both \$\$\$\$.

3. At the formal hearing, the Taxpayer requested that the value be reduced to \$\$\$\$ for each of the two years at issue. The County requested that the value set by the board of equalization be reduced to \$\$\$\$ for each of the two years at issue.

4. The subject property consists of a #####-acre vacant lot. It is one of ##### adjoining lots on STREET in CITY. All ##### lots are on a hillside that requires terracing to create a driveway, and to a lesser extent, a building pad. Steep terrain makes much of the subject property unusable, lessening the usable space as a lot.

5. The Taxpayer testified that he received the subject property following a foreclosure when the developer who purchased the lot did not meet financial obligations. The developer had completed extensive site work to terrace and slope a driveway, but the Taxpayer does not know if city officials will accept the previous site work without re-engineering and re-inspecting it.

6. The Taxpayer testified that as a practical matter, gaining building access to the subject property with a reasonably sloped driveway would best be accomplished with a single driveway that traverses all ##### lots on STREET and a switchback on ##### of the lots.

7. The Taxpayer testified that as of the January 1, 2011 and January 1, 2012 lien dates, the other ##### lots on STREET were being foreclosed on by a bank from a developer that did not meet financial obligations. The Taxpayer testified that he attempted to work with the bank to cooperate on terracing and similar site work that would bring all ##### lots into a more saleable condition. The Taxpayer testified that bank officials indicated that the bank was not in the business of holding or improving property and that the bank intended to complete the foreclosure process so that it could sell the properties.

8. In December 2012, the bank sold the ##### other lots in a single transaction. The Taxpayer testified he has spoken with the buyer of the other ##### lots on STREET and learned that the new owner is interested in a joint effort to build the necessary access for all ##### lots, but that the new owner is unable or unwilling to invest any money into the project.

9. The Taxpayer provided evidence of the sales of ##### comparable lots as follows:

Sale Date	Sale Price	Acreage	Terrain	View	Proximity
Subject Property		#####	TERRAIN	VIEW	##### miles
12/17/12	\$\$\$\$\$	#####	TERRAIN	VIEW	STREET
12/17/12	\$\$\$\$\$	#####	TERRAIN	VIEW	STREET
12/17/12	\$\$\$\$\$	#####	TERRAIN	VIEW	STREET

10. The Taxpayer's comparable sales were the other ##### STREET lots described in paragraph ##### above. These are the sales from the bank to the new owner following foreclosure.

11. The County provided an appraisal, prepared by RESPONDENT. It was the appraiser's conclusion that the value for the subject property as of the lien date at issue was \$\$\$\$\$. The appraiser relied on the sales of six comparables sales as follows:

Sale Date	Sale Price/Adj. Value	Acreage	Terrain	View	Proximity
Subject Property		#####	TERRAIN	VIEW	##### miles
8/7/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles
6/10/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles
6/25/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles
6/10/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles
12/10/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles
8/30/10	\$\$\$\$\$	#####	TERRAIN	VIEW	##### miles

12. The appraiser made small adjustments to the selling prices to compensate for differences between the subject property and the comparable properties. These were primarily size adjustments, and were small compared to the selling prices of the comparable sales; the largest size adjustment was \$\$\$\$\$. The appraiser testified that his size adjustments were modest because the steep terrain made the subject property much like a smaller lot, with advantages limited mainly to increased privacy from neighbors. Another adjustment was for location because the appraiser found a few of the comparables' locations inferior to the subject property. The largest location adjustment was %%% of the selling price of the comparables for ##### of the properties.

13. The appraiser made no adjustments for view differences or for the steep terrain on the subject property, explaining that a positive adjustment for the superior view on the subject property offset the negative adjustment that would be made for steep terrain and the building problems associated in building a driveway or a residence on the subject property.

14. The appraiser reconciled the adjusted values of the comparable properties to \$\$\$\$ as a final opinion of value.

15. The County presented evidence that the Taxpayer listed the subject property for sale in January 2012 for \$\$\$\$\$. “The remarks on the MLS listing indicated, “VIEW. Over \$\$\$\$ already invested in retaining walls, driveway access and site prep excavation work.”

16. Responding to the County’s evidence of the \$\$\$\$ listing, the Taxpayer testified that he had no responses at that price and listed it more to support his valuation of the subject property at its higher historic value on his financial statements.

17. In response to questioning from the County’s appraiser, the Taxpayer testified that he would not sell the subject property for \$\$\$\$ because he planned to hold it for a time rather than sell and realize a loss on the property.

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 provide by law. Utah Code Ann. §59-2-103 (1).

“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. Utah Code Ann. §59-2-102(12).

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

Any party requesting a value different from the value established by the county board of equalization has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

To prevail, a party requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained 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. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 590 P.2d. 332 (Utah 1979).

CONCLUSIONS OF LAW

There is good cause to conclude that there is error in the values set for the subject property by the board of equalization for the two years at issue. No evidence presented to the Commission in the formal

hearing supports this value. This conclusion requires that the Commission set a new value for the subject property. That new value must have a sound evidentiary basis. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

The Taxpayer has presented evidence in support of a requested \$\$\$\$ value. The County has submitted evidence in support of a requested \$\$\$\$ value. To determine which evidence meets the test of a sound evidentiary basis, the Commission considers the totality of the evidence in light of Utah law.

Utah law 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.” Utah Code Ann. §59-2-102(12). Sales with distress conditions such as short sales or foreclosures are problematic because they raise concerns that the seller is not free from “any compulsion to . . . sell.” Sales after a given valuation date involve buyers and sellers with market knowledge that was not known or knowable as of the valuation date. These post-valuation date sales raise concerns of knowledge that is not the “reasonable knowledge” contemplated by Section 59-2-102(12).

Utah law provides that bulk sales of lots are not appropriate for tax assessment valuation. *Board of Equalization v. Utah State Tax Comm'n ex rel. Benchmark* 864 P.2d 882 (Utah, 1993). Although in *Benchmark*, the issue was specifically an absorption discount, the court noted that “[t]he method contemplates a hypothetical sale in bulk from one developer to another.” In the *Benchmark* decision, the Utah Supreme Court stated that “an absorption discount violates sections 2 and 3 of article XIII of the Utah Constitution” and “is inconsistent with Utah's statutory scheme of ad valorem taxation.”

Applying these principles of Utah law, it appears that the Taxpayer’s sales have three problems. First, all of the Taxpayer’s sales are foreclosure sales. These are distress sales and thus cannot be said to involve buyers free from compulsion to sell. Second, the Taxpayer’s sales have sale dates in December 2012, approximately two years after the January 1, 2011 valuation date and approximately one year after the January 1, 2012 valuation date for this case. These sales thus involve a buyer and a seller that have market knowledge that no reasonable buyer could have possessed as of either January 1, 2011 or January 1, 2012. Third, the ##### sales were all on the same date from the same bank to the same buyer. This constitutes a bulk sale. As bulk sales, they are not valid for tax assessment valuation purposes. While it might seem like a good idea to use the Taxpayer’s sales because they are geographically close and topographically similar to the subject property, the Commission prefers to use evidence that meets the requirements of Utah law.

There is no evidence that the County’s sales have distress conditions. They have sale dates before January 1, 2011, which means that they include buyers and sellers with market knowledge that would have been available to a buyer or seller as of January 1, 2011 and January 1, 2012. There is no evidence

that any of the County's comparable sales were bulk sales. These sales thus match the requirements of Utah law.

While the County's comparable sales match the requirements of Utah law, they are not without their problems. All are considerably smaller than the subject property. They are some distance from the subject property. With one exception, all are flat and level. Only one has a view similar to the subject property. All lack the impediments to building imposed by the need for terracing and a lengthy driveway across steep terrain.

The appraiser addressed some of the concerns raised with the County's comparables. The appraiser made size adjustments, but kept them modest in recognition of the limited building area on the subject property. The appraiser made location adjustments that seem to address some of the concerns for comparables that are in different neighborhoods miles from the subject property.

With regard to the appraiser's treatment of view and steep slope as equal superior and inferior factors that offset each other, the Commission considers whether the evidence supports such an offset. To do this, it considers the County's last listed comparable, which shares the attributes of a VIEW and steep slope with the subject property. The \$\$\$\$ sale price and \$\$\$\$ adjusted value for this comparable is consistent with the other County comparables' selling prices and adjusted values. On that basis, it appears that the evidence does support the County's treatment of view and steep slope as offsetting factors.

The County did not dispute the Taxpayer's testimony that as of the lien date, the subject property needed improvements such as terracing and a lengthy driveway across steep terrain before the subject property could be improved with a residence. There was no evidence of similar problems with the County's comparables. The appraiser made no adjustment for this difference. This lack of adjustment is troubling, but neither party suggested a method to adjust for it.

Because there is no evidence before the Commission to support an adjustment for costs associated with a lengthy or terraced driveway, the Commission has no basis to create such an adjustment. The Commission is bound to make its determinations on the basis of the evidence presented and cannot speculate on evidence that could have been presented but was not.

On the basis of the totality of the evidence presented, there is a sound evidentiary basis to reduce the value of the subject property to \$\$\$\$ as of the lien dates.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2011 and January 1, 2012 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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 in accordance with 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 and 63G-4-401 et. seq.