

12-2410
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 5-29-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 12-2410 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2012 Judge: Chapman
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Presiding:

R. Bruce Johnson, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Owner
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 March 10, 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 duplex located at SUBJECT ADDRESS in CITY, 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 June 7, 2013. The taxpayer timely requested to proceed to a Formal Hearing.

6. The taxpayer asks the Commission to reduce the subject’s current value of \$\$\$\$ to somewhere in the range of \$\$\$\$ to \$\$\$\$. The County asks the Commission to reduce the subject’s value to \$\$\$\$.

7. The subject property consists of a #####-acre lot and a duplex that was built in 1911. The duplex has a total of 1,890 square feet of above grade space (for both units combined). It also has 1,005 square feet of unfinished basement space. The subject duplex is an “up and down” duplex. One of the subject’s duplexes is located on the main floor, while the second duplex is located on the second floor. Although both duplexes are the same size, the duplex on the main floor has two bedrooms, whereas the duplex on the second floor has only one bedroom. The subject’s two units are separately metered and have separate furnaces and water heaters. The taxpayer stated that it is possible that the subject property was converted from a single-family residence to a duplex at some time, but he guessed that it has been used as a duplex for at least 80 years. The subject duplex has a one-car detached garage, a one-car carport, and one decorative, non-working fireplace.

8. The subject’s basement houses the furnaces and water heaters for both units. It is a shelf basement that can be reached through the main floor unit via a steep staircase that includes a 90-degree turn in the staircase. The taxpayer explained that the main floor duplex can use the basement for storage, but that large items, like a sofa or a bed, cannot be maneuvered through the staircase. The taxpayer stated that the basement’s ceiling height varies from five to six feet.

9. The taxpayer purchased the subject property in 2005, at which time it had been remodeled and updated to a limited extent. The taxpayer estimated that the updates occurred between 2000 and 2005. The taxpayer stated that the appliances and linoleum floors in the kitchens had been replaced. However, he guessed that the kitchen cabinets and countertops are from the 1970's. He stated that the bath in each duplex had been remodeled with the exception of the bathtubs, which he stated to be "original." The taxpayer testified that the subject duplex's plumbing has not been updated, but that its electrical system has been updated to some extent. The subject property does not have air conditioning.

10. As of the January 1, 2012 lien date, the taxpayer stated that he was receiving rents of \$\$\$\$\$ per month for the second floor duplex and "close to" \$\$\$\$\$ per month for the main floor duplex. The taxpayer stated that he may have been receiving \$\$\$\$\$ per month for the main floor duplex, but could not remember for sure. Depending on whether the main floor unit rented for \$\$\$\$\$ or \$\$\$\$\$ per month, the total of these actual rents would be between \$\$\$\$\$ and \$\$\$\$\$ per month. The taxpayer stated that the \$\$\$\$\$ per month rental rate he was receiving for the second floor duplex on the lien date may have been below market rates because the renter had been there several years and because he was able to rent this unit for \$\$\$\$\$ per month later in 2012 after the renter left. At \$\$\$\$\$ per month for the second floor duplex and \$\$\$\$\$ or \$\$\$\$\$ per month for the main floor duplex, the total rents would be between \$\$\$\$\$ and \$\$\$\$\$ per month.¹

11. The taxpayer believes that his proposed value range of \$\$\$\$\$ to \$\$\$\$\$ is supported by the appraisal that the County submitted as evidence of the subject's 2012 value,² if the appraisal's market approach is revised and if the appraisal's gross rent multiplier ("GRM") income approach is changed to reflect actual

1 As of the March 10, 2014 Formal Hearing date (which is more than two years after the 2012 lien date at issue), the taxpayer stated that he was receiving rents of \$\$\$\$\$ per month rent for the second floor unit (after allowing three "singles" to rent it) and \$\$\$\$\$ per month for the main floor unit (after charging more to a new renter because the renter has a dog). These current rents total \$\$\$\$\$ per month.

2 County's Exhibit R-1.

rents or given relatively little or no weight. The taxpayer did not submit any documentary evidence.

12. RESPONDENT, an appraiser in the County Assessor’s Office, prepared the County’s appraisal, in which he estimated the subject’s value, as of January 1, 2012, to be \$\$\$\$\$. RESPONDENT estimated this value after deriving a \$\$\$\$\$ value for the subject with both the market approach and the GRM income approach. However, RESPONDENT stated that after hearing the taxpayer’s testimony, his appraised value might be high. Based on his market approach value being reduced from \$\$\$\$\$ to \$\$\$\$\$ and his GRM income approach value being reduced from \$\$\$\$\$ to \$\$\$\$\$, RESPONDENT asked the Commission to reduce the subject’s value to \$\$\$\$\$ for the 2012 tax year.

Market Approach

13. In the appraisal’s market approach, the County compared the subject property to seven comparable sales that sold near the lien date (between July 2011 and January 2012). For each comparable, the following chart show the comparable’s address, its lot size, the number of bedrooms in each of its unit, the style of duplex (whether it is a side-by-side or up and down duplex), its sales prices, the County’s original adjusted sales price, and the County’s revised adjusted sales price (the County reduced the adjusted sales prices of Comparables #1 and #4 after hearing the taxpayer’s testimony).

	Address	Lot Size	No. of Bed-rooms	Style of Duplex	Sales Price	Original Adjusted Sales Price	Revised Adjusted Sales Price
Subject	SUBJECT ADDRESS	0.11	2/1	Up/Down	-----	-----	-----
Comp #1	ADDRESS-1	0.08	2/2	Side/Side	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #2	ADDRESS-2	0.23	3/2	Side/Side	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #3	ADDRESS-3	0.05	1/1	Side/Side	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #4	ADDRESS-4	0.10	2/2	Side/Side	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #5	ADDRESS-5	0.06	2/1	Up/Down	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #6	ADDRESS-6	0.17	1/1	Side/Side	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #7	ADDRESS-7	0.14	3/2	Up/Down	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

14. The County indicated that it might be appropriate to make a downward adjustment to Comparables #1 and #4 because the taxpayer, who is in the real estate business, testified that he had knowledge that these two comparables had been totally remodeled before they sold. RESPONDENT stated it was possible that the sales prices for these two comparables required downward adjustments of \$\$\$\$ for condition. He also testified that this reduction would result in revised adjusted sales prices of \$\$\$\$ for Comparable #1 and \$\$\$\$ for Comparable #4. The County stated that reducing the adjusted sales price of each of these two comparables by \$\$\$\$ would result in its overall market approach value being reduced from \$\$\$\$ to \$\$\$\$.

15. The taxpayer, however, contends that two of the County's other comparables should not be considered because they are too dissimilar from the subject duplex, specifically Comparables #2 and #7. Comparable #2 is the only comparable located *more than* 0.80 miles away from the subject property. It is located 2.34 miles away from the subject property at COMPARABLE ADDRESS-2, which the taxpayer contends is a more desirable and expensive area. The County did not make any location adjustment to this comparable. This comparable also has a lot size that is significantly larger than the subject's lot size and the lot sizes of the other comparables. The County also did not make any lot size adjustment to this comparable. The Commission is not convinced that these differences have been properly accounted for in the appraisal.

16. Comparable #7 is the only comparable with units that are not separately metered. As a result, the taxpayer opined on whether it was a "legal" duplex. The County, on the other hand, stated that if the property is marketed as a duplex, it should be used as a comparable for other duplexes, regardless of whether its units are separately metered. Because Comparable #7's units are not separately metered, it is possible that it can also be used as a single-family residence without many alterations. For these reasons, the Commission is not convinced that this comparable should be used to estimate the subject's value.

17. The Commission also notes that Comparables #2 and #7 are the comparables in the County's appraisal that sold for the highest prices and that their revised adjusted sales prices are also the highest of any

of the comparables. Furthermore, it is noted that they are the only comparables with five total bedrooms (three bedrooms in one unit and two bedrooms in the other). For these reasons, the Commission will disregard these two comparables and determine the value shown by the market approach by analyzing the remaining five comparables.

18. The taxpayer contends that some of the County's adjustments to the other comparables are questionable. The taxpayer contends that the County's \$\$\$\$ adjustment for air conditioning is insufficient, and that the adjustment should probably be \$\$\$\$ (an adjustment of \$\$\$\$ per unit instead of \$\$\$\$ for the entire property). The taxpayer also contends that side-by-side duplexes are more desirable than up and down duplexes and notes that the County did not adjust for this difference. The taxpayer also contends that the County's adjustment for the subject's decorative, non-functioning fireplace at \$\$\$\$ is too high. The taxpayer contends that the County has not adjusted some of the other comparables for their superior conditions and locations. Other than the taxpayer's opinion, however, he has not provided any evidence to show that the market would have reacted differently than RESPONDENT indicated with his adjustments. Although the taxpayer indicated that he has worked in the real estate field, he did not indicate that he was, like RESPONDENT, a certified appraiser. All of the remaining five comparables are located within one mile of the subject property, and the subject property itself has been updated to a significant extent since 2000. For these reasons, the Commission is not convinced that the County's adjustments for the remaining five comparables need to be revised any further.

19. As a result, the revised adjusted sales prices of the five remaining comparables are \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. These adjusted sales prices indicate that \$\$\$\$\$ is a reasonable value for the subject property. If the two comparables that were completely remodeled (Comparables #1 and #4) were also removed from the analysis, the adjusted sales prices of the three remaining comparables are \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. These adjusted sales prices also indicate that \$\$\$\$\$ is a reasonable value for the subject property.

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Based on the foregoing, the Commission concludes that the market approach shows the subject's value to be \$\$\$\$\$.

Income Approach

20. In its appraisal, the County also used the GRM income approach to estimate a value of \$\$\$\$\$ for the subject duplex. The County derived this value by multiplying market rents of \$\$\$\$\$ per month by a GRM of 150. The County did not know the subject's actual rental rates when it prepared its appraisal. The County estimated the \$\$\$\$\$ per month market rent amount by comparing the subject to three comparable rentals (which also happened to be three of the comparables that the County used in its market approach). The County obtained the GRM of 150 from the individual GRM's at which three comparables sold (which again happen to be three of the comparables that the County used in its market approach).

21. It appears that the County's estimated market rent of \$\$\$\$\$ per month for the subject property, as of the lien date, may be high. First, it is clear that the subject's second floor unit has historically rented at a lower rate than its main floor unit. Second, the taxpayer testified that the actual rents, as of the lien date, were \$\$\$\$\$ per month for the second floor unit and between \$\$\$\$\$ and \$\$\$\$\$ per month for the main floor unit, the total of which would be between \$\$\$\$\$ and \$\$\$\$\$ per month. However, the taxpayer admitted that he was able to rent the second floor unit later in 2012 for \$\$\$\$\$ per month after a long-term renter left (who may have been paying below-market rent as of the lien date). At \$\$\$\$\$ per month for the second floor duplex and between \$\$\$\$\$ and \$\$\$\$\$ per month for the main floor duplex, the subject's total rents would be between \$\$\$\$\$ and \$\$\$\$\$ per month.

22. Third, the County used its three market approach comparables with the highest total rents as the three rental comparables with which it estimated the subject's market rent. It is noted that these three rental comparables all had at least one more bedroom than the subject property and that one of the comparables had two more bedrooms than the subject. In addition, two of the three rental comparables are the market approach

comparables that had been completely renovated. Furthermore, the third rental comparable is the market approach comparable located on STREET, which the Commission excluded from the market approach analysis after determining that it was too dissimilar to the subject property to be a convincing comparable. As a result, the County's use of these three rental comparables, without additional adjustments, could result in the subject's total market rents being overestimated.

23. Based on the foregoing, it would seem more reasonable to use total rents of \$\$\$\$ to \$\$\$\$ per month in the GRM model to estimate a value for the subject as of the lien date. If a rental rate between \$\$\$\$ and \$\$\$\$ per month is substituted into the County's GRM approach, it results in a value for the subject that is between \$\$\$\$ and \$\$\$\$.

24. The County explained that the GRM approach is often used by appraisers to estimate the value of rental properties that contain two to four units. The County also pointed out that the standard appraisal report for properties with two to four units contains a GRM approach section for an appraiser to complete.

25. The taxpayer rebutted the County's use of the GRM approach and stated that an investor may prefer to use other income approaches when deciding on a price to pay for a duplex. First, the taxpayer explained that a "capitalization approach" using the County's estimated market rents of \$\$\$\$ per month would produce a value that is even lower than the value he is proposing. The taxpayer explained that the County's monthly rental rate of \$\$\$\$ produces \$\$\$\$ of potential gross income ("PGI"). If he subtracted vacancy loss of 5%, \$\$\$\$ of property taxes, and \$\$\$\$ of insurance expenses and capitalized the resulting net operating income ("NOI") at a 7% capitalization rate, he stated that he would derive an income approach of about \$\$\$\$. He also stated that this approach would result in an even lower value if he subtracted other expenses that he incurs, which he estimated to be at least \$\$\$\$ a year.³

3 The County objected to the taxpayer's testimony about alternative income approaches because the taxpayer had not exchanged this evidence prior to the hearing. The Commission overruled the County's

26. Second, the taxpayer also contends that a “rate of return” income analysis would also show that the County’s appraised value of \$\$\$\$ is too high. The taxpayer explained that a potential buyer might look at the rate of return that could be earned on the required down payment to determine whether it would pay a certain price for a duplex. The taxpayer stated that a potential buyer purchasing a duplex at the County’s appraised value of \$\$\$\$ would have to pay 25% of that amount, or \$\$\$\$\$, as a down payment.⁴ Based on the County’s estimated income of \$\$\$\$ per month, a potential investor could expect \$\$\$\$ of income from which he or she would have to subtract vacancy losses, expenses, and mortgage payments to determine their “cash return.” The taxpayer performed this calculation twice at the hearing and indicated that an investor purchasing the subject property at the County’s estimated value of \$\$\$\$ could only generate a return on their \$\$\$\$ down payment that was between 1.3% and 2.0%. The taxpayer stated that most investors want a 6.0% return on investment. As a result, he concluded that the County’s \$\$\$\$ appraised value is too high.

27. The Commission is not persuaded that the fair market value of a duplex is best derived with either an income capitalization approach or a rate of return on investment approach. As to the capitalization approach, the taxpayer has not shown that its proposed capitalization rate of 7% is the rate at which duplexes sell in the market. As to the rate of return on investment approach, the taxpayer has not shown that the down payment would have been 25% instead of 20% or how the mortgage payment is calculated. In addition, for both approaches, the taxpayer has not provided evidence to support the expenses he deducted. The taxpayer’s income approach information is not convincing and does not show that the GRM income approach should not be used to estimate the subject property’s value.

objection and allowed the testimony. The Commission generally does not require rebuttal evidence to be exchanged prior to a hearing unless it has issued a scheduling order in which it established a date for the parties to exchange rebuttal evidence.

⁴ The taxpayer stated that the down payment percentage increased from 20% to 25% somewhere near the 2012 lien date.

28. Reconciliation. The most convincing evidence shows a value of \$\$\$\$ for the subject property with the market approach and a value that ranges between \$\$\$\$ and \$\$\$\$ with the GRM income approach. The County’s appraiser stated that he would rely more heavily on the market approach, which seems reasonable because the market approach reflects the prices at which comparable properties actually sold. For these reasons, the evidence shows that the subject’s 2012 value should be reduced to \$\$\$\$.

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 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. Both parties request a lower value for the subject property. Accordingly, the \$\$\$\$ value established by the County BOE no longer has the presumption of correctness. The County’s appraisal is the best evidence of the subject’s value, once it is revised as described earlier in the decision. The taxpayer’s two income approaches, specifically its capitalization rate approach and its rate of return on investment approach, are not convincing.

3. The County appraisal’s market approach, once revised, indicates that \$\$\$\$ is a reasonable value for the subject property. The appraisal’s GRM approach, once revised, shows a value of \$\$\$\$ to \$\$\$\$ for the subject property. Based on these value estimates, the subject’s fair market value is \$\$\$\$ for the 2012 tax year.

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. 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.