

12-2770

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2012

DATE SIGNED: 2-23-2015

COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO

EXCUSED: J. VALENTINE

GUIDING DCISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF RURAL  
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 12-2770

Parcel No. #####

Tax Type: Property Tax/ Locally Assessed

Tax Year: 2012

Judge: Phan

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**Presiding:**

Michael Cragun, Commissioner  
Jane Phan, Administrative Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor  
RESPONDENT-2, Appraiser  
RESPONDENT-3, Appraiser

**STATEMENT OF THE CASE**

This matter came before the Utah State Tax Commission for a Formal Hearing on October 27, 2014, in accordance with Utah Code §59-2-1006 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 ("Property Owner") has filed an appeal of the decision of the RURAL COUNTY Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The lien date at issue in this appeal is January 1, 2012.

3. The County Assessor had originally valued the subject property at \$\$\$\$\$, as of the lien date and the County Board of Equalization ("County") sustained that value. At the hearing the Property

Owner requests a reduction to \$\$\$\$\$. The representative for the County asked that the value of \$\$\$\$\$ be upheld.

4. The property that is the subject of this appeal is parcel no. ##### and is located at SUBJECT ADDRESS, CITY-1, Utah.

5. The subject property is #####-acres of land improved with a rambler style residence constructed in 2007. The residence has approximately 1800 square feet above grade,<sup>1</sup> and a similar sized basement. In the basement 451 square feet are finished. This property has an attached two-car garage, is of good grade and good condition. There is a valley view out of the front of this property.

6. One factor that had not been previously considered, the Property Owner testified that when he toured the subject property before making his offer to buy the property in February 2012, there was evidence of a water problem in the basement. There was some water damage and mud in the basement. He testified that this was from a rain gutter down spout draining into the basement, which has subsequently been repaired.

7. The property is located in the SUBDIVISION in a mountain bench location near canyons and a recreational trail. The subject lot is sloped from back to front and the access roads are also sloped. This provides that many of the residences in the subdivision have substantial views. The Property Owner offered the opinion that the more desirable properties are those that have the views out from the back of the residence, and the subject has views out of the front of the residence.

8. The Property Owner is requesting the assessment be set at \$\$\$\$\$, the price for which he had purchased the subject property. He had purchased for \$\$\$\$\$ with \$\$\$\$\$ in concessions on April 5, 2012. He provided a copy of his Settlement Statement, which listed the seller as "MORTGAGE ASSOCIATION AKA FANNIE MAE." He also provided a copy of his Purchase Contract, which was dated February 27, 2012.<sup>2</sup>

9. The Property Owner pointed out that at the time he had made his offer on the subject property, there were multiple interest parties and three offers on the table. The seller had gone with the Property Owner's offer. This was supported by information in the Purchase Contract as well as an email from his real estate agent.<sup>3</sup>

10. It was the Property Owner's position that his purchase of the subject property represented fair market value, because this property was listed for sale for years on the open market and did not sell

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<sup>1</sup> According to the County in Respondent's Exhibit 2, the subject property has 1,792 square feet above grade and a basement of 1,758 square feet. According to an appraisal offered by the Property Owner, Petitioner's Exhibit 2, the subject has 1,825 square feet above grade and a basement of 1,804 square feet. These differences are inconsequential and not an issue addressed by the parties.

<sup>2</sup> Petitioner's Exhibit 1.

<sup>3</sup> Petitioner's Exhibits 1 & 4.

until he finally was able to negotiate the purchase price noted above and it was that low, even with multiple offers.

11. Both the Property Owner and the County provided information on the subject's listing history. The County did provide a history of the Multiple Listing information on the subject property. This showed an original list date of October 29, 2007, and a list price at \$\$\$\$\$. This listing states, "This is the builders home and he has paid full attention to the details. Features home surround sound system, granite tops, with custom cabinets, formal living room, covered deck and more. Still time to customize!" The status of this listing showed "Expired." There was another listing dated April 8, 2008 for \$\$\$\$\$ which also showed the status as "Expired." There was a listing dated May 1, 2009 for \$\$\$\$\$ which also expired unsold. This listing noted, "Beautiful newer home located in great area at mouth of CANYON and TRAIL with amazing views. Fully upgraded with granite, central vac, great fireplace, surround sound." Then a listing dated November 13, 2009 for \$\$\$\$\$ which noted that this was a short sale and showed the status as expired. The final listing showed a list date of October 5, 2011, for a price of \$\$\$\$\$. This is the listing in effect when the Property Owner made his offer and notes the sold price of \$\$\$\$\$ with \$\$\$\$\$ in concessions,<sup>4</sup> which was a bit above the list price, but as noted by the Property Owner there were multiple offers. The Property Owner provided some additional listings information and prices from 2009 forward to when he purchased the property.<sup>5</sup> This information does indicate that the subject property had been actively listed for sale for years. It also shows that since late 2010, the subject had been continually listed for prices under \$\$\$\$\$.

12. The Property Owner provided a copy of the appraisal that had been prepared for the subject for financing at the time he had purchased the property. This appraisal had been prepared by APPRAISER, Certified Appraiser. It was APPRAISER'S conclusion that the value of the subject property as of March 22, 2012, was \$\$\$\$\$.<sup>6</sup> However, in the appraisal he noted that he gave the most weight to other REO comparables.<sup>7</sup> Of the four comparable sales that he had included in the appraisal, none were in the same subdivision as the subject and most were considerably distant. He also included two listings, and one of the listings was in the same subdivision as the subject. One was considerably distant from the subject.

13. APPRAISER'S comparables were the following:

Address	Sale Price	Sale Date	REO	GLA	Age	Distance in Miles	Adjusted Price
SUBJECT ADDRESS				#####	4		

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<sup>4</sup> Listing information for the subject is in Respondent's Exhibit 1.

<sup>5</sup> Petitioner's Exhibit 3.

<sup>6</sup> Petitioner's Exhibit 2.

<sup>7</sup> Petitioner's Exhibit 2, pg. 2.

Sales

ADDRESS-1	\$\$\$\$\$	3/12	No	1,883	1	2.99	\$\$\$\$\$
ADDRESS-2	\$\$\$\$\$	1/12	Yes	1,837	9	4.69	\$\$\$\$\$
ADDRESS-3	\$\$\$\$\$	11/11	No	1,855	1	2.06	\$\$\$\$\$
ADDRESS-4	\$\$\$\$\$	9/11	Yes	2,439	1	1.59	\$\$\$\$\$

Listings

ADDRESS-5 <sup>8</sup>	\$\$\$\$\$	Listing	No	1,471	2	0.16	\$\$\$\$\$
ADDRESS-6	\$\$\$\$\$	Listing	No	1,843	6	1.67	\$\$\$\$\$

14. The County had argued that the APPRAISER'S value was an REO value, rather than fair market value. Additionally the County indicated that the comparables used by APPRAISER in his appraisal were from inferior areas. APPRAISER'S comparable sales were mostly from different cities as Comparable 1 was in CITY-2, Comparable 2 in CITY-3 and Comparable 3 was in CITY-4. Comparable 4 was the only sale in CITY-1. The two listings were located in CITY-1. The listing at ADDRESS-5 was the only property in the same subdivision, SUBDIVISION, as the subject. The County pointed out that the listing for this property was a home yet to be built.<sup>9</sup> It was listed at \$\$\$\$\$, which would be a base price for a 1,471 square foot rambler. It was not provided what was actually constructed or the final price on this lot. It was the County's position that the subject was located in an upscale subdivision near the canyon and recreation.

15. It was the County's position in addition, that the subject had amazing views. The County provided photographs of the view from the front yard of the subject property. Although there were clearly some valley and mountain views, they were not unobstructed views.<sup>10</sup>

16. The County submitted an appraisal that had been prepared by NAME, Certified Residential Appraiser. It was NAME conclusion that as of January 1, 2012, the value of the subject property was \$\$\$\$\$.<sup>11</sup> However, the County did not request an increase in value to the appraisal value, but instead asked that the value remain as set by the County Board of Equalization. In his appraisal, NAME considered five comparable sales, three of which were located in the same subdivision as the subject. The other two were located in CITY-1 like the subject but in different subdivisions. The County's appraisal comparables were the following:

Address	Sale Price	Sale Date	REO	GLA	Year Built	Same Sub.	Adjusted Price
SUBJECT ADDRESS				#####	2007		
<u>Sales</u>							
ADDRESS-7	\$\$\$\$\$	4/12	No	1,887	2006	Yes	\$\$\$\$\$

<sup>8</sup> Property located in the same neighborhood as the subject, but was listed as a yet to be built residence.

<sup>9</sup> Respondent's Exhibit 7.

<sup>10</sup> Respondent's Exhibit 6.

<sup>11</sup> Respondent's Exhibit 2.

ADDRESS-8	\$\$\$\$	1/11	No	1,826	2007	Yes	\$\$\$\$
ADDRESS-9	\$\$\$\$	1/12	No	2,100	2010	No	\$\$\$\$
ADDRESS-10	\$\$\$\$	9/12	No	1,690	2008	Yes	\$\$\$\$
ADDRESS-11	\$\$\$\$	8/11	No	1,671	2008	No	\$\$\$\$

17. In the appraisal the County did not make view adjustments as it was the County's position that the view from the subject was generally equal to that of the other comparables. The County did provide the Multiple Listing Report for its comparable sales<sup>12</sup> and the three properties in the same subdivision as the subject all indicated that they had views. The Property Owner argued that the comparable at ADDRESS-7, was directly behind the subject and above the subject in elevation. It was his argument that the views from the back of this house were unobstructed by his house. He also testified that the property at ADDRESS-10 was directly across the street from his property and had unobstructed views out the back and off a deck. The MLS report on this property indicates a daylight basement, large Trex deck and, "Professionally designed & lush landscaping with stream, waterfall & putting green."

18. To show that there was not such a big difference due to views between lots in the SUBDIVISION, the County provided some of the original lot sales in the subdivision.<sup>13</sup> These sales did predate the lien date substantially, having occurred in 2005 through 2008. However, they do not show a huge disparity in price. Ten lot sales were provided. Taking out the high of \$\$\$\$\$ and the low of \$\$\$\$\$, the remaining eight lots had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. A view would affect the value of a residential lot just like it would affect the value of a finished residential property. These sales demonstrate little difference between lots in the subdivision.

19. Upon review of the evidence presented in this matter, it is clear that the County has placed no weight on the Property Owner's purchase of the subject just shortly after the lien date or the fact that the subject had been listed for sale for years prior to the lien date, and since late 2010 at prices under \$\$\$\$\$. The Property Owner had been under contract to purchase the subject in February 2012, after inspecting the property and noting water damage in the basement which likely had been there on the lien date. Further, there were multiple offers at that time and yet the Property Owner was able to negotiate a price much lower than what the County is indicating is market value. It is clear that this was an REO sale, the Property Owner purchased the property from FANNIE MAE. This is a factor to consider, but given the significant market exposure of the subject property over nearly five years time and the multiple offer situations at the end, some weight should be given to the Property Owner's purchase. There may be some subjective factors, like curb appeal or style that were affecting its marketability and therefore market value. The appraisal prepared for Petitioner at the time that he purchased the property is

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<sup>12</sup> Respondent's Exhibit 8.

<sup>13</sup> Respondent's Exhibit 5.

not very representative of the fair market value of the subject as the comparables were from inferior areas. Of all of the information submitted, there were two other properties in the same subdivision that had sold relevant to the lien date. The County's comparables at ADDRESS-7 selling for \$\$\$\$ and ADDRESS-8 selling for \$\$. Giving the subject purchase price equal weight with these two comparables' adjusted appraisal conclusion supports a value around \$\$\$\$ for the lien date at issue. The third comparable from the same subdivision, at ADDRESS-10 had sold in for \$\$\$\$ in September 2012, significantly post lien date and may be considered in the value for the subsequent year, but not for the January 1, 2012 lien date.

#### 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 provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

"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. (Utah Code Ann. 59-2-102(12).)

(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. . . . (4) 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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary basis upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSION OF LAW

Property tax is based on its “fair market value” pursuant to Utah Code Sec. 59-2-103. “Fair market value” is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. In this matter, although the Property Owner’s purchase of the subject just after the lien date had been an REO transaction, there was significant market exposure and multiple offers. There was apparent water damage to the basement of the property and the lower price in part may have been due to subjective elements which kept it from selling at prices as high as the two other properties in the subdivision. Some weight should be given the purchase price, as well as the other sales relevant to the lien date in the subdivision. These factors do indicate a somewhat lower value for the subject.

Considering the evidence and the applicable law in this matter, the value should be reduced to \$\$\$\$\$ for the lien date at issue in this appeal.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that that the value of the subject property is \$\$\$\$\$, as of the January 1, 2012 lien date. The County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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.

