

13-617
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 7-22-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
COMMISSIONER CONCURS: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 13-617 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2012 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of Salt Lake County (the "County"). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on January 9, 2014. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2012. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization sustained the value.

At the hearing, the Taxpayer requested that the value be reduced to \$\$\$\$\$. The County requested that the value set by the board of equalization be reduced to \$\$\$\$\$.

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).

DISCUSSION

The subject property is parcel no. #####, located at SUBJECT ADDRESS in CITY, Utah. It consists of a #####-acre lot improved with a cabin. The cabin was ##### years old as of the lien date and built of average quality of construction with an exterior of (X) and (Y). It has ##### square feet above grade and no basement. It has no garage. It has ski in and ski out access, but other types of access such as snowmobile or snow cat are only allowed after five o'clock p.m. and before eight o'clock a.m. during the ski season. Water to the subject property freezes and does not run in the winter months.

The Taxpayer provided an appraisal, prepared by REPRESENTATIVE FOR TAXPAYER. The Taxpayer's appraiser concluded that the value of the subject property was \$\$\$\$ as of the lien date. The Taxpayer's appraiser relied on the sales of 14 comparable properties and two comparable expired listings.

Four of the Taxpayer's comparables were in the CITY area. The Taxpayer's appraiser included other comparable sales in the appraisal, but they were primarily in CANYON-1 or near the mouth of CANYON-2. The Taxpayer's appraiser made adjustments to the selling prices of the comparable properties for various factors including time of sale, lot size, construction quality, cabin age, cabin size, basement, porches and decks, fireplaces, and legal interest conveyed. The Taxpayer's appraiser reconciled the indicated values of all 16 comparable properties to a final \$\$\$\$ opinion of value.

The subject property and the comparable sales on which the Taxpayer’s appraiser relies are as follows:

No.	Sale Date	Sale Price	Above Grade	Cabin Age	Adjustments	Adjusted Value
	Subject Property		#### s.f.	###-years		
1	February 2, 2011	\$\$\$\$\$	1,561 s.f.	83 years	-\$\$\$\$\$	\$\$\$\$\$
2	September 16, 2011	\$\$\$\$\$	1,100 s.f.	38 years	-\$\$\$\$\$	\$\$\$\$\$
3	November 24, 2010	\$\$\$\$\$	2,157 s.f.	27 years	-\$\$\$\$\$	\$\$\$\$\$
4	September 8, 2009	\$\$\$\$\$	576 s.f.	54 years	+\$\$\$\$\$	\$\$\$\$\$
5	August 18, 2008	\$\$\$\$\$	1,580 s.f.	56 years	-\$\$\$\$\$	\$\$\$\$\$
6	September 23, 2008	\$\$\$\$\$	1,613 s.f.	101 years	-\$\$\$\$\$	\$\$\$\$\$
7	September 25, 2008	\$\$\$\$\$	1,024 s.f.	76 years	-\$\$\$\$\$	\$\$\$\$\$
8	December, 2006	\$\$\$\$\$	1,850 s.f.	63 years	-\$\$\$\$\$	\$\$\$\$\$
9	August, 2006	\$\$\$\$\$	1,656 s.f.	36 years	-\$\$\$\$\$	\$\$\$\$\$
10	June, 2005	\$\$\$\$\$	1,468 s.f.	27 years	-\$\$\$\$\$	\$\$\$\$\$
11	November, 2007	\$\$\$\$\$	1,375 s.f.	39 years	-\$\$\$\$\$	\$\$\$\$\$
12	N/A	\$\$\$\$\$	815 s.f.	40 years	+\$\$\$\$\$	\$\$\$\$\$
13	August, 2007	\$\$\$\$\$	810 s.f.	65 years	+\$\$\$\$\$	\$\$\$\$\$
14	August, 2006	\$\$\$\$\$	1,024 s.f.	28 years	-\$\$\$\$\$	\$\$\$\$\$
15	March, 2007	\$\$\$\$\$	1,098 s.f.	39 years	-\$\$\$\$\$	\$\$\$\$\$
16	N/A	\$\$\$\$\$	1,518 s.f.	53 years	-\$\$\$\$\$	\$\$\$\$\$

The Taxpayer’s appraiser reconciled the indicated values of all 16 comparable properties to a final \$\$\$\$\$ opinion of value.

The County provided an appraisal, prepared by RESPONDENT. The County relied on the sales of five comparable properties. The subject property and the County’s comparable properties are as follows:

No.	Sale Date	Sale Price	Above Grade	Cabin Age	Adjustments	Adjusted Value
	Subject Property		#### s.f.	###- years		
1	June 9, 2005	\$\$\$\$\$	1,378 s.f.	31 years	-\$\$\$\$\$	\$\$\$\$\$
2	November 24, 2010	\$\$\$\$\$	2,157 s.f.	28 years	-\$\$\$\$\$	\$\$\$\$\$
3	August 31, 2006	\$\$\$\$\$	1,656 s.f.	41 years	-\$\$\$\$\$	\$\$\$\$\$
4	May 7, 2007	\$\$\$\$\$	1,892 s.f.	No data	-\$\$\$\$\$	\$\$\$\$\$

5	August 13, 2009	\$\$\$\$\$	3,076 s.f.	19 years	-\$\$\$\$\$	\$\$\$\$\$
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Not all of the comparable sales presented by the parties are equally persuasive. For example, all but four of the Taxpayer’s comparables are outside the AREA-1 and CITY areas. The Taxpayer’s appraiser did not make location adjustments for the sales outside the area and did not provide evidence to demonstrate that the other areas had similar market values to the AREA-1 and CITY areas. Additionally, both parties used comparables with sale dates several years before the January 1, 2012 lien date. Removing from consideration all comparables outside the CITY and AREA-1 area as well as those more than three years before the lien date leaves the following comparables:

No.	Sale Date	Sale Price	Above Grd.	Cabin Age	Adjustments	Adjusted Value
	Subject Property		#### s.f.	### years		
TP-3	November 24, 2010	\$\$\$\$\$	2,157 s.f.	27 years	-\$\$\$\$\$	\$\$\$\$\$
Co-2	November 24, 2010	\$\$\$\$\$	2,157 s.f.	28 years	-\$\$\$\$\$	\$\$\$\$\$
Co-5	August 13, 2009	\$\$\$\$\$	3,076 s.f.	19 years	-\$\$\$\$\$	\$\$\$\$\$

The TP denotes a Taxpayer comparable; the Co denotes a County comparable. TP-3 and Co-2 are the same comparable. The differences in the parties’ analysis of this property appear to be in adjustments to value. The Taxpayer’s appraiser made an adjustment of -\$\$\$\$\$ for style, a -\$\$\$\$\$ adjustment for quality of construction, and a -\$\$\$\$\$ for condition. These adjustments are in addition to adjustments for cabin age, size, and features. The County’s representative opined that the three listed adjustments total to approximately \$\$\$\$\$ per square foot for the cabin on the subject property.

The most persuasive evidence presented tends to support the \$\$\$\$\$ board of equalization value since the various values listed are both above and below \$\$\$\$\$. However, as the County has requested a value determination reduction to \$\$\$\$\$, the Commission is reluctant to sustain the board of equalization value. There is good cause to reduce the value of the subject property to \$\$\$\$\$ as requested by the County.

Clinton Jensen
 Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2012 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

COMMISSIONER DIXON CONCURS

I concur in the value conclusion of the majority, but write separately to provide my analysis of the evidence, and the reasoning for my conclusion.

Burden of Proof and Preponderance of the Evidence

The Majority has already determined the Taxpayer has provided an evidentiary basis to call into question the Board of Equalization ("BOE") value. I will not disturb this record; however, it is important to note, that the County has also requested a value different from the BOE value, which means the BOE value no longer has the presumption of correctness. This means both parties must, by a preponderance of

the evidence show the BOE value contains error, and provide an evidentiary basis to support the value being requested.

Subject Description

The statements and documents in the record suggest the Subject is located in an area with unique challenges. The BOE record¹ indicates that the Subject is in the AREA-1 which is comprised of just 20 improvements. The record also indicates there are restrictions to improvements in the AREA-1 including the footprint of any existing home cannot be changed. There are restrictions on winter access in that snowmobiles that must be used to access the AREA-1 in the winter can only be used before 8:00 a.m. and after 5:00 p.m. Finally, the improvements in AREA-1 cannot be connected to public water and sewer. The Subject has no running water during the winter months, because the water source freezes. It is understood from the information in the record that these restrictions apply only to the AREA-1 where the Subject is located. The evidence suggests, and the County agrees, that the Subject has functional obsolescence in that it is ###² square feet (“sf”) and only has one bedroom and one bathroom. The information supports that the functional obsolescence of the Subject may not be curable as the footprint cannot be changed.

Evidence Provided³

I agree with the majority on the following points:

- (1) The information provided would seem to support the market for property in CANYON-2 is a different market than that in CANYON-1. As such, the sales in CANYON-1 are not persuasive.
- (2) Four sales in CANYON-1 are more than four years before the lien date at issue, and therefore less persuasive⁴.
- (3) Thus, there appear to be only two sales within three years of the lien date to suggest a range of value for the Subject, these are Taxpayers Comparable Sale (“Sale” or “Comp”) Three which is

¹In a hearing before the Commission, the Commission can consider all information, including from the BOE.

² There is a difference in the appraisals regarding the Subject’s sf. The Taxpayer noted #### sf, the County noted #### sf. For the purposes of this Concurrence, I have used the sf noted in the majority opinion.

³ While it also appears in the BOE record that the Taxpayer raised an equalization argument, the Taxpayer did not provide information to support an equalization argument.

⁴The County held the most similar sales were the Common Comp and County Comp Three, but reconciled using County Comp One and County Comp Three, which sold in 2005 and 2006, respectively, and used County Comps Four and Five to support its value. It is not clear why the Common Comp was not used in the County’s reconciliation, when it was the sale closest to the lien date and the County had made a 15% adjustment to the Common Comp for its claim it was a foreclosure.

also County Comp Two (here forth referred to as “The Common Comp”), and County Comp Five.

Analysis

The record is void of any rebuttal by the parties to the evidence provided by the opposing party, except a general statement made by the County regarding overall large adjustments per square foot made by the Taxpayer’s appraiser. The record is also void of any rebuttal by the Parties to adjustments made to elements of the Comps by the opposing party. This is particularly interesting as both parties made large adjustments to the Common Comp, but made them for different elements. These are shown as follows in Table One:

Table One -- Adjustments to the Common Comp and County Comp Five

Element adjusted⁵	Common Comp County Adjustment	Common Comp Taxpayer Adjustment	County Comp 5 County Adjustment
<u>Large Adjustments</u>			(county only)
Foreclosure	+ \$\$\$\$\$	no concessions	none
Location ⁶	- \$\$\$\$\$	none	-\$\$\$\$\$
Condition	+ \$\$\$\$\$	-\$\$\$\$\$	-\$\$\$\$\$
Above Grade SF (Gross living area)	- \$\$\$\$\$	-\$\$\$\$\$	-\$\$\$\$\$
Functional Utility	- \$\$\$\$\$	none	-\$\$\$\$\$
Acreage (site)	none	+\$\$\$\$\$	
Design	none	-\$\$\$\$\$	
Construction	none	-\$\$\$\$\$	
Actual Age	none	-\$\$\$\$\$	
Deck	none	-\$\$\$\$\$	
<u>Smaller Adjustments</u>			
Room count	\$\$\$\$-	-\$\$\$\$\$	
Heat/Cool	-\$\$\$\$\$	-\$\$\$\$\$	-\$\$\$\$\$
One car	-\$\$\$\$\$	-\$\$\$\$\$	
Public Water/Sewer	-\$\$\$\$\$	-\$\$\$\$\$	-\$\$\$\$\$
Basement	none	-\$\$\$\$\$	
Energy Eff	none	-\$\$\$\$\$	

⁵Based on the appraisals, the parties seem to agree a time adjustment is not warranted after 2009. The Taxpayer’s appraiser held adjustments were warranted between 2006 and 2009.

⁶The location adjustment appears to be based on the restrictions placed on AREA-1 as opposed to the AREA-2 and CITY locations; however, the record is void as to whether AREA-2 and CITY are ski-in and ski- out properties like AREA-1. There was no suggested value adjustment for ski in or ski out properties.

Total adjustments -\$\$\$\$\$ -\$\$\$\$\$ -\$\$\$\$\$

The County did not provide information to show how it determined a 15% adjustment was an appropriate adjustment for the Common Comp as the County Appraiser held it was a foreclosure⁷, but the Taxpayer did not refute the claim or adjustment. It is also noted that the bulk of the County’s large adjustments to the Common Comp seem to cancel each other out -- +\$\$\$\$\$ Foreclosure and -\$\$\$\$\$ Above Grade SF, +\$\$\$\$\$ Condition and -\$\$\$\$\$ Location; however, these adjustments were not rebutted by the Taxpayer. The County’s two adjusted sales provide the preponderance of the evidence before the Commission. This is shown below in Table Two.

Table Two Adjusted Price Per SF

	Adjusted Selling Price/ sf		
Common Comp	\$\$\$\$\$ Taxpayer	\$\$\$\$\$/ ##### sf ⁸	= \$\$\$\$\$/sf
	\$\$\$\$\$ County	\$\$\$\$\$/ ##### sf	= \$\$\$\$\$
County Comp 5	\$\$\$\$\$ County	\$\$\$\$\$/ ##### sf	= \$\$\$\$\$

The County called into question the overall price per sf adjustment made to the Common Comp by the Taxpayer, and the Taxpayer did not rebut the County’s adjustments. The County’s adjusted value for County Comp Five, which is a superior property, would seem to indicate a ceiling in the market. The County had an adjusted value of \$\$\$\$\$ for the Common Comp, which falls in the middle of the adjusted sales. The County held the Common Comp was a foreclosure, and this was not rebutted; however, there is evidence to support the value of the Subject should be in the middle to lower range of value due to the Subject’s obsolescence and location restrictions. The preponderance of the evidence supports the County’s requested value of \$\$\$\$\$, which lies in the lower end of the range of value of the adjusted sales, and between the adjusted sales of the Common Comp, which is the sale closest to the lien date. While

⁷The Commission has previously found, that a foreclosure does not necessarily establish that the purchase price was below the market value. See Commission Order 04-1263, page 3 at <http://www.tax.utah.gov/commission-office/decisions>

⁸There is a difference in the square footage in the appraisals for the Common Comp. The Taxpayer shows it with #####- sf and the County with #####-sf. For the purposes of this Concurrence I have used the sf noted in the majority opinion.

Appeal No. 13-617

this concludes a value of \$\$\$\$/\$sf for the Subject, an improvement with more sf such as the Common Comp which has #####-sf, and County Comp Five with #####-sf would have a lower per square foot price than a smaller improvement, such as the Subject at #####- sf.

Conclusion

Both parties by a preponderance of the evidence showed the BOE value contains error; however, the Taxpayer did not by a preponderance of the evidence support the requested value. The preponderance of the evidence supports reducing the BOE value to the value of \$\$\$\$\$, which was requested by the County.

D'Arcy Dixon Pignanelli
Commissioner