

13-2326
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 3-2-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-2326</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2013</p> <p>Judge: Chapman</p>
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Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
For Respondent: RESPONDENT-1, from the Davis County Assessor's Office (by telephone)
RESPONDENT-2, from the Davis County Assessor's Office (by telephone)

STATEMENT OF THE CASE

TAXPAYER-1 AND TAXPAYER-2 ("Petitioners" or "taxpayers") bring this appeal from the decision of the Davis County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 20, 2014.

At issue is the fair market value of the subject property as of January 1, 2013. The subject is a single-family residence located at SUBJECT ADDRESS in CITY, Utah. The home was under construction as of the 2013 lien date. The County BOE reduced the \$\$\$\$ value at which the subject was originally assessed for the 2013 tax year to \$\$\$\$\$. The taxpayers ask the Commission to reduce the subject's 2013 value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

UCA §59-2-102(12) defines “fair market value” to mean “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.”

UCA §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”

Utah Admin. Rule R884-24P-20 (“Rule 20”) provides guidance on valuing real property that is under construction as of the lien date, as follows in pertinent part:

- A. For purposes of this rule:
 - 1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.
 - 2. Project means any undertaking involving construction, expansion or modernization.
 - 3. "Construction" means:
 - a) creation of a new facility;
 - b) acquisition of personal property; or
 - c) any alteration to the real property of an existing facility other than normal repairs or maintenance.
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 - 9. Residential means single-family residences and duplex apartments.
- B. All construction work in progress shall be valued at "full cash value" as described in this rule.
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- E. Appraisal of Properties not Valued under the Unit Method.
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 - 2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- a) The full cash value of the project expected upon completion.
- b) The expected date of functional completion of the project currently under construction.
 - (1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.
- c) The percent of the project completed as of the lien date.
 - (1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:
 - (a) 10 - Excavation-foundation
 - (b) 30 - Rough lumber, rough labor
 - (c) 50 - Roofing, rough plumbing, rough electrical, heating
 - (d) 65 - Insulation, drywall, exterior finish
 - (e) 75 - Finish lumber, finish labor, painting
 - (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical
 - (g) 100 - Floor covering, appliances, exterior concrete, misc.

3. Upon determination of the . . . full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

- a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion. . . .

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).

DISCUSSION

The subject property consists of a #####-acre lot and a two-story, single-family residence that was under construction as of the lien date. The home has since been completed and contains 4,194 square feet of

above-grade space on the main and second floors. The home also has an unfinished basement that is 2,472 square feet in size. The home has one fireplace and a three-car garage with extra storage space.

The subject home was completed around the end of April or the beginning of May 2013. Utah Admin. Rule 20(E)(2)(c)(1) (“Rule 20”) provides guidance on determining the percentage of completion for residential properties that are under construction as of the lien date. The taxpayers proffered evidence to support their claim that the subject home was 60% complete as of the January 1, 2013 lien date. The County has accepted the taxpayers’ estimate that the home was 60% complete as of the lien date.¹ Although the parties agree that the home was 60% complete as of the 2013 lien date, they disagree on how this 60% completion ratio should be used in determining the “fair market value” of the subject property as of the lien date.

The County BOE used the 60% completion ratio to determine the value of the subject’s improvements only (i.e., the County did not use the ratio to determine the subject’s land value, which the County had separately determined to be \$\$\$\$\$). To determine the value of the subject’s incomplete improvements, the County BOE multiplied the 60% ratio by \$\$\$\$\$ to arrive at an improvements value of \$\$\$\$\$. The County explained that the \$\$\$\$\$ amount is the “permit value” shown on the building permit that the taxpayers obtained from CITY in order to build the subject home. The County contends that this permit value relates to the improvements only and does not contain any value for the land. The County BOE added the improvements value of \$\$\$\$\$ that it obtained with this methodology to the subject’s land value of \$\$\$\$\$ to arrive at a total 2013 value of \$\$\$\$\$ for the subject property.

The taxpayers, however, contends that the 60% completion ratio should be applied against the fair market value of the subject home once it was complete. The taxpayers proffered an appraisal in which the

¹ The subject’s original assessed value of \$\$\$\$\$ was based on an estimate that the home was 78% complete as of the lien date. The County BOE reduced the value to \$\$\$\$\$ to reflect a 60% completion ratio.

subject's value upon completion was estimated to be \$\$\$\$ as of May 13, 2013.² Applying the 60% completion ratio to \$\$\$\$ produces a value of \$\$\$\$\$. Given this methodology, the taxpayers ask the Commission to reduce the subject's 2013 value to \$\$\$\$\$.

The County asks the Commission to reject the taxpayer's methodology for two reasons. First, the County contends that the percentage of completion ratio established under Rule 20(E)(2)(c)(1) should only be applied to the completed value of the improvements, not to the completed value of the entire property (which would include the land value). Second, the County stated that it has a long-standing County policy to apply the percentage of completion ratio to a property's permit value to determine the improvements value of a home under construction. So that the subject property is not treated differently from other homes under construction, the County asks the Commission to determine its 2013 value using the building permit value and not the subject's appraised value (upon completion). For these reasons, the County asks the Commission to sustain the subject's current value of \$\$\$\$ for the 2013 tax year.

The first issue to be addressed is whether the 60% completion ratio should be applied against a property's total completed value (i.e. value including both land and improvements), as the taxpayers propose, or only against the completed value of the improvements, as the County proposes. The County's position is more convincing because there is no evidence to suggest that the subject's land, like the subject's house, was 60% incomplete as of the lien date.³ In addition, application of the taxpayers' proposed methodology could

2 At the hearing, the County stated that it did not disagree that the subject's value as of May 13, 2013 was \$\$\$\$\$.

3 The taxpayer provided the second page of a document to show that the subject was approximately 60% complete in late-December 2012. This page lists various components associated with the house itself, but it does not list the land as one of the components with which the 60% completion ratio was derived.

result in an assessed value that was less than the cost of the land alone for homes whose construction began immediately prior to a lien date.⁴ For these reasons, the taxpayers' proposed methodology is suspect.

Furthermore, the County's position appears to be consistent with Rule 20. Rule 20(E)(3)(a) provides that the percentage of completion ratio is to be multiplied by the "total full cash value of the residential **project** expected upon completion" (emphasis added). "Project" is defined in Rule 20(A)(2) to mean "any undertaking involving construction, expansion or modernization," while "construction" is defined in Rule 20(A)(3) to mean the "creation of a new facility." Furthermore, "construction work in progress" is defined in Rule 20(A)(1) expressly to include improvements, but makes no mention of land. For these reasons, the subject's 60% completion ratio should be applied against the expected value of the subject's improvements upon completion only and not against the expected total value of the subject property upon completion. Such an interpretation also appears to be consistent with other Commission decisions in which values for homes under construction were established by applying the percentage of completion ratio to the expected value of improvements only.⁵

The second issue is whether the 60% completion ratio should be applied against the subject home's permit value, as the County proposes, or whether a taxpayer can proffer other evidence of the value of the project upon completion against which the completion ratio can be applied. For a residential property under construction, Rule 20(E)(2)(a) and (E)(3) provide that a county assessor will determine "[t]he full cash value" of the project expected upon completion and multiply it by the percentage of completion ratio.

4 As a hypothetical, suppose a property owner purchased a lot for \$\$\$\$\$ in 2012 and began to build a house on this lot in mid-December 2012. The hypothetical house is to be completed in late 2013, and the total value of the property (both land and improvements) upon completion is expected to be \$\$\$\$\$. If the house was only 10% complete as of the 2013 lien date, the taxpayers' methodology would result in a 2013 value of \$\$\$\$\$ (10% of the total completed value of \$\$\$\$\$). This methodology would underestimate the property's value, given that the owner had already paid more than twice the \$\$\$\$\$ amount for the land alone.

5 See *USTC Appeal No. 09-3465* (Initial Hearing Order Jun. 29, 2010); and *USTC Appeal No. 10-1397* (Initial Hearing Order Dec. 30, 2010). Redacted copies of these and other selected decisions can be viewed on

Pursuant to its long-standing policy, the County used the permit value of the subject's improvements to determine the full cash value of these improvements upon completion. Rule 20 does not indicate how to determine the expected full cash value of the improvements upon completion. However, when determining whether this value can best be shown with the permit value used by the County or the value shown by the taxpayer's appraisal, the Commission should keep in mind that the subject property's 2013 assessed value should reflect its "fair market value." Section 59-2-103(1).

Because of its long-standing policy, the County estimated the full cash value of the subject's improvements upon completion to be its permit value of \$\$\$\$\$. When the subject's land value of \$\$\$\$\$ is added to this amount, the County has, in effect, estimated the subject's total value upon completion to be \$\$\$\$\$. The evidence, however, shows that the subject's total "fair market value" will only be \$\$\$\$\$ upon completion, which the County does not dispute. Accordingly, the County's methodology of applying the Rule 20 percentage of completion ratio to permit value appears, at least in the instant case, to overestimate the subject's fair market value upon completion by more than 10%.

If the subject's land value of \$\$\$\$\$ is subtracted from the subject's total value upon completion of \$\$\$\$\$, as shown by the taxpayers' appraisal, it results in a value upon completion of \$\$\$\$\$ for the subject's improvements only. If the 60% completion ratio is applied against this \$\$\$\$\$ amount, it results in a value of \$\$\$\$\$ for the subject's incomplete improvements as of January 1, 2013. Adding this \$\$\$\$\$ amount to the subject's land value of \$\$\$\$\$ would result in a total value under construction of approximately \$\$\$\$\$ as of the January 1, 2013 lien date.

For these reasons, the taxpayer's appraisal suggests that the permit value the County obtained from CITY overestimates the fair market value of the subject's improvement once completed. The County

the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

explained that a city planner determines the permit value after the property owner or builder submits plans for a home that is to be built. Then, the city planner uses building valuation data (“BVD”) from the International Code Council (“ICC”) to determine a permit value for the improvements shown on the plans. The County indicated that the city planner will have to use his or her expertise to estimate the quality of the finish of the home when using the BVD to estimate the permit value.

TAXPAYER-1 stated that he acted as his own general contractor to build the subject property. He stated that he gave the plans for the subject property to the city planner, but indicated that at no time was he asked to provide information about the quality of the materials he was putting into the home or the dollar amount that he planned to spend. TAXPAYER-1 stated that he did not provide the \$\$\$\$ permit value to the city.⁶

Use of permit values obtained from city or county records may be appropriate to value residential properties under construction for mass appraisal purposes. However, once a property is appealed, that property’s “fair market value” must be considered on an individual basis, and the Commission may consider all relevant information to determine this value. There is no statute or rule that requires the expected value of a residential project upon completion to be its permit value. As a result, upon review of an individual property in the appeals process, evidence may show that there is better evidence of the project’s expected value upon completion than the permit value. Such is the case for the property at issue in this appeal.

The County provides no information showing the expected value of the subject’s improvements upon completion to be equal to its \$\$\$\$ permit value. The County admitted that it had not performed any studies to determine how permit values relate to the values of improvements upon completion. In addition, the County

⁶ It is also unclear how much the taxpayers spent to build the subject house. Even if this amount were known, however, it might not include general contracting costs because TAXPAYER-1 acted as the general contractor on the project. Furthermore, Rule 20 provides for “value,” not “costs,” to be estimated.

does not contest that the subject's total value upon completion is \$\$\$\$\$, as shown by the taxpayers' appraisal. If the subject's land value of \$\$\$\$\$ is subtracted from this total completed value of \$\$\$\$\$, it leaves \$\$\$\$\$ as the expected value of the subject's improvements upon completion. As a result, it appears that in this case, the permit value of the subject's improvements overestimates the expected value of these improvements upon completion by more than \$\$\$\$\$ (\$\$\$\$\$ minus \$\$\$\$\$).⁷

Based on the foregoing, the 60% completion ratio obtained from Rule 20 should be multiplied by \$\$\$\$\$ to determine the fair market value of the subject's improvements that were under construction as of the lien date. This results in an improvements value of \$\$\$\$\$ for the subject's incomplete improvements. Adding this \$\$\$\$\$ value to the subject's land value of \$\$\$\$\$ would result in a total value of approximately \$\$\$\$\$ for the 2013 tax year. The taxpayers have not shown that the subject's value should be lower than this amount, and the County has not shown that it should be higher. For these reasons, the Commission should reduce the subject's current value of \$\$\$\$\$ to \$\$\$\$\$ for the 2013 tax year.

Kerry R. Chapman
Administrative Law Judge

⁷ It is, of course, unknown whether permit values overestimate the expected values of improvements upon completion in all cases. There may be cases where the permit value is a reasonable substitute for the expected value of the improvements upon completion. There may even be cases where the permit value is lower than the expected value of the improvements upon completion. However, such determinations are dependent on the evidence provided to either support the permit value or to show that it is incorrect.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's value should be reduced to \$\$\$\$ for the 2013 tax year. The Davis County Auditor's Office is ordered to adjust its records in accordance with this decision.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner