

13-2390 & 15-36

TAX TYPE: PROPERTY TAX

TAX YEAR: 2013 & 2014

DATE SIGNED: 12-18-2015

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

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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. 13-2390 & 15-36

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2013 & 2014

Judge: Phan

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**Presiding:**

Robert Pero, Commissioner

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT-1, RURAL COUNTY Assessor

RESPONDENT-2, RURAL COUNTY Deputy Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing for both Appeal Nos. 13-2390 and 15-36 on August 18, 2015, 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. The lien dates at issue in these appeals are January 1, 2013 for tax year 2013 and January 1, 2014 for tax year 2014.

2. The property subject to these appeals is parcel no. ##### located at SUBJECT ADDRESS CITY-1, Utah.

3. For tax year 2013, the County Assessor had originally assessed the subject property at \$\$\$\$\$. Petitioner ("Property Owner") appealed to the County Board of Equalization which upheld that value. The Property Owner requests a reduction to \$\$\$\$\$ and at the hearing the County requested that the

value remain at \$\$\$\$\$. For tax year 2014, the values assessed and requested at the hearing were the same as for 2013. The County Assessor had assessed the property at \$\$\$\$\$; the County Board of Equalization (“County”) upheld that value and requests that value be sustained at the hearing. The Property Owner requested a value of \$\$\$\$\$ for 2014.

4. The subject property is #####-acres of land improved with a main residence and other structures. The structures on the subject are as follows:

- A. Main Residence: A ranch-style residence built in YEAR or YEAR, with #####-square feet. This residence has a new roof which was put on in November 2012. In addition to kitchen and living spaces, this residence has three bedrooms, four bathrooms and a fireplace.
- B. Guest House: This is a guest or mother-in-law unit. This unit has a partial kitchen, living room, one bedroom and one bathroom. Attached to this unit is a laundry room and office. The County records show this building was constructed in YEAR and has #####-square feet. This guest house is attached to the original garage.
- C. Guest Units: This is a detached structure that has two bedrooms and two bathrooms constructed in YEAR. It sits behind, and to the northwest of the house.
- D. Original Garage and Carport: This is a detached garage, understood to be the original garage constructed in YEAR, which is a combination two-car garage and carport that is accessed by the #####-East drive way. It is adjacent to the south side of the house. This original, detached garage is understood to be #####-square feet.
- E. Second Garage: This is a three-car garage which is ##### square feet, built in YEAR. The roof lines of the guest house and garage touch. The bays of the garage are accessed by the driveway on the #####-South side of the Subject.

5. In addition to these structures, the subject property has an in ground swimming pool and some patio areas outside. However, the pool was installed in YEAR, the circulation and heating system is original and not functioning, and the pool is cracked and leaks.

6. The subject property is zoned R-3, which is a residential zone, but the zoning allows for a conditional use variance that allows rentals on the property.<sup>1</sup> The Property Owner maintains, and it was not refuted by the County, that she uses the property as her primary residence and it is not used for a commercial purpose.

7. The County has allowed the primary residential exemption to apply to #####-acre of the land and the structures noted above. The County had placed a value of \$\$\$\$\$ on the remaining #####-of an acre, which did not receive the primary residential exemption.

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<sup>1</sup> The Commission takes administrative notice from prior appeals that the Subject was operated as a B&B known as the NAME OF INN until 2009.

8. The subject is located in an established neighborhood, in a historic area of CITY-1 near the middle of town just a few blocks from STREET near restaurants and bars.

9. The County had arranged for an independent appraiser to appraise the subject property in 2015 and had asked that the Property Owner allow the appraiser to inspect the interior of the residence and structures. However, the Property Owner refused to allow the appraiser onto the property. The appraiser then completed his appraisal by using an exterior inspection from the street.

10. The Property Owner had on DATE AND YEAR purchased the subject property as part of a transaction in which she acquired the subject property and the Bed and Breakfast business that was being operated out of the subject property at the time. The total purchase price for the real property and the business was \$\$\$\$\$. A Buyer's Closing Statement was provided by the Property Owner which did list the contract sales price to be \$\$\$\$\$. Of that \$\$\$\$\$ purchase price, \$\$\$\$\$ came from a Promissory Note and Deed of Trust secured by the subject property. The remainder appears to have come from Promissory Notes secured by other properties.<sup>2</sup> There was nothing in the closing documentation provided by the Property Owner that specifically listed out what portion of the total price was for the real property and what portion of the total price was for the operating business.

11. The Property Owner asserts that she purchased the subject property for \$\$\$\$\$ in YEAR and, therefore, its market value for the 2013 and 2014 tax years should be based on the \$\$\$\$\$ plus the Utah State Tax Commission factor orders issued to the County in 2007 and 2009. The Property Owner states that the 2007 factor order would have increased the subject property by \$\$\$\$\$ and the 2009 factor order by \$\$\$\$\$. This added up to the \$\$\$\$\$ value she was requesting for the subject property for the tax years at issue.

12. The Property Owner had constructed the second garage after she purchased the subject property.

13. The Property Owner provided a list of all sales of residential properties that occurred in the CITY-1 area in 2012 and 2013.<sup>3</sup> During 2012, there had been 94 sales with an average sale price of \$\$\$\$\$ and median sale price of \$\$\$\$\$. The Property Owner points out that of the 94 sales, only 12 sales were above \$\$\$\$\$. The highest priced sale was \$\$\$\$\$ and the next highest at \$\$\$\$\$. The rest of the sales were lower than \$\$\$\$\$. She indicated that none of the sales were in the same taxing region or neighborhood as the subject. She also states that none of the residences were as old as the subject residence.

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<sup>2</sup> Petitioner's Exhibit 1, pgs. 10-18.

<sup>3</sup> Petitioner's Exhibit 1, pgs. 79-82

14. The Property Owner states during 2013 there were 101 sales with only 15 above \$\$\$\$\$. The highest price sale was for \$\$\$\$\$ and the median was \$\$\$\$\$. Again, she states that none of the residences on these properties were as old as the subject residence and they were not in the same neighborhood or taxing jurisdiction as the subject.

15. The Property Owner provided for the first time at the hearing some photographs of specific areas of damage to the interior of the subject residence and to some of the exterior. There was significant damage to the roof and roof decking; however, it is noted that the roof was replaced in 2012. There were some photographs of the exterior of the main residence which would show what was visible from the street. There were also some photographs of damaged areas on the interior of the residence or other buildings and to the patio and other spaces outdoors which may not be visible from the street. There were some photographs of trees in the yard being cut. The Property Owner had not provided a copy of these photographs to the County prior to the hearing by the evidence exchange date, so they were submitted for the first time at the hearing. Because the Property Owner had not allowed the independent appraiser, County Assessor or an employee of the County Assessor's office on to the property or inside any of the structures, the Commission disallows any photographs or testimony regarding the condition of the interior of the structures or the property that would not be visible from the street.

16. The Property Owner has filed appeals of the County's assessed values for many years. Following a Formal Hearing for tax year 2012, the year prior to the years at issue in this matter, the Utah State Tax Commission had lowered the value for the subject property from the \$\$\$\$\$ set by the County Board of Equalization to \$\$\$\$\$. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 12-222 & 13-136*, (January 10, 2014).

17. The County offered an appraisal as evidence in this matter to support that the value should remain at \$\$\$\$\$ for each year at issue. The appraisal had been prepared by APPRAISER, of CITY-1 Appraisal Inc. APPRAISER is not an employee of RURAL COUNTY, but was contracted by the County to perform the appraisal. APPRAISER's appraisal was not a retrospective appraisal back to the lien dates at issue in this appeal and had an effective date of July 21, 2015. It was APPRAISER's conclusion that as of July 21, 2015, the value of the subject property was \$\$\$\$\$. The County did not explain why it had not contracted with APPRAISER for a retrospective appraisal to show the value on January 1, 2013 or January 1, 2014.

18. The County had contacted the Property Owner about APPRAISER coming onto the property and to see the interior condition of the residential buildings on the subject property to make a determination as to the value. APPRAISER had also contacted the Property Owner about the interior inspection of the residential buildings. The Property Owner refused to allow APPRAISER onto the property. APPRAISER then performed the appraisal based on an exterior view from the street.

19. All of the sale comparables used in the appraisal were significantly post lien date for both of the tax years at issue in this appeal. The four comparable properties he considered had sold in 2015 and then he considered two listings that were active as of the date of the appraisal. His four sales are the following:

Address	Sale Price	Sale Date	GLA	Age	Lot Size	Guest House	Adjusted Price
Subject-ADDRESS			####	####	####	Yes	
ADDRESS-1	\$\$\$\$	####	####	####	####	None	\$\$\$\$
ADDRESS-2	\$\$\$\$	####	####	####	####	None	\$\$\$\$
ADDRESS-3	\$\$\$\$	####	####	####	####	Yes	\$\$\$\$
ADDRESS-4	\$\$\$\$	####	####	####	####	None	\$\$\$\$

20. Of the comparables, the most similar was the property at ADDRESS-1 as far as location, size, style and age. In the appraisal, APPRAISER noted that this comparable property was only #### miles from the subject. In the appraisal, APPRAISER made both a positive \$\$\$\$ adjustment for this comparable having an inferior location and a positive \$\$\$\$ adjustment for the site or lot, even though this comparable was nearly identical in size to the subject. As APPRAISER was not present to testify at the hearing, the only explanation regarding this comparable provided by APPRAISER was in the appraisal on Page 6 and states, “The lot size for ADDRESS-1 is similar to the subject’s lot size, however, there was a value difference because of location and use. ADDRESS-1 is located on the west side of town on an inside lot in a semi rural location without curb & gutter or street lights.” This is an insufficient explanation for both a \$\$\$\$ location adjustment and a \$\$\$\$ site adjustment.

21. Neither APPRAISER nor the County provided a market study to show what type of market appreciation or depreciation had occurred from the lien dates at issue in this hearing, which were January 1, 2013 and January 1, 2014, and the appraisal date of July 2015. The appraisal may be relevant evidence for determining a value for the subject property for the 2016 tax year, but not relevant to the lien dates at issue in this matter.

22. The County did not submit any comparable sales or other market evidence at the hearing to support its value of \$\$\$\$\$. Due to the uniqueness of the subject property, having the large older residence with additional guest house and guest units located on one acre of land in the historical downtown area of CITY-1, the unadjusted comparable sales offered by the parties in hearings for previous years have been unpersuasive in determining a value because appraisal adjustments were needed for the considerable differences. The Commission had suggested in prior decisions that an appraisal be submitted for determining fair market value and the County did submit an appraisal in this hearing, however, not a retrospective appraisal that would show the value of the lien dates at issue in this appeal.

The Utah State Tax Commission ordered that the value be lowered for the 2012 tax year from \$\$\$\$ to \$\$\$\$ in a decision resulting from a Formal Hearing. The County raised the value back up to \$\$\$\$ for the two years at issue in this appeal and at the hearing did not provide support for this increase based on sale comparables that occurred near the lien date or a retrospective appraisal.

23. The Property Owner wants the value to be based on her 2004 purchase of the subject in a transaction in which she paid \$\$\$\$ for the subject property and other assets. She attributes \$\$\$\$ of the \$\$\$\$ to the subject property. This is not a reliable basis for market value as the sale occurred years prior to the lien date and there is no part of the contract that shows how the total \$\$\$\$ purchase price was allocated to the various assets that were part of the sale. Further, the Property Owner's argument that the value of the subject property should be determined using the \$\$\$\$ plus the two factor orders required by the State Tax Commission is not supported by law, in that the Utah State Tax Commission only issues a factor order if sales ratio studies show that a County Assessor is failing to raise or lower values based on market value. In other words, if the County Assessor is doing a reasonable job of assessing property within the County based on fair market value, raising or lowering values as appropriate based on market conditions, the Utah State Tax Commission does not issue a factor order.

#### APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All 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.

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 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.

For the 2013 tax year, Utah Law has the following provisions regarding the assessment of property after a reduction in value. Utah Code Sec. 59-2-301.4 (2013) states:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
  - (a) within the three years before the January 1 of the year in which the property is being assessed; and

- (b) by a: (i) county board of equalization in a final decision; (ii) the commission in a final appealable administrative order; or (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
  - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
  - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (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.
- (5) 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.

The Commission takes corrective action against a County if sales ratio studies show assessments are not within the standards provided by law at Utah Code Sec. 59-2-303.1(4)(a) which states:

The commission shall take corrective action if the commission determines that: (i) a county assessor has not satisfactorily followed the current mass appraisal standards, as provided by law; (ii) the sales-assessment ratio, coefficients of dispersion, or other statistical measures of appraisal performance related to the studies required by Section 59-2-704 are not within the standards provided by law; or (iii) the county assessor has failed to comply with the requirements of this section.

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

1. Property tax is based on a property's "fair market value" as of January 1 of the tax year at issue 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. As most properties do not sell near the lien date every year, "fair market value" needs to be determined based on market information like comparable sales or appraisals.

2. The Utah State Tax Commission had for the 2012 tax year lowered the value from \$\$\$\$\$ to \$\$\$\$\$. This is a "reduction in value" under Utah Code Sec. 59-2-301.4. Pursuant to Utah Code Sec. 59-2-301.4, the County is not precluded from raising the value for a subsequent year, but at this Formal Hearing has failed to present evidence that the County considered the requirements of Utah Code Sec. 59-2-301.4 in valuing the subject property. There was no evidence the County took into consideration the factors listed at Utah Code Sec. 59-2-301.4 or showed why the value of the subject property should be raised. The appraisal with an effective date 2.5 years after the 2013 lien date and 1.5 years after the 2014 lien date is not sufficient. The value should remain as set for the 2012 tax year at \$\$\$\$\$ until the County provides information that was previously unknown or unaccounted for, establishes the reasons for the prior value reduction no longer influence the fair market value, or provides evidence of other factors affecting the fair market value which support the increase.

3. The Property Owner misunderstands the law regarding the Utah State Tax Commission's issuance of a factor order or corrective action. Under Utah Code Sec. 59-2-303.1(4), the Tax Commission is to take corrective action, which includes issuing a factor order, if the County Assessor has not followed current mass appraisal standards or if the sales-assessment ratio, coefficients of dispersion, or other statistical measures of appraisal performance on the part of the County Assessor are not within the standards provided by law. The Property Owner argues that the value for the subject property should be based on her allocated \$\$\$\$\$ purchase price plus the two factor orders issued by the Utah State Tax Commission which add up to a value of \$\$\$\$\$. However, in years where a County Assessor had been adjusting values based on sales and market data and was within the statistical ratios because of these adjustments, no factor order would be issued even if values were increasing. Therefore, the Property Owner's approach does not necessarily capture all market appreciation.

4. The interior grade and condition of a residence affects the market value of a property and, therefore, an interior inspection of a property is relevant and discoverable in these proceedings. The Commission has previously considered the position of the parties where a property owner argued that the value of her residence should be reduced because of the interior grade and condition, but would not allow



an appraiser for the County inside her residence to view the interior. The order issued in that case, *Utah State Tax Commission Order Granting Rule 34(b)(1)* (April 26, 2007),<sup>4</sup> set out the position that if the property owner did not allow an appraiser or an employee of the County inside the residence to view and photograph the interior, the Commission would not allow the property owner to provide testimony or evidence concerning the interior condition, quality or grade at the hearing. The Commission continues to follow this position. The Property Owner in this appeal would not allow the appraiser contracted by the County onto the property or into any of the structures. The appraiser, therefore, had to prepare his appraisal based on an exterior inspection from the public street. The Tax Commission disallows in this proceeding the photographs from the Property Owner first proved at the hearing and her testimony regarding the interior grade and condition of the buildings and interior portion of the property that are not visible from the public roadways.

Considering the evidence and the application of Utah Code Sec. 59-2-301.4, the value should remain at \$\$\$\$\$ for both tax years 2013 and 2014.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds the value of the subject property to be \$\$\$\$\$ for both the January 1, 2013 and the January 1, 2014 lien dates. The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

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

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.

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<sup>4</sup> This decision is available in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

Appeal Nos. 13-2390 & 15-36

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.