

14-167
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 12-19-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioners, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 14-167</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 (by telephone)
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER-1 AND TAXPAYER-2 ("Petitioners" or "taxpayers") bring this appeal from the decision of the Salt Lake 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 September 17, 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 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 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 §59-2-301.4 provides for a county assessor to consider a valuation reduction when assessing a property, as follows:

- (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 unappealable 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.

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”

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)

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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 one-story rambler that was built in YEAR. The home contains ##### square feet of “above-grade” living space on the main floor. It also has a basement that is ##### square feet in size (70% finished). The home has two full baths and a one-car garage (that was converted from a carport). Some of the home has not been updated. The main floor bath and the home’s windows and furnace are all original. However, between the taxpayers’ purchase of the home in November 2011 and the 2013 lien date, the taxpayers made repairs to the home and recarpeted and repainted it. In addition, they finished a bath in the basement in 2012. The taxpayers indicated that the kitchen has been updated and that the roof has been replaced, but that these updates occurred prior to their purchase of the home in 2011.

The taxpayers ask the Commission to establish a 2013 value for the subject property by appreciating by about 5% the \$\$\$\$ value that the Commission established for the subject property for the 2012 tax year in *USTC Appeal No. 12-2653* (Initial Hearing Order May 9, 2013). In *Appeal No. 12-2653*, the Commission reduced the subject’s 2012 value from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$. The taxpayers contend that values have not increased more than 5% between 2012 and 2013. Appreciating the 2012 value by 5% would result in a value of \$\$\$\$\$. On this basis, the taxpayers ask the Commission to reduce the subject’s 2013 value to \$\$\$\$\$.

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Section 59-2-301.4(2)(b) provides that when assessing a property subject to a valuation reduction, the county assessor shall consider whether the reasons for the valuation reduction continue to influence the fair market value of the property. It does not appear that all of the factors that the Commission considered when reducing the subject's 2012 value continue to exist as of the 2013 lien date. The taxpayers purchased the subject property for \$\$\$\$\$ in November 2011 as a HUD foreclosure sale. The Commission based its 2012 decision on the taxpayers' assertion that the subject property was in "poor" condition when they bought it in November 2011, that they needed to make repairs and some updates to the home, and that they made most of these repairs and updates in early 2012 (which would not be reflected in the subject's 2012 value as established by the Commission in *Appeal No. 12-2653*). Because the property's condition was improved between 2012 and 2013, the same factors that influenced the Commission's 2012 decision are not applicable to the 2013 tax year. As a result, the subject's fair market value as of January 1, 2013 would not be reflected by simply increasing the subject's 2012 value of \$\$\$\$\$ by the percentage appreciation that all homes experienced between 2012 and 2013. The subject's value also increased between 2012 and 2013 because of the repairs and updates that were made during 2012.

In the file were three Comparative Market Analysis ("CMA") reports that the taxpayers provided prior to the hearing. At the hearing, however, the taxpayers did not proffer or rely on their CMA reports. Nevertheless, the County proffered the taxpayers' three CMA reports in order to point out that almost every one of the comparables used in them were properties that sold as short sales, had condition issues, or were located relatively far away from the subject property.

The taxpayers' "first CMA report" (dated September 13, 2013) estimates a 2013 value of \$\$\$\$\$ for the subject property. Four of the six comparables used in this report sold for prices higher than the subject's current value of \$\$\$\$\$. Five of the six comparables were repossessions or short sales. In addition, the report's final conclusion of value is incorrect because it does not attribute any square footage, land, or other features to

the subject property when adjusting the comparables. The taxpayers' "second CMA report" (dated January 15, 2014) estimates a 2013 value of \$\$\$\$\$. All three comparables used in this report were repossessions or short sales, and two of the three comparables have sales prices and adjusted sales prices that support the subject's current value of \$\$\$\$\$. The taxpayers' "third CMA report" (dated July 24, 2013) estimated the subject's 2013 value to be \$\$\$\$\$. Four of the five comparables used in this report were short sales, and the County represented that the fifth comparable had condition issues.

It is not apparent that short sales and comparables with condition issues would establish the subject property's 2013 value after the taxpayers made repairs and updates to the subject in 2012. In addition, it is noted that some of the comparables in the taxpayers' three CMA reports, although short sales, would support the subject's current value of \$\$\$\$\$. Based on the foregoing, the taxpayers' evidence is insufficient to show that the subject's current value of \$\$\$\$\$ is too high to reflect its fair market value as of January 1, 2013. However, before making a final decision, the County's other evidence should also be analyzed.

The County proffered its own CMA report, in which the subject property's 2013 value was estimated to be \$\$\$\$\$. The County's CMA report compared the subject property to five comparables that sold between August 2012 and February 2013 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The CMA report adjusted the comparables to adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$. None of the comparables are distressed sales, and all of them are located within three blocks of the subject property. However, most, if not all, of the County's comparables have been remodeled to a greater extent than the subject property. Because its CMA report does not account for differences in remodeling or condition, the County does not ask the Commission to increase the subject's value to the \$\$\$\$\$ value estimated in its CMA report. The County instead asks the Commission to sustain the subject's current 2013 value of \$\$\$\$\$.

The County points out that one of the comparables in its report is a home located next door to the subject property. This comparable sold for \$\$\$\$\$ in August 2012 with \$\$\$\$\$ of concessions (i.e., net sales

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price of \$\$\$\$). It is identical to the subject in size, age, and lot size. The County proffered photographs that show that the comparable had been remodeled with average materials. From this comparable, it is clear that the subject's value was less than \$\$\$\$ as of the 2013 lien date. However, the County's comparables do not show that the subject's value was lower than its current value of \$\$\$\$.

It is the taxpayers, not the County, that have the burden of proof in this matter. The evidence is insufficient to show that the subject's current value of \$\$\$\$ is incorrect. In addition, the taxpayers have not provided sound evidence to show that the subject's 2013 value is \$\$\$\$\$, as they propose. Their reliance on the 2012 value established by the Commission to derive the subject's 2013 value is misplaced because of the repairs and updates they made to the subject property during 2012. For these reasons, the subject's current value of \$\$\$\$ should be sustained for the 2013 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject's current value of \$\$\$\$ for the 2013 tax year. It is so ordered.

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 to the address listed below and must include the taxpayer'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.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner