

14-401
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 1-9-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 14-401</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT-1, Appraiser, Salt Lake County
RESPONDENT-2, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing in accordance with Utah Code §59-1-502.5 on October 6, 2014. The Salt Lake County Assessor's Office originally valued the subject property at \$\$\$\$\$, as of the January 1, 2013 lien

date. The County Board of Equalization (“the County”) sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$. The County is asking the Commission to sustain its value at \$\$\$\$\$.

APPLICABLE LAW

Utah Code §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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. To prevail, a party must 1) demonstrate that the value established by the County contains 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. The Commission relies in part on *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 is located at SUBJECT ADDRESS, CITY-1, Utah. It is a ##### parcel of land improved with two residential duplex buildings, four rental units in total. One of the duplex buildings had been constructed in YEAR and the second building in YEAR. Although constructed at different times both buildings are the same size, with ##### square feet on the main floor and a basement of the same size which is 50% finished. The County considers the duplexes to be fair grade construction and in average condition. There are no garages on the property.

The subject parcel is located on ROAD which is a heavily trafficked street. Although ##### acre in size, the only curb cut for a driveway into the lot is on one end of the property and the two duplexes were constructed on that side of the property, leaving more than half of the land unused with the current configuration. It was the Property Owner's statement that there would be no additional curb cuts allowed because of the nearness to the corner and the busy traffic. In addition he stated that the County's building restrictions for this area would not allow any additional rental units to be constructed on this property. The County did not dispute this fact. There was no indication that the subject parcel could be divided so that each duplex unit could be sold separate from the other. The County noted that due to the configuration of the two duplexes, the only way to use the entire acreage was to tear down the existing improvements and construct a single family residence with the land being the yard space.

The Property Owner requested a reduction to \$\$\$\$ for the 2013 tax year. He pointed out that for the 2012 tax year, the value set by the County Assessor had been \$\$\$\$\$. He had appealed that value to the County Board and then was able to reach a stipulation with the County Board that reduced the value to \$\$\$\$ for the 2012 tax year. In addition the Property Owner provided three land comparables and one listing as it was his position that the value of the land was much lower than what the County was stating. He also provided two four-plex comparables:

The Property Owner's four-plex sales were the following:

Address	Size	Year	Acreage
		Built	
Subject: SUBJECT ADDRESS	#### ¹	YEAR	####

¹ This is the total square footage which includes ##### unfinished basement square feet. It is unclear from the MLS reports what, if any, portion of the comparables are basement areas or unfinished basement areas.

ADDRESS-1	\$\$\$\$	11/12	####	1986	0.20
ADDRESS-2	\$\$\$\$	1/13	####	1973	0.55

The Property Owner's three land sales and one listing were the following:

Address	Sale Price/Per Square Foot	Sale Date	Size	Comments From MLS
Subject: SUBJECT ADDRESS		####		
ADDRESS-3	\$\$\$\$/\$\$\$\$	11/11	0.50	Distress Sale, Near Subject ²
ADDRESS-4	\$\$\$\$/\$\$\$\$	2/13	1.50	Beautiful Building Lot
ADDRESS-5	\$\$\$\$/\$\$\$\$	7/13	1.06	No water, Dirt Road Access, Mt Views
ADDRESS-6	\$\$\$\$/\$\$\$\$	Listing	1.00	Mt. Views, Secluded Lot

The County's representative pointed out that the two four-plex comparables were far in location from the subject. The subject is located much farther east and nearer to ski resorts than the two four-plex comparables. It was the County's argument as well that the subject was two-duplex units and two-duplex units did not compare to a four-plex unit and only duplex units should be used as comparables. He also pointed out that most of the Property Owner's land sales were far from the subject, being located in CITY-2. It was his contention that these areas were not a comparable location to the subject and that there were numerous sales nearer in location to the subject. The one land comparable provided by the Property Owner that was very near in location to the subject, at ADDRESS-3 had been a distressed, bank owned sale.

The County supported its value for this property with three duplex sales and seven land sales. Each of the duplex sales were a single duplex per lot, unlike the subject which has two duplexes on one lot and is not divisible to sell separately. The County did not provide an appraisal or adjustment grid to compare these sales to the subject. However, the County indicated that an adjustment for the surplus land of the subject should be made and argued that a very conservative rate for this adjustment should be \$\$\$\$ per square foot of the surplus land. The

² It was the Property Owner who had purchased this lot and he did not provide the MLS Report. Instead he provided the Settlement Statement, which indicated he had purchased this from a credit union. This comparable is located only two parcels away from the subject on the same street.

County’s Duplex sales and then the value the County concluded after making the \$\$\$\$ per square foot adjustment for surplus land is as follows:

Address	Sale Price	Sale Date	Size	Year Built	Acers	County’s value with Land Adjustment
Subject: SUBJECT ADDRESS			##### ³	YEAR	#####	
ADDRESS-7	\$\$\$\$	1/12	#####	YEAR	#####	\$\$\$\$
ADDRESS-8	\$\$\$\$	8/12	#####	YEAR	#####	\$\$\$\$
ADDRESS-9	\$\$\$\$	8/12	#####	YEAR	#####	\$\$\$\$

The County argued just taking into account the \$\$\$\$ per square foot for surplus land and these sales supported the value, without having to add a value for the second duplex on the subject property.

The County additionally provided seven land sales to support its land value. The County’s land comparables are the following:

Address	Sale Price/ Per Square Foot	Sale Date	Acres	MLS Comments
ADDRESS-10	\$\$\$\$/\$\$\$\$	3/12	####	Near (X), Mt. Views
ADDRESS-11	\$\$\$\$/\$\$\$\$	3/12	####	Views Valley & Canyon
ADDRESS-12	\$\$\$\$/\$\$\$\$	4/12	####	Gated Subdivision, Views
ADDRESS-13	\$\$\$\$/\$\$\$\$	6/12	####	high end Gated Community
ADDRESS-14	\$\$\$\$/\$\$\$\$	8/12	####	Gated Community, Mt. Views
ADDRESS-15	\$\$\$\$/\$\$\$\$	10/12	####	Gated Community, Views
ADDRESS-16	\$\$\$\$/\$\$\$\$	4/13	####	Mt. & Valley Views

After considering the information presented at the hearing, although the County has criticized the comparables provided by the Property Owner, the County has not provided better information and its dual valuation approach in this matter is overvaluing the subject property. The County argues that the subject should be compared to two duplexes, rather than a four-plex. If, in fact, the subject could be divided and each duplex sold separately, the County would be correct, because duplexes tend to sell more per unit than four-plexes for various reasons. However, the subject duplex units cannot be sold separately, both buildings, all four-rental units would have to be sold together, like a four-plex. This negates a number of the reasons for the higher price per unit often obtained for duplexes. Secondly, the County acknowledged that the

³ See footnote 1.

only way to make full use of the ##### acres was to tear down the existing buildings, so the lot could be developed for one large single family residence. Less than one-half of the subject lot is even being used and landscaped for the duplex units and driveway. Additional yard space is unlikely to add further value if this property is valued as four rental units, unless the value as a building lot was higher than the four-plex value. Yet the County provides duplex comparables and then adds a substantial value for the surplus land. The County is in error. This property needs to be valued as the higher of these two separate approaches rather than as a combination of the value for both. The County may value this as a four-plex, with some adjustments for the fact that the four units are in two separate buildings and have larger than typical yard space. Under this approach the surplus land would contribute little value to the existing improvements. Or the County may value this property as a large, single family residential building lot. The County is doing a variation of both approaches and then adding that together.

One other factor regarding the land comparables. Although two of the Property Owner's land sales were farther in location from the subject than the ones used by the County, the County's comparables were in a higher value area, much nearer to the ski resorts or in a high end subdivision. If the subject was to be valued as a residential lot, all of the County's land sales were in superior areas and they all sold for less than the \$\$\$\$ value set on the subject property by the County. They were all listed as prime residential home lots, with views. Some were in gated communities. There was no indication the subject had a view and it was clearly not in these high end subdivisions. The most comparable land sale to the subject was the Property Owner's comparable at ADDRESS-3, which was a ##### acre lot selling for \$\$\$\$ or \$\$\$\$ per square foot.

Neither side submitted an appraisal or made appraisal adjustments to the various comparables. The most similar of all of the properties submitted as comparables was the four-plex property submitted by the Property Owner at ADDRESS-2. This property sold for \$\$\$\$\$, very near the lien date at issue in this appeal. Additionally this four-plex was on a large lot, with ##### acres. The additional acreage of the subject would not likely add much when valued as a four-plex. It should be noted that this value is higher than if the subject property were to be valued as a residential lot based on the comparables submitted. The value should be lowered to \$\$\$\$\$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2013 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 emailed or 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

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

