

14-546
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 2-6-2015
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</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. 14-546</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: REPRESENTATIVE-1 FOR TAXPAYER, Representative
REPRESENTATIVE-2 FOR TAXPAYER, Trustee
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

The TAXPAYER ("Petitioner" or "taxpayer") brings 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 October 7, 2014.

At issue is the fair market value of the subject property as of January 1, 2013. The subject is a cabin that is located on U.S. Forest Service Land at SUBJECT ADDRESS in CANYON, Salt Lake County, Utah. The County BOE sustained the \$\$\$\$ value at which the subject property was assessed for the 2013 tax year. 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 §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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. . . .

. . . .

(4) 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.

. . . .

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 is a cabin located on U.S. Forest Service land and is located between the RESORT-1 and RESORT-2 ski resorts. It is located on ROAD where it and approximately 14 other cabins are located near one another on the Forest Service land. The subject cabin was built in 1954 and appears to have been well-maintained. It has 1,080 square feet of living space on the main floor and 200 square feet on the second floor. The subject property sold in September 2011, which will be discussed in more detail later. The Multiple Listing Service (“MLS”) information about the subject property shows that its cabin has three bedrooms, one ¾-bath, one ½-bath, a vaulted ceiling, and a basement that can be used for storage.

The parties agree that the land on which the subject is situated is not subject to property taxation because it is owned by the federal government. The Division asserts that the \$\$\$\$ amount assessed to the subject property only represents the value of the subject’s improvements and does not include any land value. The taxpayer, however, contends that the \$\$\$\$ value represents not only the value of the subject’s improvements, but also the value of the Forest Service land on which it sits. As a result, the taxpayer contends that the subject’s value should be reduced. The taxpayer proposes that the subject’s value be reduced to \$\$\$\$ to reflect the value of its improvements only and proffers both fair market value and equalization arguments to support this value for the improvements. These arguments will be addressed separately.

Fair Market Value. For 2013, County records show the subject property to have no land value and to have a building value of \$\$. To support its assertion that the \$\$\$\$ value represents the value of the improvements only, the County proffered Multiple Listing Service (“MLS”) information about the sale of the subject property. This information shows that the taxpayer purchased the subject property for \$\$\$\$ on September 3, 2011, approximately 16 months prior to the 2013 lien date at issue.¹

1 REPRESENTATIVE-2 FOR TAXPAYER, the trustee of the taxpayer, indicated that the taxpayer paid an arm’s length value for the subject property, even though the seller of the property was an entity owned by

For fair market value purposes, the taxpayer initially argued that the subject's \$\$\$\$ value contains value associated with the underlying exempt land. The taxpayer proffered evidence to show that the Forest Service land on which the subject cabin is located has an appraised value of approximately \$\$\$\$.² If this \$\$\$\$ value for the Forest Service land is subtracted from the subject's assessed value of \$\$\$\$\$, the resulting value is \$\$\$\$\$. On this basis, the taxpayer asks the Commission to reduce the subject's 2013 value to \$\$\$\$\$.

The evidence, however, does not show that the subject's \$\$\$\$ value includes the \$\$\$\$ value of the Forest Service land on which it sits. First, REPRESENTATIVE-2 FOR TAXPAYER admitted that the \$\$\$\$ sales price the taxpayer paid for the property in September 2011 did not include the value of the underlying land. Second, the County proffered several other sales or listings for cabins on Forest Service land in Salt Lake County to show that the prices at which these cabins sold (without the underlying land) support the County's claim that the subject's current value of \$\$\$\$ is for its improvements only. The County proffered MLS information showing that a cabin near the subject property³ that is also on Forest Service land sold for \$\$\$\$ in August 2014. This cabin was slightly smaller than the subject property, but it was newer (built in 1972). Other MLS information shows that another nearby cabin located at ADDRESS-1 is listed for sale at \$\$\$\$ as of October 2014. Its cabin is also smaller than the subject's cabin, but it was built in 1954, the same year in

himself and other relatives. REPRESENTATIVE-2 FOR TAXPAYER explained that his family has owned the subject property for years, but eventually some family members wanted to sell while he wanted to retain the property. As a result, they listed the property for sale at \$\$\$\$ through the Multiple Listing Service ("MLS") and waited until an unrelated party made what they considered to be a reasonable offer to purchase the subject property for \$\$\$\$\$. At that time, REPRESENTATIVE-2 FOR TAXPAYER indicated that he was allowed to match the offer and purchase the subject property through the trust for \$\$\$\$\$.

2 This appraisal was performed in order to determine the annual lease rate of the land. The taxpayer also proffered evidence to show that for cabins in the subject's area that are not on Forest Service land (i.e., those where the property owner owns both the land and the improvements), the County has assessed their land values near the \$\$\$\$ value of the Forest Service land on which the subject is located.

3 This comparable is located at ADDRESS-2, whereas the subject is located at SUBJECT ADDRESS.

which the subject cabin was built.⁴ This information shows that the subject's current value of \$\$\$\$\$ is a reasonable estimate of the price at which the subject's improvements (without the underlying land) would sell. The taxpayer has not shown that the price at which the subject's improvements (without the land) would sell between a willing buyer and a willing seller would be lower than \$\$\$\$\$, much less \$\$\$\$\$.

At the hearing, the taxpayer formulated an alternative argument. It theorized that the \$\$\$\$\$ value it paid for the subject property and the similar values paid by other purchasers of cabins on Forest Service land was for "something more" than just the improvements they acquired. The taxpayer proposed that not only were they all purchasing improvements, but that they were also acquiring some type of right to enter into a lease with the Forest Service to use the underlying land. However, REPRESENTATIVE-2 FOR TAXPAYER acknowledged that the lease contract between the Forest Service and the subject property's prior owner was not transferable.⁵ He also acknowledges that the taxpayer had to enter into a new lease agreement with the Forest Service to use the underlying land after it purchased the cabin in September 2011.

REPRESENTATIVE-2 FOR TAXPAYER pointed out, however, that the Forest Service allowed the taxpayer to lease the subject's underlying land on the same terms as the prior owner (based on an annual lease rate of 5% of the land's appraised value). In addition, he pointed out that it is well established that a new owner of a cabin on Forest Service land in the subject's area will have no problems in entering into a new lease

4 The County also proffered sales of cabins on leased Forest Service land in the "X" subdivision. This subdivision is also located In CANYON, but is located several miles down the canyon from the ski resort areas. The County proffered two sales from 2010 of properties in the X subdivision on Forest Service land. The first is a December 2010 sale of a 1957-built cabin that is much smaller than the subject, which sold for \$\$\$\$\$. The second is a November 2010 sale of a 1970-built cabin with less above-grade square footage than the subject, which sold for \$\$\$\$\$.

5 The 2009 lease agreement between the Forest Service and the subject's prior owner includes the following clause:

NONTRANSFERABILITY. This permit is not transferable. A purchaser or transferee of the recreation residence covered by this permit must apply for and obtain a new permit from the Forest Service.

with the Forest Service. This information, however, does not convincingly show that the taxpayer was purchasing rights associated with the subject's underlying land when it paid \$\$\$\$ for the subject's improvements in September 2011. The taxpayer has pointed to no Utah statute or any court precedent to show that a buyer is paying for something other than taxable property when it purchases land on Forest Service land, especially where the right to lease the land is non-transferrable.⁶ In addition, even had the taxpayer proved that some non-taxable right was included in the price that it paid for the improvements only, the taxpayer has not provided evidence of the value of this right. Clearly, the taxpayer was not purchasing the land, whose value is approximately \$. There is no evidence to show that the value of any "right" would be the same as the value of the land itself. For these reasons, the taxpayer has not shown that the "fair market value" of the subject's improvements (without the land), as of January 1, 2013, is less than its current value of \$.

Equalization. The "fair market value" of the subject's improvements (without the land) is \$ as of January 1, 2013. Nevertheless, the subject's value may be reduced for equalization purposes if the evidence shows that subject's value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent

6 The taxpayer did not assert that the "right" to lease the underlying land was "intangible property." Nevertheless, the Commission notes that UCA §59-2-102(28)(b) allows certain types of intangible property to be excluded from that "property" which is subject to taxation. Section 59-2-102(20) defines "intangible property," as follows:

- (20) "Intangible property" means:
- (a) property that is capable of private ownership separate from tangible property, including:
 - (i) money; (ii) credits; (iii) bonds; (iv) stocks; (v) representative property; (vi) franchises; (vii) licenses; (viii) trade names; (ix) copyrights; and (x) patents;
 - (b) a low-income housing tax credit;
 - (c) goodwill; or
 - (d) a renewable energy tax credit or incentive. . . .

There is no evidence to show that any "right" the taxpayer may or may not have purchased to lease the subject's underlying land is one of the items listed in the above definition of "intangible property."

its “fair market value,” the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The taxpayer bases its equalization argument on the assessed values of nine comparables that are located in a nearby subdivision where the cabin owners also own the underlying land. The comparables will be referred to as “cabins with land” as opposed to properties, like the subject, that will be referred to as “cabins on leased land.” The taxpayer shows the total values at which the nine cabins with land were assessed for 2013, in addition to how these total values are allocated into land values and building values. One of the nine comparables was assessed at a total value of \$\$\$\$\$, while the remaining eight comparables were assessed at total values ranging between \$\$\$\$\$ and \$\$\$\$\$.

With the exception of the one comparable that is assessed at \$\$\$\$\$, which appears to be an anomaly, the total values of the taxpayer’s cabins with land have been allocated into land values ranging between \$\$\$\$\$ and \$\$\$\$\$ and building values ranging between \$\$\$\$\$ and \$\$\$\$\$. The taxpayer contends that because the building values of these cabins with land are all lower than the subject’s building value of \$\$\$\$\$, the subject’s current value of \$\$\$\$\$ is inequitable. To correct this perceived inequity, the taxpayer has calculated that on average, 61% of the total values of the nine cabins with land has been attributed to their land. The taxpayer shows that if 61% of the subject’s current value of \$\$\$\$\$ represents the value of its underlying land, then the subject’s building value (39% of \$\$\$\$\$) would be approximately \$\$\$\$\$. For these reasons, the taxpayer contends that it could ask for the subject’s value to be decreased to \$\$\$\$\$ for purposed of equity. However, the taxpayer indicates that it will only ask the Commission to reduce the subject’s building value to \$\$\$\$\$, based on reducing the subject’s current value of \$\$\$\$\$ by the \$\$\$\$\$ value of the underlying Forest Service land.

It is clear that the building value of the subject property (which is its total value) is higher than the building values that have allocated to the nearby cabins with land. At issue is whether this fact is sufficient to

show that the subject property has been inequitably assessed. The County contends that it is not sufficient for a couple of reasons. First, the County contends that the taxpayer's equalization argument is improper because the taxpayer is comparing "apples to oranges" (i.e., comparing cabins with land with the subject property, which a cabin on leased land). The County contends that it would be more appropriate to look at the assessed values of properties that are more comparable to the subject property, specifically the assessed value of other cabins on leased land. The County shows that the 14 other cabins on leased land in the subject's area have assessed values for improvements only (i.e., no land value) ranging between \$\$\$\$\$ and \$\$\$\$\$.

It is noted that the subject's assessed value of \$\$\$\$\$ is near the higher end of assessed values for these cabins on leased land. The taxpayer, however, did not argue that the subject's assessed value was out of line with the assessed values of other cabins on leased land. Furthermore, neither party has submitted evidence about the ages and sizes of the nearby cabins on leased land for the Commission to determine whether the subject's value, which is at the higher end of these values, is equitable with these comparables. As a result, the evidence does not show that the subject's current value is inequitable when compared to the assessed value of those comparables that are most similar to the subject property (i.e., cabins on leased land).

Second, the County contends that the taxpayer's equalization argument is flawed because there is no evidence showing that the taxpayer's nine cabin with land comparables are assessed below their fair market values. The County explains that if the subject and the comparables are all assessed at their total fair market values, there can be no inequity of assessment, regardless of whether the cabins with land have allocated building values that are lower than the subject's building value. This argument of the County is also convincing. The Commission must consider whether the taxpayer has shown that its cabin with land comparables are being taxed at values that are less than their fair market values, in comparison to the subject, which it being taxed at its fair market value. In *Rio Algom*, the Court stated that:

To assess property at its just value is only one of the fundamental requirements of law. The assessment must further represent the owner's equal portion of the burden of taxation, and if the assessors have not appraised at full value but only at a fixed percentage of true value, then such treatment must be uniform and equal on all real estate and tangible property, so much so that if both cannot be obtained then equality must prevail.

The taxpayer has not shown that its nine cabin with land comparables are being taxed at total values that are below their total fair market values. As a result, it has not been shown that it would be inequitable to assess the subject property at its fair market value.

One last comment should be made about the taxpayer's attempt to compare a portion of the total values of the nine cabin with land comparables, specifically their building values, with the subject's building value. The County used a market approach to determine the subject's building value because there is a market for such buildings without land (i.e., there is a market for cabins on leased land). There is no such market for the buildings alone where the properties are cabins with land. For these properties, the buildings do not sell separately from the land. As a result, the County could not use a market approach to determine the building values alone for the taxpayer's nine comparables. Instead, it used a market approach to determine the *total* values of the nine comparables. It then used a market approach to determine their land values, then subtracted the land values from the total values to derive allocated building values. As a result, a comparison of the nine comparable's building values to the subject's building value is not appropriate to show an inequity of assessment.⁷

⁷ See *USTC Appeal No. 08-0628* (Initial Hearing Order Oct. 16, 2008), in which the Commission stated: In most instances, the value of a residential property is derived through a market approach that establishes a total value for the property without regard to the individual land and improvements values. How a County may have allocated that total value between land and improvements is, generally, immaterial when the Commission reviews the fair market value of a residential property.

Redacted versions of this and other selected Commission decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

Nevertheless, separate building and land values may be material when the Commission is reviewing a property and/or comparables whose total values are not determined with a "unitary" approach (such as the

Regardless, it is not at all clear that the market for cabins with land and the market for cabins on leased land are the same. Accordingly, the taxpayer's comparables are not convincing comparables for purposes of equalization. It would be more appropriate to compare the subject's assessed value with the assessed values of other cabins on leased land. Furthermore, the taxpayers have not shown that any of its comparables are being assessed at a value below "fair market value." As a result, the taxpayers have not shown that it is inequitable to assess the subject property at its fair market value. For these reasons, the taxpayer's equalization argument is not convincing.

In conclusion, the taxpayer has not met its burden to show that that the subject's current value should be reduced because of its fair market value arguments or its equalization arguments. Accordingly, the Commission should sustain the subject's current value of \$\$\$\$ for the 2013 tax year.

Kerry R. Chapman
Administrative Law Judge

market or income approach). For example, had the County determined the total values of the taxpayer's nine cabin with land comparables by adding together separate values it had determined for their buildings and land (using the cost approach for the buildings and the market approach for the land) and had the County also determined the subject's building value with the cost approach, the taxpayer's building value comparison may have been appropriate. See *USTC Appeal No. 09-3842* (Initial Hearing Order Nov. 11, 2010), in which the Commission stated that "we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently." However, in that appeal, the property at issue may have been assessed using the cost approach, where values had been determined for the land and the improvements separately with individual valuation methodologies.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$ should be sustained 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, 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