

14-2395
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 12-18-2015
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 14-2395</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2014</p> <p>Judge: Chapman</p>
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Presiding:

John L. Valentine, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: RESPONDENT, from the RURAL COUNTY Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 14, 2015.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2014, with a lien date of January 1, 2014.
3. At issue is the fair market value of Parcel No. #####. The subject property is a vacant recreational lot located at SUBJECT ADDRESS in CITY-1, RURAL COUNTY, Utah. The subject property is owned by TAXPAYER ("Petitioner" or "taxpayer").

4. The RURAL COUNTY Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2014 tax year. The County BOE also sustained the property’s classification as “non primary land” (i.e., land that does not qualify for the primary residential exemption set forth in Utah Code Ann. §59-2-103(2)).

5. The taxpayer has appealed the County BOE’s decision to the Tax Commission. The taxpayer does not dispute the County’s classification of the subject lot as a non primary property. However, he does dispute the subject’s 2014 value and asks the Commission to reduce its current value of \$\$\$\$ to \$\$. The County BOE asks the Commission to sustain the subject’s current value of \$\$\$\$.

6. The Commission held a Mediation Conference in lieu of an Initial Hearing on April 14, 2015.

7. On May 20, 2015, subsequent to the Mediation Conference, the Commission issued a Stipulation & Order of Approval in the matter. The Commission issued this order on the basis of a stipulation that appeared to have been signed and dated by both parties on April 14, 2015. The stipulation indicated that the parties had agreed that the subject property’s 2014 value would remain at \$\$\$\$ and that the property would qualify for the primary residential exemption.¹

8. On May 27, 2015, the taxpayer sent an email to County Assessor NAME-1, in which he objected to the Commission’s issuance of the May 20, 2015 Stipulation and Order of Approval. In the email, the taxpayer admitted that he signed a stipulation, but stated that he signed it before the Mediation Conference began and before any values had been entered on it. He stated that he had understood that the stipulation would only be used if he and the County BOE reached an agreement on the subject’s value. He contended that the parties did not reach any agreement and that the values shown on the stipulation were entered after the

¹ Because the subject property is a vacant lot, it clearly does not qualify for the primary residential exemption.

conference and without his consent. On this basis, the taxpayer requested a Formal Hearing on the matter before the Commission.

9. After receiving the email described in the prior paragraph, the County Assessor sent an email back to the taxpayer. In her email, NAME-1 indicated that she was fully aware that the parties had not reached an agreement at or since the Mediation Conference. She stated that she had a copy of the stipulation that had her signature on it only and that she did not have a stipulation with both parties' signatures on it.

10. On May 28, 2015, the taxpayer forwarded the emails described in the prior two paragraphs to the Commission and asked for a Formal Hearing before the Commission.

11. On June 17, 2015, the Commission issued an Order Setting Aside Order of Approval, in which it set aside the May 20, 2015 Stipulation and Order of Approval. The Commission subsequently set the matter for a Formal Hearing. The only issue before the Commission at the Formal Hearing is the subject property's fair market value for the 2014 tax year.

12. The subject property is a #####-acre recreational lot located in the SUBDIVISION, which is north of CITY-1 and relatively close to the RURAL COUNTY-2 border. The subdivision is also located about three miles from the (X) Ski Resort, which is across the border in RURAL COUNTY-2 and which is separated from the subject's subdivision by a mountain.

13. The taxpayer also owns another property in the SUBDIVISION. The subject property and the other property the taxpayer owns are separated by a property that the taxpayer does not own. The taxpayer's other property in SUBDIVISION is #####-acres in size and has a cabin on it.

14. Sometime before the 2014 lien date, RURAL COUNTY had placed a moratorium on new construction of homes in SUBDIVISION because of inadequate roads for emergency vehicles and because of an inadequate water system for fire suppression. The County indicated that steps are being taken to obtain the needed infrastructure through a special service district ("SSD") that was being planned in 2014, but that was

not formed prior to the 2014 lien date. The taxpayer admitted that certain parties are trying to establish an SSD to put in the infrastructure for water and sewer, but asserted that the SSD is being legally challenged by some of the SUBDIVISION property owners. Given this information, it is clear that the subject property could not have been built on as of the lien date. However, as of the lien date, it is *not* clear that the moratorium on building will be permanent and that the subject property will never be able to be built upon.

15. As of the 2014 lien date, the subject property did not have water or sewer. A “perc” test has not been performed on the subject property to see if a septic system can be installed on the property. The taxpayer testified that because a seasonal stream crosses the subject property, a septic system could not be placed on most portions of the subject property. The taxpayer explained that a septic system must be located 150 feet away from the stream. This information, however, is insufficient to show that the subject property cannot accommodate a septic system.

16. In addition, the subject property does not have a dedicated water share giving its owner the right to drill a well for water. The taxpayer explained that acquiring a water share would not guarantee that a well, if dug, would not be dry. The County indicated that as of the 2014 lien date, water shares were available to the public for approximately \$\$\$\$\$. The taxpayer submitted evidence of a Water Share Sale Announcement dated May 4, 2015, in which a water share was being offered for sale at a starting bid of \$\$\$\$\$.² The taxpayer also contends that there were no water shares to buy as of the 2014 lien date. The County countered that water shares were available to buy from other property owners on the 2014 lien date for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The taxpayer’s evidence of a water share being offered for sale in May 2015 for a starting price of \$\$\$\$\$ is insufficient to show that no water shares were available as of the 2014 lien date or that water shares could not have been purchased for \$\$\$\$\$ to \$\$\$\$\$ on this date.

2 Petitioner’s Formal Hearing Exhibit 2 (“Exhibit P-2”), p. 4.

17. To support his proposed value of \$\$\$\$\$, the taxpayer testified that he purchased the subject property for this amount in August 2013, approximately four months prior to the 2014 lien date. The taxpayer submitted a Settlement Statement dated August 27, 2013, which shows that he purchased the subject property for \$\$\$\$\$ from The NAME-2 and NAME-3 Charitable Remainder Unitrust (“Trust”).³ Although the Settlement Statement was not signed by NAME-2 or NAME-3 (the trustees of the Trust), the County did not refute the taxpayer’s claim that he purchased the property for \$\$\$\$\$. As a result, the Commission finds that the taxpayer purchased the subject property for \$\$\$\$\$ on August 27, 2013.

18. The taxpayer contends that the price he paid for the subject property should be its “fair market value” for property tax purposes. However, “fair market value,” as defined in Utah Code Ann. §59-2-102(12), does not provide that the price a person pays for a property is *always* that property’s value for property tax purposes. For the price paid for a property to represent its “fair market value,” that price must be the amount at which the property would change hands between a willing buyer and a willing seller, with neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

19. The County suggests that the Trust may have been under some compulsion to sell the subject property or did not have reasonable knowledge of the relevant facts when it agreed to sell it for \$\$\$\$\$ because the County is unaware of any other sale of a lot in SUBDIVISION ever occurring for a price less than \$\$\$\$\$. The County provided six sales of lots in the subject’s subdivision, as follows:⁴

Property	Price	Date of Sale	Size in Acres	Perc Test Performed?	Water Right Included?	Source of Sale
Comp 1	\$\$\$\$\$	DATE	#####	Not Known	No	MLS ⁵
Comp 2	\$\$\$\$\$	DATE	#####	No	No	MLS
Comp 3	\$\$\$\$\$	DATE	#####	Not Known	Yes	MLS

3 Exhibit P-1.

4 Respondent’s Exhibit 1 (“Exhibit R-1”), pp. 6-16.

5 “MLS” means the Multiple Listing Service.

Comp 4	\$\$\$\$\$	10/15/13	#####	Yes	Yes	MLS
Comp 5	\$\$\$\$\$	10/14/14	Not Known	Not Known	Not Known	State Survey ⁶
Comp 6	\$\$\$\$\$	08/12/14	Not Known	Not Known	Not Known	State Survey

20. The County also proffered MLS information showing that the subject property was listed for sale in June 2012 for \$\$\$\$\$.⁷ The County admits that this asking price was too high to reflect the subject property’s “fair market value.” However, the County states that the subject property was only listed for sale on MLS for six months and that it seems unusual that the Trust accepted a price of \$\$\$\$\$ for the subject property more than a year after the listing had expired and where the other sales of SUBDIVISION lots have been for \$\$\$\$\$ or more.

21. The County did not submit an appraisal of the subject property. However, the County pointed out that all of the comparables it submitted would have been subject to the same building moratorium as the subject at the times of their sales. In addition, the County pointed out that the two MLS comparables it submitted that sold without water shares, though smaller in size, are otherwise similar to the subject property. Because these two comparables sold for \$\$\$\$\$ and \$\$\$\$\$, the County contends that they support the subject’s current 2014 value of \$\$\$\$\$. For these reasons, the County believes that the \$\$\$\$\$ price the taxpayer paid for the subject property does not represent its “fair market value” and that the subject’s current value of \$\$\$\$\$ does. As a result, the County asks the Commission to sustain the subject’s current value.

22. The taxpayer explained that when the subject property was first listed for sale in 2012, he called the listing realtor and inquired about the property, but thought the \$\$\$\$\$ list price was too high and did not make an offer. He stated that he waited a year and called the realtor again, at which time he was told that

6 The County explained that when a property is transferred to a new owner, the Property Tax Division of the Utah State Tax Commission sends out a survey asking for details about the sale. Some buyers respond to the survey and submit information about the price paid for the property, which may be forwarded to a county.

7 Exhibit R-1, p. 2.

the listing was expired. At this time, the taxpayer told the realtor that he would offer \$\$\$\$ for the property.

The realtor contacted the Trust, which countered with the \$\$\$\$ amount that the taxpayer accepted.

23. The taxpayer provided additional information about the Trust's sale of the subject property to him. The taxpayer submitted a note dated April 14, 2015, that was written by the County Assessor and indicated the following: "NAME-3 phone call said (sic) they had to foreclose on the property & short sell it, out of their Trust."⁸ To counter the note written by the County Assessor, the taxpayer also submitted an email dated April 20, 2015, that Lynn Butterfield, the realtor who had listed the subject property for sale, had written to him. In this email, NAME-4 stated that the sale of the subject property "was not a short sale in any way" and that the \$\$\$\$ should be considered its "fair market value" because this was the price to which the buyer and seller agreed.⁹ The information about the Trust's motivation to sell the subject property is contradictory. Without additional information to show which statement is correct, they are insufficient to show whether or not the Trust was under some compulsion to sell the subject property.¹⁰ The taxpayer has the burden of proof. At the hearing, the taxpayer testified that he did not know why the Trust sold the subject property. Based on the evidence submitted at the hearing, the Commission finds that the taxpayer has not shown that the Trust was

8 Exhibit P-2, p. 3.

9 Exhibit P-2, p. 1.

10 The Commission also notes that none of the statements described in this paragraph were made by a witness who testified at the Formal Hearing. As a result, these "out-of-court" statements are hearsay evidence. Utah Code Ann. §63G-4-206(1)(c) provides that in proceedings such as those held by the Tax Commission, evidence may not be excluded solely because it is hearsay. However, UCA §63G-4-208(3) provides that "[a] finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence." In addition, Utah Admin. Rule R861-1A-28(2)(b) provides that hearsay evidence may be admitted at Tax Commission proceedings, but that no decision of the Commission will be based solely on hearsay evidence. The parties submitted no other information to show whether or not the Trust was under some compulsion to sell the subject property. Accordingly, the information the parties submitted is insufficient to make a finding of fact on whether the Trust was under some compulsion to sell the subject property or not.

under no compulsion to sell the subject property or that the Trust had reasonable knowledge of the relevant facts.

24. The County's comparable sales suggest that a vacant lot in SUBDIVISION without water and sewer, like the subject property, typically sells for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. The subject's current value of \$\$\$\$\$ is within this range. Accordingly, without other credible sales of properties that will support a value near the subject's sales price of \$\$\$\$\$, the subject's sales price appears to be an anomaly that does not represent its "fair market value."

25. The taxpayer testified that he is aware of other sales for prices that are less than the \$\$\$\$\$ and \$\$\$\$\$ prices at which the County's most similar comparables sold. In addition, he claims that the County Assessor told him that she, too, was aware of sales for lower amounts. The County Assessor was not present to testify about the statement she purportedly made. However, RESPONDENT, the County appraiser who was present, testified that except for the sale of the subject property, he was unaware of any lot in SUBDIVISION that has sold for less than \$\$\$\$\$.

26. To support his argument that other properties sold near the \$\$\$\$\$ amount he paid for the subject property, the taxpayer submitted a Warranty Deed, which shows that The NAME-5 Family Trust transferred a lot in SUBDIVISION to NAME-6 and NAME-7 on January 4, 2014.¹¹ The taxpayer stated that he spoke to NAME-6, who told him that he paid \$\$\$\$\$ to purchase this lot. The taxpayer also stated that NAME-6 appealed this lot's value to the County BOE on the basis of the \$\$\$\$\$ purchase price and that the County BOE denied NAME-6's appeal. The taxpayer's evidence is sufficient to show that NAME-6 purchased a lot in SUBDIVISION in early 2014. However, the information about the \$\$\$\$\$ purchase price is hearsay evidence, and the taxpayer had not provided any other evidence to show that this lot actually sold for

11 Exhibit P-2, p. 5.

this amount. No settlement statement was submitted. Nor was any evidence of the appeal that NAME-6 filed with the County BOE submitted, which might have verified the \$\$\$\$ sales price. For these reasons, the taxpayer's information is insufficient for the Commission to find that this lot sold for \$\$\$\$.

27. However, even had the evidence been sufficient to show that NAME-6 purchased his lot for \$\$\$\$, this evidence would not have been sufficient to show that its \$\$\$\$ sales price represented its "fair market value" or to show that the subject's \$\$\$\$ sales price represented the subject's "fair market value." No evidence was submitted to show why the seller sold the lot to NAME-6 for \$\$\$\$, whether the parties to the transaction were related or connected in some manner, whether the lot had been exposed to the market before it sold and, if so, what its list price had been. In addition, no information about the size and features of NAME-6's lot were provided to determine whether it and the subject property are comparable.

28. Based on a preponderance of the evidence, the evidence does not show that the \$\$\$\$ price the taxpayer paid for the subject is its "fair market value." Instead, it shows that the subject property's current value of \$\$\$\$ is a better estimate of its "fair market value."

APPLICABLE LAW

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

2. For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows in pertinent part:

"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. . . .

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, as follows in pertinent part:

(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. 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).

CONCLUSIONS OF LAW

1. For the 2014 tax year at issue, Section 59-2-103(1) provides for the subject to be taxed on the basis of its “fair market value” as of January 1, 2014. Section 59-2-102(12) defines “fair market value” as “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.”

2. The County does not request a value that is different than the \$\$\$\$ value that was established by the County BOE. Accordingly, the \$\$\$ value has the presumption of correctness. As a result, the taxpayer has the burden not only to demonstrate that this value is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject’s value to the \$\$\$\$ amount he is proposing.

3. The taxpayer has not met its burden to show that the subject’s \$\$\$\$ value is incorrect or provided a sound evidentiary basis for reducing the subject’s value to \$\$\$\$\$. Other than the sale of the subject property, the only convincing evidence of sales in the subject’s subdivision show that lots like the subject property sell for prices ranging between \$\$\$\$ and \$\$\$\$\$. The taxpayer has not shown that these lots are superior and more valuable than the subject property. Earlier, the Commission analyzed both parties’ evidence

Appeal No. 14-2395

and found by a preponderance of that evidence that the subject's current value of \$\$\$\$ is its "fair market value."

4. Based on the foregoing, the Commission should sustain the subject's current value of \$\$\$\$ for the 2014 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 2014 tax year. 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. 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.