

15-446, 15-1849

TAX TYPE: LOCALLY ASSESSED PROPRETY

TAX YEAR: 2014, 2015

DATE SIGNED: 2-2-2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF COUNTY, UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal Nos. 15-446, 15-1849 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Years: 2014, 2015 Judge: Jensen
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Presiding:

Rebecca L. Rockwell, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, for the Taxpayer
Respondent: RESPONDENT-1, for the County
 RESPONDENT-2, for the County
 RESPONDENT-3, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 27, 2016. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Taxpayer") brings this appeal from decisions of the Board of Equalization of COUNTY (the "County") for the lien dates January 1, 2014 and January 1, 2015. The Taxpayer filed separate appeals for the two tax years at issue. On the basis of the parties' requests, the Commission heard both appeals together and will address both years at issue in this decision.

2. The subject property, parcel no. #####, is located at SUBJECT ADDRESS in CITY-1, Utah. The values set by the County Assessor and the County Board of Equalization and the parties' value requests at the formal hearing for the two years at issue are as follows:

Appeal No.	Year	Assessed Value	BOE Value	Taxpayer Request	County Request
15-446	2014	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

15-1849	2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
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3. The subject property consists of a #####-acre vacant lot in the NAME OF SUBDIVISION. It is on a subdivision street in a residential area and is approximately 100 yards from a highway.

4. The Taxpayer provided a history of the purchase of the subject property. In 2013, the Taxpayer was purchasing the lot next to the subject property. The Taxpayer told the seller that unless the subject property could be purchased at the same time as the adjacent lot, the Taxpayer would not be interested in buying either property. Two members of the same family owned the two properties that the Taxpayer was interested in purchasing and sold the two properties to the Taxpayer on June 12, 2013. The agreed upon sales price for the subject property was \$\$\$\$\$.

5. The Taxpayer provided evidence that the assessed value of the subject property was \$\$\$\$\$ for 2012 and 2013.

6. The Taxpayer argues that an increase in the assessed value of the subject property from \$\$\$\$\$ for 2012 and 2013 to an assessed value of \$\$\$\$\$ for 2014 and 2015 shows error in the \$\$\$\$\$ value. The Taxpayer argues that, although not to the same extent, the same is true of an increase in assessed value from \$\$\$\$\$ in 2012 and 2013 to the board of equalization values of \$\$\$\$\$ for 2014 and \$\$\$\$\$ for 2015.

7. The Taxpayer provided evidence that from June 2013 to January 1, 2014, the average selling price for real property increased by 1.2% in the subject property's zip code. The Taxpayer provided evidence that the same source showed an 8% decrease in values for the subject property's zip code for the period January 1, 2014 to January 1, 2015.

8. The County provided an appraisal for each of the tax years at issue.

9. For 2014, the County presented an appraisal prepared by RESPONDENT-2. It was the conclusion of the appraiser for 2014 that the value for the subject property as of the January 1, 2014 lien date was \$\$\$\$\$. The appraiser for 2014 relied on the sales of six comparable properties with sale dates in September 2013, November 2013, October 2013, December 2013, April 2013, and July 2013 and sale prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser for 2014 made adjustments to account for differences between the subject property and comparable properties for factors such as time of sale, lot size, location, and view. After making these adjustments, the six comparable sales indicated values for the subject property of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser for 2014 reconciled these to a final \$\$\$\$\$ opinion of value.

10. The appraiser for 2014 testified that the first comparable sale on September 2013 with a sale price of \$\$\$\$\$ indicating a \$\$\$\$\$ value for the subject property was on the same street as the subject property and was the closest of the comparables at ##### of a mile away.

11. The appraiser for 2014 testified that he was aware of another sale on the same street as the subject property that occurred in August 2012 with a \$\$\$\$\$ sale price. He explained that he did not use this sale as a comparable property because it was a sale of a lot that suffered topography challenges from its position in a land depression.

12. For 2015, the County presented an appraisal prepared by RESPONDENT-3. It was the conclusion of the appraiser for 2015 that the value for the subject property as of the January 1, 2015 lien date was \$\$\$\$\$. The appraiser for 2015 relied on the sales of six comparable properties with sale dates in January 2015, August 2015, June 2015, September 2013, August 2012, and July 2015 and sale prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser for 2015 made adjustments to account for differences between the subject property and comparable properties for factors such as time of sale, lot size, location, view, and topography. After making these adjustments, the six comparable sales indicated values for the subject property of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The appraiser for 2015 reconciled these to a final \$\$\$\$\$ opinion of value.

13. The appraiser for 2015 testified that the fourth comparable sale on September 2013 with a sale price of \$\$\$\$\$ indicating a \$\$\$\$\$ value for the subject property was on the same street as the subject property and was the closest of the comparables at ##### of a mile away. He testified that it adjusted to a different value for 2015 than for 2014 because of changes in the market from January 1, 2014 to January 1, 2015.

14. The appraiser for 2015 testified that he relied on one sale on the same street as the subject property that occurred in August 2012 with a \$\$\$\$\$ sale price but had to make a \$\$\$\$\$ adjustment for topography challenges from its position in a land depression.

15. Both appraisers testified that they did not use the Taxpayer's purchase of the subject property as an indicator of value because it was involved in a transaction with no MLS listing and was part of a single transaction with another lot. The appraisers found these concerns heightened given that the \$\$\$\$\$ sale price of the subject property is a statistical outlier compared to the broader market of lots near the subject property.

16. Both appraisers testified that they made adjustments to value on the basis of market information. Specifically, both completed market studies of lot sales similar to and near the subject property and noted steady increases in value from 2012 through January 1, 2015.

17. Commenting on the County's evidence, the Taxpayer opined that comparing a 2014 appraisal at \$\$\$\$ to a 2015 appraisal at \$\$\$\$ at a time when the average sale price in the subject property's zip code decreased showed that the County's appraisals were unreliable.

APPLICABLE LAW

All 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. Utah Code Ann. §59-2-103 (1).

"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. Utah Code Ann. §59-2-102(13).

Utah Code Ann. §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"

In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value different from the subject property's current value but not higher than the value originally assessed, the respondent has the burden of proof to support its position. For either party's position to prevail in this case, the party must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount proposed by the party. *See 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*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

Both parties have the same burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. The Taxpayer's purchase of the subject property causes concerns that prevent it from being considered sound evidence. As testified by both of the County's appraisers, there is no evidence that it was ever listed on the MLS or otherwise received full market exposure at the time of its sale. Further, "fair market value" is defined 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.” That the seller of the subject property in 2013 did not list it with a real estate agent raises concerns that he or she did not speak with any real property professionals and thus may or may not have “reasonable knowledge of the relevant facts.” Additionally, the 2013 sale of the subject property was part of a single transaction with another lot. Because there are concerns regarding the \$\$\$\$ purchase price as an indicator of market value, there is no benefit to making calculations of increase or decrease from that selling price.

Similarly, evidence of an increase in assessed value between two given years can indicate that the earlier year value was too low, that the later year value was too high, or that the value of a given property did increase in value over time. Without direct evidence of market conditions for a given property, there is no basis in the evidence to find which of these conditions is occurring. The Taxpayer’s evidence regarding average sale price does not meet the standard of sound evidence for this purpose for two reasons. First, it appears to be average selling price, which is an indicator of what types of properties – higher priced compared to lower priced – are selling. It is less useful to determine whether the sale price of a single property would have gone up or down. Second, there is no showing that the Taxpayer’s information addresses vacant subdivision lots or whether it addresses all types of real estate transactions.

Although the County’s appraisals are the most persuasive evidence of market data presented, they are made at a time and in an area with few sales of vacant lots. One sale appearing in both appraisals with a sale price of \$\$\$\$ is both close to the subject property and similar in characteristics and desirability to the subject property. The appraisers’ adjustments to value have sound support in market studies. However, the Commission cannot entirely discount a sale on the same street with a \$\$\$\$ sale price. One appraiser did not include this sale in his appraisal for the 2014 tax year. Even though this lot has topography issues that caused the appraiser that did use it as a comparable to make a \$\$\$\$ topography adjustment, it is very close to the subject property, is larger than the subject property, and had a selling price that was the same as the 2014 board of equalization value. The most persuasive lot sales, with selling prices of \$\$\$\$ and \$\$\$\$\$, tend to bracket and support the board of equalization values rather than showing error in the board of equalization values.

The appraiser for 2015 relied on several post lien date sales in arriving at the higher value of the County’s two appraisals. This causes concern of buyers and sellers operating with knowledge that was not known or knowable as of the January 1, 2015 lien date, which would be market knowledge that goes beyond the “reasonable knowledge of the relevant facts” described in Utah Code Ann. §59-2-102(13).

The evidence, taken as a whole, supports a finding that neither party met the burden of proof to show error in the board of equalization values for the two tax years at issue. There is good cause to sustain the board of equalization values for both tax years at issue.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds good cause to sustain the board of equalization values for both tax years at issue. It is so ordered.

DATED this ____ day of _____, 2017.

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 in accordance with 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 and 63G-4-401 et. seq.