

16-160

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2015

DATE SIGNED: 2-15-2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 16-160 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2015 Judge: Chapman
---	--

Presiding:

John L. Valentine, Commission Chair

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer

For Respondent: RESPONDENT-1, COUNTY-1 Assessor (by telephone)

RESPONDENT-2, COUNTY-1 Clerk/Auditor (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 28, 2016.

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 2015, with a lien date of January 1, 2015.
3. At issue is the fair market value of Parcel No. #####. The subject property is a single-family residence located at SUBJECT ADDRESSE in CITY-1, Utah. The subject property is owned by TAXPAYER (“Petitioner” or “taxpayer”).

4. The COUNTY-1 Board of Equalization (“Respondent” or “County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2015 tax year. The taxpayer appealed the County BOE’s decision to the Tax Commission.

5. The Commission issued an Initial Hearing Order in this matter on July 20, 2016. The taxpayer requested to proceed to a Formal Hearing.¹

6. The taxpayer asks the Commission to reduce the subject’s 2015 value to \$\$\$\$\$, while the County asks the Commission to sustain the subject’s current value of \$\$\$\$\$.

7. The subject property consists of a #####-acre lot, a main residence, and other residential structures that were once used, in part, for a commercial bed and breakfast business. The subject property is located approximately two blocks east of STREET in downtown CITY-1.² The taxpayer purchased the subject property in 2004 and used it both as her residence and as a bed and breakfast business until sometime in 2009. The taxpayer testified that since she stopped operating the bed and breakfast business at the subject property in 2009, she has only used the subject property as her personal residence.

8. The subject property’s main residence was built around 1958 and has #####-square feet of above-grade living space. The subject property also has a guest house, which was built in 1997 and has #####-square feet of above-grade living space. Another residential structure containing two guest units (with each unit consisting of a bedroom and bath) was also built in 1997. It has #####-square feet of above-grade living space. In total, the subject property’s three residential structures have #####-square feet of above-grade living space. The subject property also has a swimming pool (which seems to be in need of repairs), as well as a two-car garage, a separate three-car garage, a one-car carport, a covered porch, and covered patios.³

1 Because the taxpayer asked to proceed to a Formal Hearing, the Commission’s Initial Hearing Order is not a final order and has no precedential value for purposes of determining the subject’s 2015 value.

2 Respondent’s Exhibit 1 (Exhibit 3-B (aerial photographs)).

3 Respondent’s Exhibit 1, pp. 2 and 8-9; Petitioner’s Exhibit 1 (Exhibit A, pp. 17-18). There is

9. RESPONDENT-1 stated that the subject's current value of \$\$\$\$\$ was derived with a cost approach and consists of a \$\$\$\$\$ land value and a \$\$\$\$\$ improvements value. The subject's \$\$\$\$\$ land value is the sum of the \$\$\$\$\$ value assessed to the subject's first acre of land (which qualifies for the residential exemption under Utah Code Ann. §59-2-103(2) and (4)) and the \$\$\$\$\$ value assessed to the subject's remaining #####-acres of land (which does not qualify for the exemption). Based on the value assessed to the subject's #####-acres of land, it appears that the County has determined that residential land in excess of a typical building lot is worth \$\$\$\$\$ per 1/100th of an acre (which equates to \$\$\$\$\$ per acre).⁴

10. The subject's current *total* value of \$\$\$\$\$ equates to approximately \$\$\$\$\$ per square foot if the value is divided by the #####-square feet of above-grade living space in the subject's main residence only. If the subject's current value of \$\$\$\$\$ is divided by the #####-square feet of above-grade living space in all of the subject's residential structures, it equates to approximately \$\$\$\$\$ per square foot.

11. The subject's current *improvements* value of \$\$\$\$\$ equates to approximately \$\$\$\$\$ per square foot if the value is divided by the #####-square feet of above-grade living space in the subject's main residence only. If the subject's current improvements value of \$\$\$\$\$ is divided by the #####-square feet of above-grade living space in all of the subject's residential structures, it equates to approximately \$\$\$\$\$ per square foot.

12. The taxpayer has appealed the subject's value every year since 2006, which would include: 1) the 2006, 2007, 2008, and 2009 tax years when the subject property was used for both commercial and residential purposes; and 2) the 2010, 2011, 2012, 2013, 2014, and 2015 tax years when the subject property

contradictory evidence as to the size of the guest house, specifically whether it is #####-or #####-square feet in size. The most convincing evidence of the guest house's size is a sketch of the structure from County records, which shows the guest house to be #####-square feet in size. The taxpayer, who has the burden of proof, has not shown that the dimensions or square footage calculation, as shown on this sketch, is incorrect.

⁴ The County indicates that most nearby lots are #####-acres or less in size. Respondent's Exhibit 1, p. 2.

was used for residential purposes only. For each of the 2006 through 2014 tax years, the following chart shows the value the County BOE established, the value the Commission established, and a short description of the reason(s) why the Commission either reduced or sustained the County BOE’s value:

Year	County BOE’s Value	Commission’s Value	Basis of Commission’s Decision
Valued as Residence and Commercial Bed & Breakfast			
2006	\$\$\$\$\$	\$\$\$\$\$	Based on equalization argument (using both commercial and residential equalization comparables). ⁵
2007	\$\$\$\$\$	\$\$\$\$\$	Based on equalization argument (using both commercial and residential equalization comparables). ⁶
2008	\$\$\$\$\$	\$\$\$\$\$	Based on equalization argument (using both commercial and residential equalization comparables). ⁷
2009	\$\$\$\$\$	\$\$\$\$\$	Based on equalization argument (using both commercial and residential equalization comparables).
Valued as Residence Only			
2010	\$\$\$\$\$	\$\$\$\$\$	Denied taxpayer’s equalization argument. Set value on basis of “fair market value,” as supported by comparable sales (which the County provided). ⁸
2011	\$\$\$\$\$	\$\$\$\$\$	Denied taxpayer’s equalization argument. Set value on basis of “fair market value,” as supported by comparable sales from 2010 (which the County provided). ⁹
2012	\$\$\$\$\$	\$\$\$\$\$	Denied taxpayer’s equalization argument. Set value on basis of “fair market value,” as supported by comparable sales from 2011, the highest of which sold for \$\$\$\$\$ (which the County provided).
2013	\$\$\$\$\$	\$\$\$\$\$	Did not adjust on basis of equalization. Set value at \$\$\$\$\$ on basis of Utah Code Ann. §59-2-301.4 and

5 See *USTC Appeal No. 06-1345* (Initial Hearing Order Aug. 28, 2007). Neither party requested a Formal Hearing in this appeal.

6 See *USTC Appeal No. 08-1459* (Findings of Fact, Conclusions of Law, and Final Decision Aug. 30, 2011).

7 See *USTC Appeal No. 09-3520* (Findings of Fact, Conclusions of Law, and Final Decision Feb. 6, 2012). *Appeal No. 09-3520* addressed the subject’s values for both 2008 and 2009.

8 See *USTC Appeal No. 11-85* (Findings of Fact, Conclusions of Law, and Final Decision Mar. 15, 2013).

9 See *USTC Appeal Nos. 12-222 & 13-136* (Findings of Fact, Conclusions of Law, and Final Decision Jan. 10, 2014). The Formal Hearings for these 2011 and 2012 appeals were combined.

			because evidence was insufficient to show that a higher “fair market value” was appropriate. ¹⁰
2014	\$\$\$\$\$	\$\$\$\$\$	Same reasoning as for 2013.

13. During the 2015 tax year at issue, the subject property was used only as a residential property.

As a result, the Commission’s final decisions for the 2006 through 2009 tax years are not particularly helpful in establishing the subject’s 2015 value because the subject property was used for both residential and commercial purposes during these prior years and because the Commission determined the subject’s values for these prior years based on both residential and commercial equalization comparables.¹¹ However, the final decisions concerning the subject property’s value for years in which it was used only for residential properties (i.e., for the 2010 to 2014 tax years) may be useful in showing how the Commission has addressed specific issues that have also arisen for the 2015 tax year.¹²

14. At the hearing, the taxpayer suggested that once the Commission determines a property’s value for one year, the County should be required to use that value to assess the subject property for subsequent years.¹³ Until 2013 when Section 59-2-301.4 took effect, however, there was no statutory requirement for a county to even consider a property’s reduction in value for a prior year when assessing that property for a subsequent year, much less requiring a County to assess a property at the reduced value in a subsequent year.

10 See *USTC Appeal Nos. 13-2390 & 15-36* (Findings of Fact, Conclusions of Law, and Final Decision Dec. 18, 2015). The Formal Hearings for the 2013 and 2014 tax years were also combined.

11 The Commission determines the value for a specific year using the evidence submitted in each appeal, which may be different from one appeal to the next.

12 At the hearing, the taxpayer indicated that the Commission could find additional evidence relevant to the instant appeal in the files for prior appeals concerning the subject property. The Commission, however, is limiting the evidence it will consider in the instant appeal to that evidence that was submitted at the Formal Hearing for the instant appeal. The Commission will not attempt to find and will not consider additional evidence that may be located in files for prior appeals that are closed. That being said, the Commission may consider conclusions it reached in prior decisions when resolving issues that have been raised again in the instant appeal.

13 See also Petitioner’s Exhibit 2, p. 5, in which the taxpayer contends that the County has completely ignored the values established by the Commission when the County assesses the subject property for subsequent tax years.

Effective for tax year 2013, Subsection 59-2-301.4(1) and (2) provide that where a property's value has been reduced within the three years before the lien date at issue, a county assessor shall consider "any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal" and "whether the reasons for the valuation reduction continue to influence the fair market value of the property." In addition, Subsection 59-2-301.4(3) provides that the statute "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."

15. The Commission has interpreted Subsection 59-2-301.4(1), (2), and (3) to mean that a value reduction within three years before the lien date shall be considered in establishing the subject's value as of the lien date at issue, especially where evidence relevant to the lien date at issue does not show that the subject's value has changed since the year for which the reduction occurred.¹⁴ In the instant case, the subject's value has been reduced by the Commission to \$\$\$\$\$ within the three years before the 2015 lien date. Accordingly, the Commission will consider the parties' respective evidence and, later in the decision, determine whether this evidence warrants a 2015 value for the subject property that is different from the \$\$\$\$\$ value reduction.¹⁵

Taxpayer's Arguments and Evidence

16. 2004 Purchase Price. The taxpayer presents various arguments as to why she believes that the subject's 2015 value should be reduced to \$\$\$\$\$. One of the taxpayer's arguments concerns the \$\$\$\$\$ price that she claims to have paid for the subject property's real property in 2004. To this \$\$\$\$\$ value, the taxpayer adds \$\$\$\$\$, which is the sum of what she describes as two subsequent "State Mandated" increases to land

14 See, e.g., *Appeal Nos. 13-2390 & 15-36.*

15 In Petitioner's Exhibit 2, the taxpayer provided information about the subject's 2016 assessed value and the taxpayer's appeal of the 2016 value to the County BOE. At the hearing, the taxpayer admitted that the subject's 2016 value is not at issue in the instant appeal. In Petitioner's Exhibit 1, the taxpayer criticizes the Commission's decisions concerning the subject's values for the 2014 and prior tax years. The Commission's decisions for the 2014 and prior tax years are final. Accordingly, the subject's 2014 and prior years' values are

value in CITY-1, one increase for \$\$\$\$ in 2006 and another for \$\$\$\$ in 2009.¹⁶ The taxpayer claims that the County Assessor has not made any “mass appraisals” or “other related changes” to assessments in the subject’s “taxing region” from 2005 through 2015. As a result, the taxpayer contends that it would be inequitable for the subject property’s 2015 value to be higher than \$\$\$\$.¹⁷

17. The taxpayer has presented this argument in prior appeals, and each time, the Commission has rejected the argument.¹⁸ This argument is no more convincing for the instant appeal as it was for the prior appeals. First, the taxpayer has provided no credible evidence to show that she purchased the subject’s real property for \$\$\$\$ in 2004. In the instant appeal, no documentary evidence concerning the taxpayer’s purchase of the subject property in 2004 was provided. Nevertheless, in the Commission’s prior decisions concerning the subject property, the Commission noted that the taxpayer paid \$\$\$\$ in 2004 for the subject property’s real and personal property and for the bed and breakfast business that was being operated at the property. In addition, these decisions show that of the total payment of \$\$\$\$\$, the taxpayer allocated \$\$\$\$ to the subject’s real property because this was the amount of the mortgage on the property and on a “Deed of Trust and Promissory Note” on the property after the 2004 purchase.¹⁹

18. In *Appeal Nos. 12-222 & 13-136*, the Commission found that “the amount of the promissory note relating to real property . . . does not necessarily establish what portion of the \$\$\$\$ purchase price was for the land and buildings.” In *Appeal Nos. 13-2390 & 15-36*, the Commission considered the taxpayer’s

also not at issue in the instant appeal.

16 It is assumed that the “State Mandates” to which the taxpayer refers are corrective action orders issued to a county by the Tax Commission pursuant to Utah Code Ann. §59-2-303.1(4)(a).

17 See Petitioner’s Exhibit 1, pp. 1-2; Petitioner’s Exhibit 1 (Exhibit A, pp. 2, 9, and 14); Petitioner’s Exhibit 1 (Exhibit B, pp. 4 and 8-9); Petitioner’s Exhibit 1 (Exhibit D, pp. 6, 11, and 14); Petitioner’s Exhibit 1 (Petitioner’s Exhibit E, pp. 8 and 10); and Petitioner’s Exhibit 1 (Exhibit F, p. 5).

18 See *Appeal Nos. 11-85, 12-222 & 13-136, and 13-2390 & 15-36*.

19 See *Appeal Nos. 11-85 and 12-222 & 13-136*.

purchase of the subject property and found that “there is no part of the contract that shows how the total \$\$\$\$ purchase price was allocated to the various assets that were part of the sale.” As a result, the Commission has never found that the taxpayer paid \$\$\$\$ for the subject’s real property in 2004. For this reason and because the taxpayer provided no credible evidence in the instant case to show that she paid \$\$\$\$ for the subject’s real property in 2004, the Commission declines to make such a finding. The Commission’s reasoning from its prior decisions is sound. Mortgage and promissory note amounts do not necessarily show what a property’s “fair market value” is as of the date of the mortgage or promissory note. Furthermore, such documents do not necessarily show what amount of the total purchase price for a business was allocated to the business’s real property.

19. In addition, the taxpayer’s allocation of \$\$\$\$ to the subject’s real property in the instant matter is suspect because it is inconsistent with the \$\$\$\$ amount she allocated to the subject’s real property for purposes of *Appeal No. 08-1459*. In that prior appeal, the taxpayer argued that of the \$\$\$\$ purchase price, \$\$\$\$ was allocated to the business, another \$\$\$\$ to the personal property, and another \$\$\$\$ to reservations. Because these three amounts totaled \$\$\$\$\$, the taxpayer determined that the remainder of the \$\$\$\$ purchase price, which equates to \$\$\$\$\$, represented the amount she paid for the real property. In *Appeal No. 08-1459*, the Commission did not find the taxpayer’s real property allocation to be convincing because “the portion of the sales price attributed to the business and to the personal property are not supported by convincing evidence.” Similarly, in the instant appeal, the taxpayer has also not provided evidence of how the sales price was allocated to the business’s various components. For these reasons, the taxpayer has not established that she paid \$\$\$\$ for the subject’s real property in 2004.

20. Second, even if the 2004 purchase price of the subject’s real property had been established, it would not have been helpful in establishing the subject’s 2015 value. It is difficult for the Commission to

imagine any circumstance where a 10-year old sale would be useful in determining a property's current value.²⁰ Furthermore, Utah law does not provide for a property's current year's value to be derived by adding increases resulting from subsequent state corrective orders to that property's purchase price. Perhaps other states use a property's purchase price in some way to establish its property tax value for subsequent tax years. Utah, however, is not such a state. In Utah, the value at which property is assessed and taxed is based on that property's "fair market value" as of January 1 of the year at issue, pursuant to Utah Code Ann. §59-2-103(1).²¹

21. Third, the Commission has previously explained in *Appeal Nos. 13-2390 & 15-36* that a property's current year's value may not even be related to prior state corrective orders, as follows:

The Property Owner misunderstands the law regarding the Utah State Tax Commission's issuance of a factor order or corrective action. Under Utah Code Sec. 59-2-303.1(4), the Tax Commission is to take corrective action, which includes issuing a factor order, if the County Assessor has not followed current mass appraisal standards or if the sales-assessment ratio, coefficients of dispersion, or other statistical measures of appraisal performance on the part of the County Assessor are not within the standards provided by law. The Property Owner argues that the value for the subject property should be based on her allocated \$\$\$\$ purchase price plus the two factor orders issued by the Utah State Tax Commission which add up to a value of \$\$\$\$\$. However, in years where a County Assessor had been adjusting values based on sales and market data and was within the statistical ratios because of these adjustments, no factor order would be issued even if values were increasing. Therefore, the Property Owner's approach does not necessarily capture all market appreciation.

The taxpayer has provided no new information or arguments in the instant appeal to show that the Commission's prior ruling about state corrective orders is erroneous.

22. Fourth, the taxpayer's purchase price methodology is also not convincing because it fails to attribute any value for improvements added to the subject property since 2004. In 2006, the taxpayer built an

20 In Petitioner's Exhibit 1 (Exhibit C, p. 5), the taxpayer states that an assessor's only requirement after "inheriting" the property values that exist upon coming into office is to "administer over the mandated changes in a uniform manner" (emphasis omitted). The taxpayer is misinformed. Utah Code Ann. §59-2-303.1(2)(a) provides that "[t]he county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data."

21 While the Commission is authorized to implement Utah's tax laws, it is not authorized to change Utah law to effectuate what the taxpayer may consider to be a better tax policy. That is the role of the Legislature.

additional three-car garage on the subject property, the cost of which was approximately \$\$\$\$.²² For these various reasons, the taxpayer's methodology to derive a 2015 value for the subject property based on a 2004 allocated purchase price and two subsequent state corrective orders is unpersuasive.

23. Assessed Values of Other Properties. To further support her requested value of \$\$\$\$\$, the taxpayer submitted County records showing the assessed values, the land acreages, the "years built," and the "square footages" of 32 properties that are located in close proximity to the subject property.²³ Using the improvements values and *some* of the square footages shown on these records,²⁴ the taxpayer calculated the average assessed improvements value of the comparables to be \$\$\$\$ per square foot for the *2010 tax year*. She multiplied this \$\$\$\$ per square foot rate by the #####-above-grade square feet of the subject's main residence to derive a value of approximately \$\$\$\$ for the subject's improvements. The taxpayer then added this improvements value of \$\$\$\$ to the subject's land value of \$\$\$\$²⁵ to derive a total value of \$\$\$\$ for the subject property for the 2015 tax year.²⁶ Given this methodology, it appears that the taxpayer is contesting the subject's improvements value, but not the subject's land value, on the basis of equalization.

22 Petitioner's Exhibit 1 (Exhibit F, p. 5). *See also Appeal Nos. 08-1459, 12-222 & 13-136, and 13-2390 & 15-36.*

23 Petitioner's Exhibit 1 (Exhibit G). The County records that the taxpayer submitted for these 32 properties provide little, if any, additional information about the properties, such as the number of garages and/or carports, the existence of other structures, the number of baths, etc.

24 The taxpayer claimed that the square footages shown on some of the County records are incorrect. As a result, for a number of these comparables, the taxpayer used her own square footage estimates to calculate the comparables' assessed values per square foot. The taxpayer asserts that County records are often incomplete and contain inaccurate information and, thus, is concerned about the County's use of a cost approach to assess residential improvements. Petitioner's Exhibit 2, pp. 7-8 and 12-13. For these reasons, the taxpayer increased the square footages of a number of her comparables (which had the effect of decreasing their assessed values per square foot). The taxpayer, however, has provided no credible evidence to show that the square footages she used to calculate the comparables' assessed values per square foot are more accurate than the square footages shown on County records.

25 The taxpayer only included the land value assessed to the subject's first acre of land (i.e., she excluded the \$\$\$\$ assessed to the subject's remaining #####-acres of land).

26 Petitioner's Exhibit 1, p. 2; Petitioner's Exhibit 1 (Exhibit A, pp. 11 and 13).

24. It is confusing whether the taxpayer recognizes that her methodology to derive a value for the subject property, as described in the prior paragraph, does not consider the value of the subject's other residential structures (i.e., the subject's guest house and guest units). On one hand, the taxpayer asserts that: "Secondary structures are not assessed!!!" (emphasis in original).²⁷ On the other hand, to the \$\$\$\$ value derived in the prior paragraph, the taxpayer indicates that one could add another \$\$\$\$ to account for the subject's guest house by valuing the guest house at the same \$\$\$\$ per square foot rate she used to value the subject's main residence.²⁸ Because the sum of these \$\$\$\$ and \$\$\$\$ values is only \$\$\$\$\$, the taxpayer contends that this equalization approach more than supports her proposed value of \$\$\$\$.

25. Under Utah Code Ann. §59-2-1006(5), a property's value may be adjusted for equalization purposes if the property's value deviates 5% from the assessed values of "comparable properties." For a property as unique as the subject property, it is arguable that there are few, if any, comparable residential properties that can reasonably be compared to the subject property for purposes of equalization. This may be a factor in the Commission's rejection of the taxpayer's equalization arguments for all prior tax years where the subject property has been used exclusively as a single-family residence (i.e., for the 2010 to 2014 tax years). Nevertheless, because the taxpayer has provided new equalization information for this appeal that was not

27 Petitioner's Exhibit 1 (Exhibit A, p. 1). The taxpayer's statement is incorrect. In Utah, a property is assessed and taxed on the basis of its "fair market value," which is defined in Utah Code Ann. §59-2-102(12), in part, to mean "the amount at which property would change hands between a willing buyer and a willing seller[.]" Accordingly, if a willing buyer would pay a higher price for a property because of the existence of a secondary residence and if a willing seller would expect a higher price for his or her property because of existence of a secondary structure, the additional value that the property's secondary structure contributes must be recognized when determining that property's total value. There is no evidence to suggest that the subject's guest house and guest units do not contribute value to the subject property. In fact, the taxpayer has submitted evidence to show that in 2010, the County performed cost approaches showing the subject's guest house to have a value of \$\$\$\$ and the subject's guest units to have a value of \$\$\$\$\$. Petitioner's Exhibit 1 (Exhibit A, pp. 17-18).

28 Petitioner's Exhibit 1, p. 2. The taxpayer did not explain why she added value for the subject's guest house, but not the subject's guest units.

considered in these prior appeals (specifically 2015 assessed values for a number of nearby properties), the Commission will analyze the taxpayer's equalization argument using the evidence submitted for the instant appeal.

26. The methodology the taxpayer employed to calculate an equalized value for the subject property is not convincing for a number of reasons. First, of the 32 properties that the taxpayer provided as comparables, a number of them are manufactured homes, hotels and motels, and/or apartment complexes.²⁹ Such properties are clearly not similar enough to the subject property to be reliable comparables for equalization purposes. Accordingly, these types of comparables will receive no weight in the analysis.

27. Second, the taxpayer used assessments from the 2010 tax year to derive an "equalized" value for the subject property for the 2015 tax year. For many of her comparables, the taxpayer provided County records showing the comparables' assessed values from 2005 through 2015. This information shows that the County has revalued most, if not all, of the comparables' improvements to some extent since the 2010 tax year.³⁰ As a result, the comparables' 2010 improvement values are not useful in determining whether the subject's 2015 improvements value is equitable or not.³¹

28. Third, as previously mentioned, the taxpayer used the "square footages" shown on County records to calculate the improvement values per square foot for some of her comparables, but not others. No testimony was provided at the hearing as to whether the "square footages" shown on these County records only

29 Petitioner's Exhibit 1 (Exhibit G).

30 Petitioner's Exhibit 1 (Exhibit G).

31 It is difficult to discern why the taxpayer believes that 2010 values should be used to determine the subject's 2015 value. If the taxpayer is suggesting that the County should not have increased the subject's and other properties' improvements values since 2010 because no factor order has been issued by the Commission since 2009, the taxpayer is, again, mistaken. As already mentioned, Subsection 59-2-303.1(2)(a) provides that a "county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data[.]" Accordingly, a county assessor must update property values pursuant to Subsection 59-2-303.1(2), as necessary, even where the Commission does not issue a Subsection 59-2-303.1(4)(a) corrective action order.

represented a property's main floor square footage or whether it represented its total square footage (including basements). In addition, no testimony was provided at the hearing as to whether these "square footages" only represented the square footage of a property's main residence or whether it represented the square footage of all residential structures on the property. As a result, it is unknown whether an improvements value per square foot rate calculated from the County's records (or from the alternative square footages provided by the taxpayer) should be applied to the subject's main residence only or to all of the subject's residential structures.

29. Fourth, even if more information were available about the "square footages" shown on the County records and the alternative square footages the taxpayer used for some of her comparables, it is possible that a per square foot methodology alone would result in an inequitably low value for the subject property. For example, the subject property has a two-car garage, a separate three-car garage, and a carport, and it is reasonable to assume that all of these features add value to the subject property. It is doubtful that many other single-family residences, if any, have as many of these same features. As a result, deriving a value for the subject property from the assessed values per square foot of comparables that do not have as many of these features is somewhat suspect.

30. Fifth, the taxpayer based her value per square foot methodology on the *average* of the values per square foot that she derived from nearby properties. The Commission is not aware of any law or precedent indicating that a property must be assessed at the average assessed value of nearby properties in order to be equitable. Again, Subsection 59-2-1006(5) provides that a property's value may be adjusted for equalization purposes if the property's value deviates 5% from the assessed values of "comparable properties," not if the subject's value deviates 5% from the average assessed value of nearby properties. Because of differences in ages and other characteristics, it is possible that using an *average* assessed value of nearby properties would result in an inequitably low value for the subject property.

31. Sixth, earlier the Commission found that manufactured homes and commercial properties are not similar enough to the subject property to be convincing equalization comparables. A number of the taxpayer's other equalization comparables are also dissimilar to the subject property and, thus, are suspect equalization comparables. For example, the County records for approximately 10 of the taxpayer's 32 equalization comparables show that their improvements were built between 1905 and 1927.³² The subject's main residence, however, was built around 1958, and its guest house and guest units were built around 1997.³³ Little, if any, information was provided about the condition and quality of construction of these much older properties. Furthermore, County records show that a number of the taxpayer's equalization comparables are less than #####-square feet in size, with a number of the comparables being between ##### and #####-square feet in size.³⁴ In comparison, the subject's main residence is #####-square feet in size, and the subject's three residential structures have a total of #####-square feet of above-grade living space. As a result, it is also questionable whether these significantly older and smaller comparables are similar enough to the subject property to be convincing equalization comparables.

32. Seventh, for approximately 14 of the taxpayer's 32 equalization comparables, the taxpayer only provided information about their 2010 and 2011 assessed values (i.e., she did not provide their 2015 assessed values). For her remaining comparables, the taxpayer provided assessment information from 2005 through 2015. For most of these remaining comparables, their 2011 assessed improvements values are equal to their 2015 assessed improvements values. In some instances, however, they are not the same.³⁵ Accordingly, the evidence is insufficient to show the value at which all of the taxpayer's comparables were assessed for the

32 Petitioner's Exhibit 1 (Exhibit G).

33 Based on a weighted average of the square footages of the subject's three residential structures, the subject property would have a weighted "year built" of approximately 1974.

34 Petitioner's Exhibit 1 (Exhibit G).

35 Petitioner's Exhibit 1 (Exhibit G).

2015 tax year. For these reasons, the approximately 14 comparables for which no 2015 assessment information was provided are not particularly useful in determining whether the subject's 2015 assessment is equitable or not.

33. Eighth, the taxpayer has not indicated which of her equalization comparables are most similar to the subject property. However, when the Commission looks at the 2015 assessments of the single-family residence comparables whose ages and square footages are most similar to the subject's (i.e., have a year built of 1950 or later and a square footage in excess of #####- square feet), the Commission finds two comparables whose improvements were assessed at rates of \$\$\$\$ and \$\$\$\$ per square foot. Specifically, a ####-square foot home that was built in 1954 was assessed at \$\$\$\$ per square foot, and a #####-square foot home that was built in 1968 was assessed at \$\$\$\$ per square foot.³⁶ These properties are older than the subject's "weighted" year built of 1974. As a result, these two comparables' improvements may be less valuable per square foot than the subject's improvements. Nevertheless, these two comparables' assessments support the subject's current improvements value of \$\$\$\$ per square foot (which is based on the subject's #####-square feet of above-grade living space from all of its residential structures).

34. In addition, the taxpayer provided the 2015 assessment of a duplex or triplex, part of which was built in 1960 and another part of which may have been built in 2000.³⁷ If these ages are correct, this property may have a "weighted" age similar to the subject's "weighted" age. It is unclear whether this property's size is #####-square feet, as shown by the County record, or #####-square feet, as estimated by the taxpayer. In any event, this comparable's improvements were assessed a 2015 value of \$\$\$\$\$, which would equate to either \$\$\$\$ or \$\$\$\$ per square foot (depending on how much square footage this comparable actually has). Even though this comparable is not a single-family residence like the subject property, the 2015

36 Petitioner's Exhibit 1 (Exhibit G, pp. 22 and 172).

37 Petitioner's Exhibit 1 (Exhibit G, pp. 152-153).

assessed value of its improvements is relatively close to the subject's improvements' current assessed value of \$\$\$\$ per square foot. When this comparable is considered in concert with the other two comparables described in the prior paragraph, these somewhat comparable properties support the current \$\$\$\$ per square foot value of the subject's improvements and do not support the \$\$\$\$ per square foot rate that the taxpayer proposes as an "equitable" value.

35. For these reasons, the Commission finds that the taxpayer has not shown that the subject property's 2015 value deviates 5% from the assessed value of comparable properties.

36. Based on the foregoing, the taxpayer has not shown that the subject's current value of \$\$\$\$ is incorrect or provided a sound evidentiary basis for reducing this value.³⁸ However, before the Commission makes a final determination of the subject's value, it should also analyze the County's arguments and evidence and consider what effect, if any, that Section 59-2-301.4 has on this case.

County's Arguments and Evidence

37. Mass Appraisal Cost Approach. The County submitted a Visual PAMSPRO Property Valuation Worksheet ("Worksheet") that provides the details of a cost approach in which the subject's improvements were initially valued at \$\$\$\$.³⁹ From this amount, the County subsequently subtracted \$\$\$\$ to "remove" value for the subject's pool, thus deriving a revised cost approach value of \$\$\$\$ for the subject's

38 In Petitioner's Exhibit 1 (Exhibit C, p. 3), the taxpayer contends that for 10 years, her valuation evidence has not been considered because the County has been presumed to be correct. The taxpayer is mistaken. The Commission's prior decisions concerning the subject property's value show that the taxpayer's evidence has always been considered. Furthermore, the Commission has spent considerable effort considering the taxpayer's evidence in the instant matter, but finds it insufficient to show that the subject's current value of \$\$\$\$ is incorrect or to support her proposed value of \$\$\$\$.

39 Respondent's Exhibit 1 (Exhibit 1 (Worksheet)). The Worksheet shows what appears to be either replacement or reproduction costs for the subject's improvements that total \$\$\$\$\$, from which depreciation of \$\$\$\$\$ is subtracted to derive the final cost approach value of \$\$\$\$\$ (before another \$\$\$\$\$ is deducted for the swimming pool).

improvements. It is assumed that the County provided the Worksheet in support of the \$\$\$\$ improvements value that is part of the subject's current total value of \$\$\$\$.

38. At first glance, the County's Worksheet value of \$\$\$\$ suggests that the subject's current value for the 2015 tax year may be low. However, the Worksheet was prepared on August 16, 2010, and there is no evidence to suggest that the factors used to develop a cost approach in 2010 are the same factors that would be used to develop a cost approach for the 2015 tax year, especially where additional depreciation may have occurred. In addition, the Commission is aware that a cost approach is often less effective in valuing an older property than a newer one. Because a portion of the subject property was built in the 1950's, a cost approach may be less reliable for a property such as the subject property. For these reasons, the Commission is not convinced that the County's Worksheet shows that the subject's current improvements value or its current total value is correct.⁴⁰

39. Appraisal. The County submitted an appraisal prepared by APPRAISER, who is an independent appraiser (i.e., not an appraiser in the County Assessor's Office). APPRAISER estimated the subject's value to be \$\$\$\$ as of July 21, 2015 (about seven months subsequent to the 2015 lien date at issue).⁴¹ In the appraisal, APPRAISER compared the subject property to four comparable sales and two property listings in the CITY-1 area.⁴² The four comparable sales sold between February 2015 and July 2015

40 The Commission recognizes that the cost approach may be a useful and effective tool for mass appraisal purposes. However, once a property's assessed value is appealed, the correctness of that property's "fair market value" is at issue, not the overall effectiveness of a county's mass appraisal system. Accordingly, there may be valuation approaches other than a county's mass appraisal approach that are better suited in estimating an *individual* property's "fair market value." A market or sale comparison approach is usually better suited than a cost approach when estimating the "fair market value" of an individual residential property, especially where that residential property is older.

41 Respondent's Exhibit 1 (Exhibit 2 (Appraisal)). The fact that the appraisal's effective date is approximately seven months after the 2015 lien date is not critical in this case because APPRAISER stated in the appraisal that "[t]here has not been any readily apparent increase or decrease in the market prices for homes [in] this area within the past 12 months[,]" which was not refuted by either party.

42 Because the two listings have not sold, their list prices are not as useful in establishing a value for the

Appeal No. 16-160

for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$, and APPRAISER adjusted them to derive adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. On the basis of these adjusted sales prices, APPRAISER estimated a value of \$\$\$\$\$ for the subject property.

40. The County contends that APPRAISER's appraisal shows that the subject's "fair market value" was \$\$\$\$\$ approximately seven months after the 2015 lien date and, thus, more than supports the subject's current value of \$\$\$\$\$ as of January 1, 2015. The Commission, however, is not entirely convinced that the appraisal produces an accurate estimate of the subject's value. APPRAISER applied gross adjustments of more than 50% to the sales prices of all four comparables to derive his adjusted sales prices. It is not surprising that most comparable sales would need a large amount of gross adjustments when compared to the subject property because of the subject property's unique features. However, appraisals are often less reliable when gross adjustments of this magnitude are present.⁴³

41. The Commission is also concerned with three adjustments APPRAISER made or did not make, specifically for differences in: 1) "site" (i.e., which appears to concern differences in lot size, zoning, and location); 2) age; and 3) condition. In regards to the "site" adjustments, the four comparable sales have lots that range between ##### and #####-acre in size, in comparison to the subject's #####-acre lot. In addition, APPRAISER indicates that the subject property is zoned R-3 and suggests that the comparable sales are not zoned R-3. For differences in "site," APPRAISER adjusted the sales prices of the four comparables upward by \$\$\$\$\$ (for the comparable with a #####-acre lot),⁴⁴ by \$\$\$\$\$ (for the comparable with a #####-

subject property as the comparable sales. For this reason and because the two listings are for homes built in 2008, they will receive no consideration in the analysis.

43 It is also noted that the adjusted sales prices APPRAISER derived for the four comparable sales are within 0.13% of one another (i.e., less than 1% apart), which is somewhat curious where such large gross adjustments are made to each of the sales.

44 Even though this comparable and the subject property have lots that are nearly identical in size, APPRAISER believed that an upward adjustment of \$\$\$\$\$ was needed because this comparable "is located on the west side of town on an inside lot in a semi rural location without curb & gutter or street lights."

acre lot), by \$\$\$\$\$ (for the comparable with a #####-acre lot), and by \$\$\$\$\$ (for the comparable with a #####-acre lot).⁴⁵

42. APPRAISER does not provide the zoning(s) of his four comparable sales so that their zonings can be compared to the subject's R-3 zoning. However, to show differences at which vacant lots sell in two different residential zonings in CITY-1, APPRAISER shows that three lots that are zoned R-3 (like the subject) sold in 2014 for \$\$\$\$\$ (a #####-acre lot located ½ block away from the subject property), for \$\$\$\$\$ (a #####-acre lot located 1¼ blocks away from the subject property), and \$\$\$\$\$ (a #####-acre lot located 2¼ blocks away from the subject property). In comparison, APPRAISER shows that a lot zoned R-2 sold in early 2015 for \$\$\$\$\$ (a #####-acre lot whose location in comparison to the subject property is unknown).⁴⁶ On the basis of these lot comparables, APPRAISER concluded that the subject's #####-acre lot is worth \$\$\$\$\$, which is nearly triple the subject's 2015 assessed land value of \$\$\$\$\$.

43. It is noted that even though a county assessor is required to annually update property values, the County has continued to assess the subject's land at \$\$\$\$\$ for the 2015 and 2016 tax years.⁴⁷ As a result, it is possible that the County does not believe that the 2014 sales of R-3 zoned lots that APPRAISER provided in his appraisal are indicative of the subject's lot value. In addition, it is unknown if any of the four comparable sales that APPRAISER used in his appraisal and to which he applied "site" adjustments of at least \$\$\$\$\$ are zoned R-2 (like the R-2 zoned lot that sold for \$\$\$\$\$ in early 2015). As a result, it is not clear from the available evidence that any of the four comparables have lot values that are \$\$\$\$\$ to \$\$\$\$\$ lower than the

Respondent's Exhibit 1 (Exhibit 2 (Appraisal), p. 6).

45 Respondent's Exhibit 1 (Exhibit 2 (Appraisal), pp. 4-5).

46 Respondent's Exhibit 1 (Exhibit 2 (Appraisal), p. 6). It is also noted that APPRAISER estimated the value of the subject's lot, as of July 21, 2015, to be \$250,000.

47 Petitioner's Exhibit 2, p. 4.

subject's lot value. For these reasons, the Commission does not find the extremely large "site" adjustments that APPRAISER applied in his appraisal to be convincing.

44. The Commission also has concerns about the "age" and "condition" adjustments that APPRAISER made in his appraisal. It is noted that three of the appraisal's four comparable sales were built in 2006 and 2008, in comparison to the subject property, which has a "weighted" age of 1974. However, APPRAISER did not make any "age" adjustments to his comparables. Furthermore, he made a downward "condition" adjustment to only one of the three comparables that were built in 2006 and 2008, and this adjustment only amounted to \$\$\$\$\$. The Commission is not convinced that these adjustments are adequate for homes that are relatively new and, thus, are many decades newer than the subject property. For these reasons, the Commission is not convinced that the subject's "fair market value," as of the July 21, 2015 effective date of the appraisal or as of the January 1, 2015 lien date, is \$\$\$\$\$.

45. Nevertheless, it is noted that one of the comparables that APPRAISER used in his appraisal (Comparable Sale #1) is the sale of a home that is somewhat similar in age to the subject property's "weighted" age of 1974 and which, like the subject, is located several blocks away from downtown CITY-1.⁴⁸ This comparable sold for \$\$\$\$\$ in March 2015 (which is less than three months after the 2015 lien date at issue). It was built in 1973 and is located within seven blocks of the subject property. APPRAISER adjusted this comparable to an adjusted sales price of \$\$\$\$\$, using adjustments that included an upward "site" adjustment of \$\$\$\$\$ and an upward "condition" adjustment of \$\$\$\$\$. As mentioned earlier, the Commission is not convinced that the appraisal's "site" and "condition" adjustments are reasonable. However, even if these two particular adjustments are eliminated completely for Comparable Sale #1, this comparable's "revised" adjusted sales price would be \$\$\$\$\$, which would more than support the subject's current 2015 value of \$\$\$\$\$.

46. Comparable Sales. The County submitted 24 unadjusted comparable sales that are located in CITY-1 and which sold in 2014.⁴⁹ The County indicates that these properties are located between one and two miles away from the subject property and were built between 1916 and 2012, with a number of them built in the 1950's, 1960's, and 1970's. These 24 comparable sales sold for prices ranging between \$\$\$\$ and \$\$\$\$. None of the comparables have a lot in excess of #####-acres, and none of them have as much above-grade living space as the #####-square feet of the subject property's main residence alone. While some of the comparables have basements, none of these comparables have as many total square feet of living space (main floor and basement combined) as the #####-square feet of above-grade living space found in the subject's three residential structures.

47. The County divided the 24 comparables' sales prices by their *above-grade* square footages to derive their prices per square foot, which ranged between \$\$\$\$ and \$\$\$\$ per square foot.⁵⁰ The County contends that these unadjusted prices per square foot support the subject's total current assessed value of \$\$\$\$\$, which equates to \$\$\$\$ per square foot (based on the above-grade square footage of the subject's main residence only) and \$\$\$\$ per square foot (based on the total above-grade square footage of the subject's three residential structures). A price per square foot methodology is usually not the best way to estimate a property's "fair market value" because it does not consider differences between the comparables and property being valued (with the exception of differences in square footage). That is especially true in the instant case, where the subject property is not similar to most, if not all, other homes. For these reasons, adjusted comparables that

48 Respondent's Exhibit 1 (Exhibit 2 (Appraisal), p. 4).

49 Respondent's Exhibit 1 (Exhibit 3 (Comparable Sales)). On the grid accompanying these sales, the County shows the date of sale for one of its comparables (Comparable #2) to be 09/24/2015. However, the separate "property information" sheet for this comparable shows its date of sale to be 09/24/2014. As a result, it appears that all 24 of these comparable sales sold in 2014.

50 Respondent's Exhibit 1 (Exhibit 3 (Comparables Sales)).

account for all differences are often more convincing than unadjusted comparables and prices per square foot derived from unadjusted sales.

48. That being said, the Commission will make some observations about the prices per square foot that the County derived with the above-grade square footages and sales prices of its 24 comparable sales. None of the comparables have a price per square foot as low as the subject's \$\$\$\$ per square foot value (based on the total above-grade square footage of the subject's three residential structures). As a result, the subject's current value of \$\$\$\$ may be low.

49. However, even if the Commission were to consider the subject's above-grade guest house and guest units to be more like basement space, the subject's current value of \$\$\$\$ per square foot (based on the square footage of the subject's main residence only) is supported by the County's comparables. First, the subject's current value of \$\$\$\$ per square foot value is within the \$\$\$\$ to \$\$\$\$ per square foot range of prices at which the County's 24 comparables sold.

50. Second, many of the County's comparable sales do not have basements or separate guest houses and, thus, appear inferior to the subject property when the subject's main residence is only used to determine its assessed value per square foot (i.e., because the subject property has an additional #####square-foot guest house and additional ##### square-foot guest rooms). As a result, it may be more appropriate to concentrate only on those of the County's comparables that have basements. The County comparables that have basements sold for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, which appear to support the subject's current value of \$\$\$\$ per square foot. Furthermore, the four comparables with basements that were built in the 1950's, 1960's, and 1970's sold for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$

per square foot.⁵¹ If the analysis were limited to these latter four comparables, their prices per square foot would also support the subject's current value of \$\$\$\$ per square foot.

51. A number of the County's 24 comparable sales from 2014, as well as the four comparable sales in the County's appraisal from 2015, sold for prices ranging between \$\$\$\$ and \$\$\$\$\$, which shows that homes in the CITY-1 area sell for prices near to or even higher than the subject's current value of \$\$\$\$.⁵²

52. While the Commission has concerns with some of the County's evidence, the County does not have the burden of proof in this matter (as explained in more detail later in the decision). Furthermore, the most convincing evidence the County submitted suggests that the subject's "fair market value," as of January 1, 2015, is not less than the subject's current value of \$\$\$\$ and that the subject's current value of \$\$\$\$ may even be low. The most convincing evidence submitted by either party is the Comparable Sale #1 from the County's appraisal, which is a #####-square foot home that was built in 1973 and which sold for \$\$\$\$ in March 2015.⁵³ When the \$\$\$\$ sales price of this comparable is adjusted, it produces an adjusted sales price for the subject property that is significantly higher than the subject's current value. As a result, the County's evidence supports the subject's current value of \$\$\$\$.

Effect of Section 59-2-301.4

53. Effective for tax year 2013, when a county assessor assesses a property for a current tax year, Subsection 59-2-301.4(2) requires the county assessor to consider a valuation reduction that was made within the prior three years. This statute, however, does not provide that a county assessor *must assess* a property at the value to which it was reduced within the prior three years. It provides that a county assessor *must consider* the value reduction when assessing the property for the year at issue. In addition, Subsections 59-2-301.4(2)(b) and (3) make clear that a county assessor may consider factors other than the valuation reduction when

51 Respondent's Exhibit 1 (Exhibit 3 (Comparables Sales)).

52 Respondent's Exhibit 1 (Exhibit 2 (Appraisal) and Exhibit 3 (Comparable Sales)).

assessing a property for a current year. Given these guidelines, the Commission will address how the valuation reductions made to the subject property within the prior three years affect the subject property's 2015 value.

54. Within the three years prior to the January 1, 2015 lien date at issue, the Commission reduced the subject's value to \$\$\$\$\$. The first time the Commission reduced the subject's value to \$\$\$\$\$ was for the 2012 tax year in *Appeal Nos. 12-222 & 13-136*. In that decision, the Commission found that:

For the 2012 tax year, there were no sales during 2010 or 2011 of property as high as the value set by the County Board for the subject at \$\$\$\$\$. The two highest sales in 2011 had been for \$\$\$\$\$ and \$\$\$\$\$. . . . Based on the limited market value evidence submitted by the parties in this hearing, the value for the 2012 tax year should be reduced to \$\$\$\$\$.

As a result, the Commission used the sales price of a comparable that sold in 2011 to establish a value of \$\$\$\$\$ for the subject property for the 2012 tax year.

55. Subsequently, in *Appeal Nos. 13-2390 & 15-36*, the Commission also reduced the subject's 2013 and 2014 values from \$\$\$\$\$ to \$\$\$\$\$. In this decision, the Commission relied on Subsection 59-2-301.4 to reduce the subject's 2013 and 2014 values to \$\$\$\$\$ because, in part, no home similar in age to the subject property had sold *near these lien dates* at a price that would support the subject's 2013 and 2014 assessed values of \$\$\$\$\$. For these 2013 and 2014 appeals, the County submitted the same 2015 appraisal that it submitted in the instant case. In its decision for the 2013 and 2014 appeals, the Commission acknowledged that Comparable Sale #1 from the 2015 appraisal was similar in age to the subject property and that it had sold for a price near the subject's 2013 and 2014 assessed values of \$\$\$\$\$. However, because this comparable sold in early 2015 and because the County's appraisal had an effective date that was more than 2½ years subsequent to the 2013 lien date and 1½ years subsequent to the 2014 lien date, the Commission gave little consideration to the 2015 appraisal or to Comparable Sale #1 contained within it.

56. At the hearing, RESPONDENT-1 stated that the County has considered the Commission's prior decisions in which the Commission reduced the subject's value to \$\$\$\$\$. RESPONDENT-1 stated, however, that she considers this value to be low for the subject property, especially when the \$\$\$\$\$ comparable sale on which the reductions in value are based occurred so many years prior to the 2015 tax year.

57. The Commission agrees with the County. While the Commission's decision to reduce the subject's value to \$\$\$\$\$ for prior years may have been reasonable, the Commission finds that the subject's value should not be reduced to \$\$\$\$\$ for the 2015 tax year. First, the comparable with which the \$\$\$\$\$ reductions in value were derived sold in 2011, which is more than three years prior to the 2015 lien date at issue in the instant appeal. This 2011 sale is too old to provide a reasonable estimate of the subject's 2015 value. Second, evidence was submitted in the instant appeal for 2015 that better supports the subject's current value of \$\$\$\$\$ than had been submitted in the 2012, 2013, and 2014 appeals. For example, Comparable Sale #1 from the County's appraisal, which is similar in age to the subject's "weighted" year built of 1974, sold within a few months of the 2015 lien date. Its sales price, when adjusted, more than supports the subject's current 2015 value of \$\$\$\$\$.⁵⁴

58. In conclusion, the Commission finds that the taxpayer has not shown that the subject's current 2015 value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ pursuant to Section 59-2-301.4. Moreover, the Commission finds that the taxpayer has not shown that the subject's current value of \$\$\$\$\$ is incorrect or provided a sound evidentiary basis for reducing this value to the \$\$\$\$\$ amount she proposes.

59. The subject's value for the 2015 tax year is \$\$\$\$\$.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll tangible taxable property located within the

⁵⁴ In addition, as already explained, the Commission's concerns about the July 21, 2015 effective date of the County's appraisal in Appeal Nos. 13-2390 & 15-36 are not a concern for the 2015 tax year.

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:

“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 a 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.

3. UCA §59-2-301.4 provides for a county assessor to consider certain prior valuation reductions when assessing a property, as follows in pertinent part:

- (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.
.....

4. 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. . . .

....

(3) In reviewing the county board's decision, the commission may:

- (a) admit additional evidence;
- (b) issue orders that it considers to be just and proper; and
- (c) make any correction or change in the assessment or order of the county board of equalization.

(4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:

- (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
- (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
- (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
- (d) if submitted, other evidence that is relevant to determining the fair market value of the property.

(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.

....

5. Utah Code Ann. §59-2-303.1 provides for mandatory cyclical appraisals of property, as

follows in pertinent part:

(1) For purposes of this section:

- (a) "Corrective action" includes:
 - (i) factoring pursuant to Section 59-2-704;
 - (ii) notifying the state auditor that the county failed to comply with the requirements of this section; or
 - (iii) filing a petition for a court order requiring a county to take action.

....

(2) (a) The county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data.

....

(3) (a) In addition to the requirements in Subsection (2), the county assessor shall complete a detailed review of property characteristics for each property at least once every five years.

....

(4) (a) The commission shall take corrective action if the commission determines that:

- (i) a county assessor has not satisfactorily followed the current mass appraisal standards, as provided by law;
- (ii) the sales-assessment ratio, coefficients of dispersion, or other statistical measures of appraisal performance related to the studies required by Section 59-2-704 are not within the standards provided by law; or
- (iii) the county assessor has failed to comply with the requirements of this section.

....

6. In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner 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 it proposes. *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

1. For the 2015 tax year at issue, Subsection 59-2-103(1) provides for the subject to be taxed on the basis of its "fair market value" as of January 1, 2015. Subsection 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 established by the County BOE. Accordingly, the \$\$\$\$ value has the presumption of correctness. The taxpayer suggests that the County has a burden to support the subject's current value of \$\$\$\$\$. That, however, is not the case where the County asks the Commission to sustain the value at which a property was originally assessed and which the County BOE had sustained. As a result, it is the taxpayer who has the burden in this case. The taxpayer has the burden not only to demonstrate that the subject's current value of \$\$\$\$ is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject's value to the \$\$\$\$ amount she proposes.

3. As explained earlier, the taxpayer's legal arguments are unpersuasive, and the evidence she has provided is insufficient to show that the subject's current value is inequitably high in comparison to the assessed value of comparable properties, pursuant to Subsection 59-2-1006(5). The taxpayer has provided no convincing evidence to show that the subject's current value of \$\$\$\$\$ is incorrect or to show that this value should be reduced to a lower amount, much less to the \$\$\$\$\$ amount she proposes.

4. The taxpayer has also not shown that the subject's current value should be reduced because of a prior valuation reduction, pursuant to Section 59-2-301.4. Furthermore, the County has provided evidence that suggests that the subject's 2015 "fair market value" may even be higher than the subject's current value of \$\$\$\$\$.

5. Based on the foregoing, the Commission should sustain the subject's current value of \$\$\$\$\$ for the 2015 tax year.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 16-160

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject's current value of \$\$\$\$ for the 2015 tax year. 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 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.