

16-877 & 16-878

TAX TYPE: PROPERTY TAX

TAX YEAR: 2015

DATE SIGNED: 3-13-2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, EX REL. PROPERTY OWNER,</p> <p>Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal Nos. 16-877 & 16-878</p> <p>Parcel Nos. XX-007 & XX-008</p> <p>Tax Type: Property Tax Tax Year: 2015</p> <p>Judge: Phan</p> |
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Rebecca Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Appraiser, COUNTY-1
For Respondent: No One Appeared
For Ex Rel. Party: RESPONDENT-1, Attorney at Law
RESPONDENT-2, Controller, PROPERTY OWNER

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 29, 2016, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner in this matter, which is the COUNTY-1 Assessor (“County Assessor”), filed an appeal of the decision issued by the COUNTY-1 Board of Equalization (“County BOE”) regarding the assessed values of the above listed properties. The County BOE reduced the assessed values of the two parcels at issue in these appeals for tax year 2015.

2. The owner of the subject parcels is PROPERTY OWNER (“Property Owner”) and the Property Owner appeared at the hearing as the ex rel. party. The Property Owner argued that the value should remain as set by the County BOE.

3. A representative for the County Assessor appeared at the hearing and requested that the values be raised for each of the subject parcels back to the value originally set by the County Assessor. No representative for the County BOE appeared at the hearing.

4. There are two parcels at issue in this decision, parcel numbers 007 and 008.

5. The County Assessor’s original assessed values and the values set by the County BOE are as follows for each parcel:

| Parcel No. | Assessor’s Original Value | County BOE Value |
|-----------------------|---------------------------|------------------|
| XX-007 (“Parcel 007”) | \$\$\$\$\$ | \$\$\$\$\$ |
| XX-008 (“Parcel 008”) | \$\$\$\$\$ | \$\$\$\$\$ |

6. The subject parcels are “paper lots,” meaning that they are platted and legally entitled to be developed as part of the SUBDIVISION, but none of the physical improvements are in place for the subdivision. The developer would need to put in a roadway, curb, gutter, water, sewer and utilities to the subdivision and then to each individual lot in the subdivision.

7. The parcels subject to this appeal are located in CANYON and are across Highway ##### from the RESORT-1. They are 200 vertical feet above the resort buildings and ski lift access. They are not “ski-in/ski-out” lots, but they have a view of the ski resort as well as the highway, parking lots for the resort and rooftops.

8. Parcel 007 is #####-acres in size, but only 1/3 of this lot has a slope of less than 30% grade. Parcel 008 is #####-acres in size and most of this lot has a slope of less than 30% grade. Each lot may only be developed for one residence. Any areas of the lot steeper than 30% grade are not developable. The appraiser for the Property Owner testified that buyers in the ski resort market are looking at how much area is actually developable. Excess, non-developable land does not add much

value. There is also a view easement over both of the subject lots in favor of neighboring lots. However, the same owner owns the neighboring lots and the subject lots, so the view easement could be released by the Property Owner¹ if the Property Owner wanted to sell the subject lots.

9. The Property Owner provided the County BOE decisions on each of the lots as an exhibit.² In the decisions, the Hearing Officer for the County BOE discusses the appraisal submitted by the Property Owner, the fact that the lots were only “paper lots,” and the adjustments made by the appraiser including the estimated cost per lot to improve the lots by putting in roads and utilities. The Hearing Officer discusses the three sales comparables and three listings that had been provided by the County Assessor, noting that the County Assessor’s sales were all located in RESORT-2, COUNTY-2, and they were improved lots. The Hearing Officer also notes that the County Assessor had not made appraisal adjustments to the comparables offered and that the County Assessor had indicted the subject lots were ski-in/ski-out lots, which was incorrect. The County BOE Hearing Officer recommended that the value of the lots be lowered to the Property Owner’s appraisal value.

10. At this Formal Hearing before the Utah State Tax Commission, the Property Owner submitted as evidence the same appraisal that it had submitted to the County Board of Equalization.³ The appraisal had been prepared by APPRAISER-1, MAI. APPRAISER-1 attended the Formal Hearing and testified regarding his appraisal. He testified that he was not able to find sales similar to the subject lots in CANYON-1 near the lien date. He testified his comparables were from CANYON-2 and were located near either the RESORT-3 or the RESORT-4. He also considered one listing in his appraisal. He testified that he had looked for land sales that were at least one half acre in size. The comparables APPRAISER-1 had relied on in his appraisal were the following:

| Address | Sale Price | Sale Date | Size |
|-----------|------------|-----------|-------|
| ADDRESS-1 | \$\$\$\$\$ | 12/2014 | ##### |
| ADDRESS-2 | \$\$\$\$\$ | 3/2013 | ##### |
| ADDRESS-3 | \$\$\$\$\$ | 3/2014 | ##### |
| ADDRESS-4 | \$\$\$\$\$ | 11/2013 | ##### |
| ADDRESS-5 | \$\$\$\$\$ | Listing | ##### |

11. APPRAISER-1 testified that he determined a location adjustment was necessary between the subject properties that are in CANYON-1 and the comparables that were all located in CANYON-2. In order to determine the amount of the location adjustment, he considered sales of improved

¹ In the appraisal submitted by the Property Owner, the appraiser did not subtract from his value conclusion for the view easement concluding that the Property Owner could rescind the easement “if he desires.” See Property Owner’s Exhibit 3, pg. 11.

² Property Owner’s Exhibit 1.

³ Property Owner’s Exhibit 3.

condominiums in CANYON-2 and compared them to sales of improved condominiums in CANYON-1. He explained in his appraisal, “The location adjustment is taken by pairing improved condominium sales from the RESORT-4 area in comparison to the RESORT-1 area on a per square foot basis. This appears to be the only reasonable method to calculate differences in location on a percentage basis.”⁴ APPRAISER-1 states in the appraisal there had been ##### sales in CANYON-2 and only ##### in CANYON-1. Performing his paired sales analysis, he concluded that properties in CANYON-1 sold for 40% more than those in CANYON-2.

12. APPRAISER-1 also made a substantial adjustment for slope due to the steepness of the subject lots. Another significant factor that he addressed in his appraisal was the cost to develop or improve the subject subdivision. All the comparables that APPRAISER-1 had used were improved residential lots. Because the subject lots were paper lots and not improved, APPRAISER-1 provided in his appraisal the bid from the contractor on the actual costs to improve the lots by putting in the roadway, curb, gutter and utilities, which totaled \$\$\$\$\$. He added 15% for entrepreneurial profit because a developer would expect a profit for taking the risk to develop the subdivision. This was a total cost of \$\$\$\$\$ for the subdivision, or a cost per each lot in the subdivision of \$\$\$\$\$. APPRAISER-1 subtracted \$\$\$\$\$ from his estimated value for each of the subject lots.

13. The County Assessor did not submit an appraisal for the subject lots.⁵ The representative for the County Assessor relied primarily on criticisms of APPRAISER-1 appraisal. Although he did provide some comparables from CANYON-1,⁶ he did not provide appraisal adjustments for the differences between these comparables and the subject lots. There were a number of dissimilarities between the CANYON-1 comparables and the subject lots, for instance, the comparables were all developed residential lots with roads and utilities in place. In addition, most had sold years prior to the lien date at issue. He stated that as far as the County was aware, there had been only five sales of residential building lots in the RESORT-1/RESORT-5 area since 2005. These were all improved lots and all were located on the same side of the highway as the ski resorts. The subject lots are across the highway and are 200 vertical feet above the ski resort. The County’s comparable lots all may have been ski-in/ski-out lots. The five CANYON-1 residential lot comparables the County Assessor provided are as follows:

⁴ Property Owner’s Exhibit 3, pg. 32.

⁵ The County Assessor did provide an appraisal of a lot that was located in RESORT-5, near the ski resort and resort amenities. See Petitioner’s Exhibit 2. This appraisal was an improved residential lot with road and utilities stubbed to the lot and it was ##### acres in size. The effective date of the appraisal was April 30, 2012. Because of all these factors, this appraisal provides little relevance to the market value of the subject parcels as of the January 1, 2015 lien date at issue in this appeal. It does, however, show that a fee appraiser had made an adjustment of \$\$\$\$\$ for the difference between a ski-in/ski-out property and properties near the resort that were not ski-in/ski-out.

⁶ Petitioner’s Exhibit 1.

| Address | Sale Date | Sale Price | Size | Price per Square Foot |
|------------|-----------|------------|-------|-----------------------|
| ADDRESS-6 | 6/2005 | \$\$\$\$\$ | ##### | \$\$\$\$\$ |
| ADDRESS-7 | 1/2006 | \$\$\$\$\$ | ##### | \$\$\$\$\$ |
| ADDRESS-8 | 11/2006 | \$\$\$\$\$ | ##### | \$\$\$\$\$ |
| ADDRESS-9 | 6/2012 | \$\$\$\$\$ | ##### | \$\$\$\$\$ |
| ADDRESS-10 | 4/2014 | \$\$\$\$\$ | ##### | \$\$\$\$\$ |

14. The representative for the County Assessor also provided three current listings in CANYON-1, which again were improved lots located on the same side of the highway as the ski resorts.⁷

15. The County Assessor’s representative at the hearing argued that APPRAISER-1 40% location adjustment was not appropriate for the comparables that he had used. He states that APPRAISER-1 had compared condominiums sold at the RESORT-4 resort to condominiums sold at the RESORT-1 resort and there was the 40% difference. The County Assessor’s representative argues, however, that the land sales that APPRAISER-1 had used as his four sales comparables and one listing were not located in the resort areas, so were inferior in location to the RESORT-4 resort condominiums. This implies that the location adjustment should have been larger. The representative for the County Assessor did not provide what he thought would have been an appropriate location adjustment.

16. The County Assessor argued that there were better comparables in CANYON-2 than the ones used by APPRAISER-1. However, he provided only two sales in CANYON-2, one of which occurred in 2008 and the second in 2012. He did provide a number of listings from that canyon. He did not make appraisal adjustments to determine a value for the subject lots from these comparables that took into account that they were improved lots as well as time adjustments for the market changes.

17. The County Assessor’s representative also criticized APPRAISER-1 adjustments for slope and view. The County’s representative argued that to maximize the value of all the lots in the SUBDIVISION, a pedestrian overpass over the highway could be constructed to make it easier to get from the subject lots to the RESORT-1 ski lifts. He did not provide evidence that this would actually be allowed under building or zoning codes, or that it was possible from an engineering standpoint due to the elevation change. He also failed to offer how much this would cost.

18. In this appeal, the County Assessor has the burden of proof to establish not only error in the value set by the County BOE, but also to provide a sound evidentiary basis on which the Commission can adopt the higher value requested. The Property Owner has supported the value set by the County BOE. The Property Owner’s appraiser testified regarding the various appraisal adjustments that he had

⁷ Petitioner’s Exhibit 1, pg. 3.

made to determine fair market value for each of the lots. These properties are very difficult to value because there were no sales of “paper lots” near the lien date and near the RESORT-1 resort. All comparables offered by either party have substantial differences. The County has put forth comparables that sold years prior to the lien date at issue, without time adjustments to account for significant market changes that occurred over this period. There are significant costs and risks involved in actually developing the subject lots into improved residential subdivision lots and it appears all the comparables offered by both parties were already improved lots. Due to the differences between the subject properties and the comparables, subjective appraisal adjustments need to be made to determine fair market value. Although criticisms of various appraisal factors made by the County Assessor are not without merit, the criticisms are not sufficient to show error in the County BOE values. They also do not provide a sound evidentiary basis on which the Commission may base new values for the subject properties.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

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

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...
- (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.

CONCLUSIONS OF LAW

1. In a proceeding before the Tax Commission, the burden of proof is generally on the Petitioner to support its position based on case law.⁸ The County Assessor is the Petitioner in this case and is asking for a value higher than that set by the County BOE, but not higher than the original assessment.⁹ Therefore, the County Assessor has the burden of proof to show both: 1) that the value set by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis to support the requested value. The Property Owner, as the ex rel. party, offered evidence to support the County BOE's value, which was based on an appraisal. The Property Owner also entered into the record the decision from the County BOE, in which the hearing officer reasonably weighed the information presented by the parties. The County Assessor's appraiser provided criticisms of the Property Owner's appraisal but did not meet the two-fold burden to raise the value above that set by the County BOE.

2. Properties like the subject lots that lack similar comparables near the lien date are difficult to value and subjective appraisal adjustments are required. The Property Owner had presented an appraisal in which the appraiser considered a number of factors and how they attributed to the value as a

⁸ 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 46, 5 P.3d 652 (Utah 2000).

⁹ Had the County requested a value higher than the value originally assessed by the County Assessor, the burden of proof is set out at Utah Code §59-2-109(2), as follows:

Notwithstanding Section 59-1-604, in an action appealing the value of property assessed by an assessing authority, the assessing authority has the burden of proof before a board of equalization, the commission, or a court of competent jurisdiction, if the assessing authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the value originally assessed by the assessing authority for that calendar year.

whole. The Property Owner had given more weight to comparables that had sold near the lien date, while the County offered comparables more similar in location but had sold years prior to the lien date. The representative for the County Assessor did not submit an appraisal and although he argued some of the Property Owner's adjustments were too high, too low or not applied consistently, he did not recalculate the values based on what he deemed would be the appropriate adjustments, or did he make appraisal adjustments and come to a value conclusion for each of the subject lots from the comparables he had offered. The values should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission sustains the values set by the County Board of Equalization for each of the parcels at issue in these appeals for the lien date January 1, 2015. 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.