

16-1563  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2016  
DATE SIGNED: 7/6/2017  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL  
EXCUSED: R. PERO

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 16-1563  Parcel No. LOT- 3, LOT-2, LOT-5 Tax Type: Property Tax Tax Year: 2016  Judge: Valentine
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**Presiding:**

John Valentine, Commissioner

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER  
For Respondent: RESPONDENT, COUNTY-1

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the COUNTY-1 Board of Equalization (“the County”). This matter was argued in an Initial Hearing on June 5, 2017, in accordance with Utah Code Ann. §59-1-502.5. This appeal involves three unimproved lots near CITY-1, Utah, identified as Parcel numbers RCR-##### (“Lot 2”), RCR-##### (“Lot 3”) and RCR-##### (“Lot 5”). The COUNTY-1 Assessor’s Office valued each of the subject properties at \$\$\$\$ as of the January 1, 2016 lien date. The Board of Equalization sustained that valuation at the same value of \$\$\$\$ for each parcel. The County is asking the Commission to uphold the Board of Equalization’s value. The Taxpayer is requesting the value of the each parcel to be reduced to \$\$\$\$.

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.

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 46, 5 P.3d 652 (Utah 2000).

ANAYLSIS

This matter involves the valuation of three platted residential lots in a rural part of COUNTY-1 located in the NAME OF SUBDIVISION. Each parcel contains approximately #####- acres, according to the Tax Roll Master Record of the County. Neither party disputed the size of the parcels. From the proffers given by both the County and the Taxpayer, the lots are appropriate for cabin sites or other recreational use.

A dispute arose regarding the right to enter on to each of the properties from a dedicated easement or right of way. The Taxpayer asserts that the easement or right of way reduced the value of the lots, since there was no legal access to the lots. The Taxpayer further indicates that a person had to obtain permission from adjoining landowners to enter the subject lots. The County maintains that there were appropriate right of ways granted to each lot at the time the property was subdivided and platted.

The County at the hearing produced the original tracing of the plat map for the subdivision from its official records. It contained the following notation: “50 ft. wide road easement, 25 ft. each side of centerline/property line as constructed unless otherwise shown.” An examination of the plat map for each of the parcels indicated no exceptions to the general notation affecting the three (3) parcels. The Commission is convinced that the County is correct in its assertion that there is a legal access to the three lots and therefore no diminution of value should be attributed to the quality of the access to the three lots.

Neither party produced appraisals of the subject parcels. The Taxpayer produced the following sales of property from the Multiple Listing Service at UtahRealEstate.com to support its view of the valuation of the three parcels:

Taxpayer’s Exhibit #	MLS #	Tax ID #	Date of Sale	Size	Sale Price
P-1	#####	#####	DATE	##### Acres	\$\$\$\$\$
P-2	#####	#####	DATE	##### Acres	\$\$\$\$\$

P-3	#####	#####	DATE	##### Acres	\$\$\$\$\$
P-4	#####	#####	DATE	##### Acres	\$\$\$\$\$
P-5	#####	#####	DATE	##### Acres	\$\$\$\$\$
P-6	#####	#####	DATE	##### Acres	\$\$\$\$\$

The Taxpayer explained that Exhibits P-1 and P-2 were for properties from another subdivision known as the NAME OF SUBDIVISION-2, that Exhibits P-3 and P-4 were for properties for the same subdivision as the subject parcels, the NAME OF SUBDIVISION, and that Exhibits P-5 and P-6 were for sales of properties within the city limits of CITY-1. The Taxpayer also indicated that Exhibit P-2 was for one of two lots sold together. Specifically, Lot 195 and Lot 208 of the NAME OF SUBDIVISION-2 were sold together, but the MLS report only listed the sales price of one tax parcel; it appears that the stated sales price was for only one lot even though it was sold together with another lot.

The County provided a history of the valuation of the subject parcels.

Subject Properties Market Values					
Parcel No.	2012	2013	2014	2015	2016
##### (Lot 2)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Lot 3)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Lot 5)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The County further provided additional sales of property to support its view of the fair market value of the three parcels:

County Exhibit #	Tax ID #	Date of Sale	Size	Sale Price
R-1	#####	DATE	#####	\$\$\$\$\$
R-2	#####	DATE	#####	\$\$\$\$\$
R-3	#####	DATE	#####	\$\$\$\$\$

The County argues that its three sales are more comparable to the subject properties since the market values in this area had taken a down turn in 2015 due to falling energy prices, but had started to come back before the lien date. The County further indicated that its first two sales are in the same subdivision as the subject parcels and on the same mountain face. They point out that the third and fourth sales provided by the Taxpayer were in the same subdivision, but were on a different and less desirable portion of the mountain, which affected their values. They further point out that the NAME OF SUBDIVISION parcels are in the CITY-1 Water District, but the parcels in the city limits of CITY-1 (Taxpayer's Exhibits 5 and 6) have to attach to city utilities at a much higher cost. They maintain that this difference further affected the value on the lien date.

In rebuttal, the Taxpayer pointed out that the County's first two sales are post-lien date and the third is pre-lien date. They argue that the third parcel is closer to the main road and therefore could have year round access, while the subject parcels would not have that access. Further, they argue this would affect the value a willing buyer would pay for the subject parcels. Although acknowledging that three of their proffered sales were pre-lien date and three were post lien date, they argue that this bracketing of value shows that the recovery in the values of property was just beginning on the lien date, but did not materially affect the value on the lien date.

#### DISCUSSION

The Commission is aware of the difficulties of mass appraisals facing the County, especially in a rapidly changing market. The history of the subject three parcels is indicative of that difficulty. Although the Taxpayer's proffers of sales were somewhat persuasive being both pre and post lien date, the County was able to distinguish those values from the subject parcels due to proximity, access to CITY-1 Water District water and the general topography of the subject parcels as compared to the proffered comparable properties.

Both parties asked the Commission to address the use of post-lien date information for purposes of the appeals process. The Commission believes that post-lien date information is useful in the appeals process to help establish a property's fair market value as of a lien date. That being said, however, the Commission is reluctant to reduce a property's value based on post-lien date information only. For example, if the only evidence of value is a sale that occurred five months after the lien date, the Commission would be reluctant to reduce a property's value based on the sale alone. In most instances, post-lien date sales may be used to corroborate value estimates, but not to establish fair market value. However, in extreme cases where the only relevant market information is after the lien date, we could base our decision on market transactions occurring after January 1, but that was not the case here.

In addition, the 2008-2009 Uniform Standards of Professional Appraisal Practice (“USPAP”) has addressed this specific concern from an appraisal perspective. Statement on Appraisal Standards No. 3 (STMT-3) provides that “[d]ata subsequent to the effective date may be considered in developing a retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date.”

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide a sound evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue, under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “fair market value” as the amount for which property would exchange hands between a willing buyer and seller. In this matter, the Taxpayer failed to adequately demonstrate errors in the valuation set by the County Board of Equalization. Even though the Taxpayer has raised some doubts with evidence seeking a new value, those doubts did not show errors in the valuation of the County.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of each of the subject properties was \$\$\$\$ as of the January 1, 2016 lien date. The Commission sustains the County Board of Equalization value. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

or emailed to:  
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner