

16-1636
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 11/17/2017
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, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 16-1636 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2016 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: REPRESENTATIVE FOR TAXPAYER, Taxpayer
 For Respondent: RESPONDENT, from the COUNTY Assessor’s Office

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”)¹ brings this appeal from the decision of the COUNTY Board of Equalization (“County BOE”). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 20, 2017.

At issue is the fair market value of the subject property as of January 1, 2016. The subject is a single-family residence located at SUBJECT PROPERTY in COUNTY, Utah. The County BOE reduced the \$\$\$\$ value at which the subject was originally assessed for the 2016 tax year to \$\$\$\$.

¹ REPRESENTATIVE FOR TAXPAYER is a member of the limited liability company that owns the subject property. For ease of reference, REPRESENTATIVE FOR TAXPAYER may also be referred to as the “Petitioner” or “taxpayer.”

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Commission to reduce the subject's 2016 value to \$\$\$\$\$. The County asks the Commission to sustain the \$\$\$\$\$ value established by the County BOE.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.”

UCA §59-2-102(13) defines “fair market value” to mean “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.”

UCA §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission”

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

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission. . . .

. . . .

(4) 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.

. . . .

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).

DISCUSSION

The subject property consists of a 0.47-acre lot and a one-story home with a walk-out basement that was built in 2005. Combined, the home's main floor and walk-out basement have 4,003 square feet of finished living space. The home has five bedrooms, four and one-half baths, and a two-car attached garage. The subject property is located in the NAME OF SUBDIVISION of the NAME OF DEVELOPMENT that is located near CITY-1 (but which is not located within the city limits). The subject property is situated on the ##### fairway of the GOLF COURSE that is part of the NAME OF DEVELOPMENT.

Currently, the NAME OF DEVELOPMENT has approximately #####-residential lots that have been developed and approximately ##### to ##### residential lots that have not been developed. In 2011, when the taxpayer purchased the subject property, the property had views across the #####-fairway of the golf course of mountains and ski runs at the NAME OF RESORT ("ski runs"). In 2015 (prior to the 2016 lien date at issue), numerous homes were built on a ridge directly across the #####- fairway from the subject property, which obstructed its view of the mountains and the RESORT ski runs. The taxpayer claims that unobstructed views of green space is a valuable feature of any home located in the NAME OF DEVELOPMENT and that the subject property's value has decreased significantly since these new homes were built across the fairway from the subject property in 2015.

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To support his argument, the taxpayer proffered a letter from NAME-1, a CITY-1 real estate agent, who estimated the subject property's value, as of the 2016 lien date, to be \$\$\$\$\$. In his letter, NAME-1 stated that this \$\$\$\$\$ value equates to \$\$\$\$\$ per square foot (based on NAME-1's estimate that the subject property has approximately 4,150 square feet of living space). NAME-1 stated that he was familiar with the subject property and the subject's immediate area because, until recently, he had been the listing agent of the home located next door to the subject property. NAME-1 believes that the construction of the new homes across the fairway from the subject property has decreased the subject's value by 20%. NAME-1 estimated that the subject property would have sold for \$\$\$\$\$ prior to the construction of these homes, but that the subject's value as of the 2016 lien date would only be \$\$\$\$\$ (i.e., 80% of \$\$\$\$\$).

The taxpayer, however, contends that NAME-1 has overestimated the subject property's value because NAME-1 mistakenly estimated the subject property to have 4,150 square feet of living space (which is 147 square feet more than its 4,003 square feet of actual living space). As a result, the taxpayer has multiplied this 147 square feet of "non-existent space" by the \$\$\$\$\$ per square foot value that NAME-1 estimated for the subject property and deducted the product from NAME-1's \$\$\$\$\$ estimate of value. With this revision to NAME-1's estimate of value, the taxpayer has determined that the subject's value, as of the January 1, 2016 lien date, is \$\$\$\$\$. For these reasons, the taxpayer asks the Commission to reduce the subject's 2016 value to \$\$\$\$\$.

The letter from NAME-1 is not compelling evidence. NAME-1 is not a licensed appraiser. In addition, it is unclear if NAME-1 is attributing any value to the subject property because of its location on the golf course. Even more importantly, NAME-1 has not provided information to show that any property in the NAME OF DEVELOPMENT, much less in the subject's NAME OF SUBDIVISION, has sold for a price as low as \$\$\$\$\$ (or as low as the taxpayer's proposed value of \$\$\$\$\$).

The County, on the other hand, proffered four comparables in the subject's NAME OF SUBDIVISION that sold in 2015 and 2016 for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. RESPONDENT (who is an appraiser) has adjusted the sales prices of these comparables to adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.² On the basis of these comparables, RESPONDENT believes that the subject's current value of \$\$\$\$\$ is too low. Nevertheless, he does not ask the Commission to increase the subject's current value. Instead, RESPONDENT asks the Commission to sustain the \$\$\$\$\$ value established by the County BOE.

The County proffered Multiple Listing Service ("MLS") information for two of its four comparables that are located in the subject's subdivision (i.e., the comparables with sales prices of \$\$\$\$\$ and \$\$\$\$\$), but not for the other two comparables in the subject's subdivision (i.e., the comparables with sales prices of \$\$\$\$\$ and \$\$\$\$\$). As a result, it is not entirely clear whether the latter two comparables actually sold for these prices (which the County BOE claims that it obtained from MLS).³ Nevertheless, where the County BOE asks the

2 RESPONDENT adjusted the comparables, but did not prepare a formal appraisal of the subject property. RESPONDENT also proffered two additional comparables from the nearby NAME OF SUBDIVISION-2 of the NAME OF DEVELOPMENT. These two comparables sold in 2015 and 2016 for prices of \$\$\$\$\$ and \$\$\$\$\$. Because the County proffered four comparables in the subject's own subdivision, the two comparables from the nearby subdivision will not be discussed any further.

3 The MLS information the County BOE proffered indicates that "[f]or statistical purposes, properties reported as 'Undisclosed Sales Price' are calculated at 95% of List Price." As a result, it appears that the MLS in COUNTY sometimes discloses a sales price that is 95% of the list price instead of the property's actual sales price. For example, the County BOE proffered the MLS information from the taxpayer's purchase of the subject property in 2011. This information shows the subject property's "listing status" as "Undisclosed Sales Price" and indicates that its "sales price" is \$\$\$\$\$ (which is exactly 95% of its \$\$\$\$\$ list price). Accordingly, the \$\$\$\$\$ sales price of the subject property in 2011, as shown by MLS, may not have been its actual sales price.

The MLS information that the County BOE provided for the two comparables that sold for \$\$\$\$\$ and \$\$\$\$\$ shows a "listing status" of "Closed," not "Undisclosed Sales Price." As a result, these sales prices appear to be the actual prices at which these two comparables sold. Because neither party has provided the MLS information for the other two comparables in the subject's subdivision that the County BOE shows as selling for \$\$\$\$\$ and \$\$\$\$\$, the Commission is not able to review their "listing statuses" and determine whether these sales prices are estimated or actual sales prices.

Commission to sustain a value for the subject property that is not higher than either its original assessed value or the value established for it by the County BOE, it is the taxpayer, not the County BOE, who bears the burden of proof. The taxpayer has not shown that any of the sales prices that the County has identified for its comparables are estimated prices and not their actual sales prices. Accordingly, the Commission will assume that all of the sales prices that the County has identified for its comparables are actual sales prices.

The Commission will separately discuss the four County comparables that are located in the subject's same subdivision. The County comparable that sold for \$\$\$\$\$ in April 2016 is situated on an interior lot (i.e., it is surrounded by other lots and is not situated on the golf course).⁴ In addition, it has about 10% less living space than the subject property. As a result, it appears to be inferior to the subject property, and its \$\$\$\$\$ sales price suggests that the subject's value will be higher than \$\$\$\$\$. RESPONDENT adjusted this comparable upward by \$\$\$\$\$ (10% of its sales price) to account for its interior lot location. After making all of his adjustments to this comparable, RESPONDENT derived an adjusted sales price of \$\$\$\$\$ for the subject property. The taxpayer has not shown that any of RESPONDENT's adjustments to this comparable are incorrect. As a result, this comparable appears to support the subject's current value of \$\$\$\$\$.⁵

4 The County BOE proffered an overhead photograph of the subdivision, which shows that this comparable may currently have views in some directions because homes have not been built on all of the lots that surround this property. However, no evidence was proffered to show that this comparable's lot is superior or equal to the subject's lot.

5 The taxpayer contends that the Commission should not consider this comparable because it sold nearly five months after the January 1, 2016 lien date and because prices in the NAME OF DEVELOPMENT greatly increased between January 1, 2016 and January 1, 2017. For the following reasons, the Commission will consider this comparable and give it some weight when reaching its decision. Subsection 59-2-1006(4) provides two specific instances where the Commission must consider post-lien date information if submitted. In addition, Subsection 59-2-1006(4) provides that the Commission must consider "other evidence that is relevant to determining the fair market value of the property" and does not preclude the Commission from considering other post-lien date information.

Given these guidelines, the Commission has previously found that it may consider "post-lien date" information in property tax appeals. *See USTC Appeal No. 16-1563* (Initial Hearing Order Jul. 6, 2017), in which the Commission addressed the use of post-lien date information in Tax Commission appeals, as follows in pertinent part:

The County comparable with the \$\$\$\$ sales price also sold in April 2016 and is situated on an interior lot (i.e., it is surrounded by other lots and is not located on the golf course).⁶ In addition, its square footage is exactly the same as the subject's square footage.⁷ As a result, this comparable does not appear to be superior to the subject property. Accordingly, its \$\$\$\$ sales price suggests that the subject's current value of \$\$\$\$ may be low. RESPONDENT adjusted this comparable upward by \$\$\$\$ (10% of its sales price) to account for its interior lot location. After making all of his adjustments to this comparable, RESPONDENT derived an adjusted sales price of \$\$\$\$ with which to estimate the subject's value. The taxpayer has not shown that any of RESPONDENT's adjustments to this comparable are incorrect. As a result, this comparable appears to support the subject's current value of \$\$\$\$.⁸

. . . . 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."

See also USTC Appeal No. 08-2281 (Findings of Fact, Conclusions of Law, and Final Decision Jan. 21, 2010); and *USTC Appeal No. 16-1692* (Initial Hearing Order Aug. 21, 2017). Redacted versions of these and other decisions may be reviewed on the Commission's website at <http://tax.utah.gov/commission-office/decisions>.

6 This comparable is located adjacent to the comparable that sold for \$\$\$\$\$. The County BOE's overhead photograph also shows that this comparable may currently have views in some directions because homes have not been built on all of the lots that surround this property. However, no evidence was proffered to show that this comparable's lot is superior or equal to the subject's lot.

7 The taxpayer proffered that the NAME OF DEVELOPMENT offered four different floor plans for homes located in the subject's subdivision. As a result, this comparable and the subject property may have the same floor plan.

8 The taxpayer also contends that the Commission should not consider this comparable because it sold in April 2016. For the same reasons explained earlier, the Commission also declines to give this comparable no

The other two County comparables that are located in the subject's subdivision sold for \$\$\$\$\$ in July 2015 and \$\$\$\$\$ in November 2015, and RESPONDENT adjusted them to adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$, respectively. These two comparables, like the subject property, are situated on the golf course. In addition, each of these two comparables has about 10% less square feet of living space than the subject property. However, it appears that these two comparables, unlike the subject property, do not have homes that are located directly across the fairway from them. As a result, it appears that these two comparables have somewhat better views than the subject property.⁹

RESPONDENT did not adjust these two comparables for view, while NAME-1 indicates that the subject property has lost 20% of its value because of the new homes recently built across the fairway from the subject. As explained earlier, however, NAME-1 has provided no information to support his value estimates for the subject property both before and after the new homes were built across the fairway from the subject property, nor has he provided any information to show that the subject property lost 20% of its value after these homes were built. Furthermore, the taxpayer has provided no information to show that a comparable that is situated on the golf course and has a less restricted view than the subject property should be adjusted downward by 20% to account for the difference between the comparable's and the subject's views.

Regardless, even if the Commission were to apply an additional negative 20% adjustment to the adjustments that RESPONDENT made to these two comparables, their "revised" adjusted sales prices would be \$\$\$\$\$ and \$\$\$\$\$. The subject's current value of \$\$\$\$\$ is within the range of these revised adjusted sales

consideration.

⁹ The comparable that sold for \$\$\$\$\$ is located two doors away from the subject property, yet its view does not appear to have been obstructed by the new homes that were built across the fairway from the subject property. Because this comparable has a lower elevation than the subject property, it does not appear to have views of the mountains and the RESORT ski runs that the subject property once had. However, this comparable still appears to have unobstructed views of green space.

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prices, while the taxpayer's proposed value of \$\$\$\$ is not. For this reason and because the other comparables previously discussed more than support the subject's current value of \$\$\$\$\$, the taxpayer's information is insufficient to show that the subject's current value is incorrect or to provide a sound evidentiary basis for reducing the subject's value to \$\$\$\$\$. Accordingly, the Commission should sustain the subject's current value of \$\$\$\$\$.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be sustained for the 2016 tax year. 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