

16-1666
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 12/4/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 16-1666</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2016</p> <p>Judge: Chapman</p>
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Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
For Respondent: RESPONDENT, from the COUNTY Assessor's Office

STATEMENT OF THE CASE

TAXPAYER-1 & TAXPAYER-2 ("Petitioners" or "taxpayers") bring 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 26, 2017.

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

The taxpayers ask the Commission to reduce the subject's current value of \$\$\$\$ to \$\$\$\$.

The County asks the Commission to reduce the subject's current value of \$\$\$\$ to \$\$\$\$.

APPLICABLE LAW

1. 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.”

2. 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.”

3. 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.

....

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

See Nelson v. Bd. of Equalization of Salt Lake County, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v.*

Utah State Tax Comm'n, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is located in the SUBDIVISION-1 of the NAME OF DEVELOPMENT-1, which is located near CITY-1 (but which is not within the city limits). The subject property consists of a #####-acre lot and a home that was built in 2004. The home contains #####-square feet of above-grade space (##### square feet on the main floor and #####-square feet on the second floor). The home also had a walk-out basement that is #####-square feet in size, of which #####-square feet are finished. Between the above-grade floors and the basement, the home has #####-square feet of finished space.¹

The subject's home has five bedrooms, five and one-half baths, three fireplaces, and a three-car garage. The home has not been remodeled since it was built in 2004. The taxpayer describes the "style" of the home as a "western" style, where the home has dark interior beams and dark exterior siding. The taxpayer states that this is the style in which most homes in the subject's area were built in the mid-2000's, whereas most homes recently built in the subject's area have a "contemporary" style that incorporates cleaner lines and more windows. The taxpayer contends that the newer, contemporary-styled homes sell for more per square foot than older Western-styled homes like the subject property.

RESPONDENT did not proffer a formal appraisal in which he estimated the subject's value as of the January 1, 2016 lien date. RESPONDENT, however, prepared a grid sheet on which he compared the subject property to 10 comparable sales that are located in the NAME OF DEVELOPMENT-1 and which sold in 2015

¹ As will be discussed in more detail later in the decision, both parties rely on total finished square footage to estimate values for the subject property (i.e., they do not differentiate between finished above-grade and finished basement square footage). RESPONDENT, the County's appraiser, explained that the County did not differentiate between finished above-grade space and finished basement space because the subject property and most of its comparables have walk-out basements.

and 2016.² The County's 10 comparables sold for prices ranging between \$\$\$\$ and \$\$\$\$\$, and RESPONDENT adjusted them to adjusted sales prices ranging between \$\$\$\$ and \$\$\$\$\$.³ The ranges of these sales prices and adjusted sales prices would support the subject's current value of \$\$\$\$\$, the County's proposed value of \$\$\$\$\$, or the taxpayers' proposed value of \$\$\$\$\$. As a result, more analysis is required to

2 The taxpayer questions whether the Commission may consider the County's sales that occurred after the January 1, 2016 lien date. 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 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>.

Furthermore, the Commission finds it curious that the taxpayers would question the County's use of post-lien date sales where the taxpayers themselves used post-lien date sales to calculate the average prices at which homes in the NAME OF DEVELOPMENT-1 sold (which will be discussed later in the decision). For these reasons and because RESPONDENT adjusted his comparables for time of sale, the Commission will not disregard the sales that occurred in 2016.

3 As mentioned before, RESPONDENT did not differentiate between finished above-grade space and finished basement space when he adjusted the County's 10 comparables. RESPONDENT made adjustments for time of sale, golf memberships and furniture included with the sales, as well as adjustments for differences in views, golf course locations, conditions, square footages, and numbers of baths. He did not make any adjustments for differences in year built, lot sizes, or number of garages.

determine which of these values, if any, best represents the subject's "fair market value" as of the January 1, 2016 lien date.

Although RESPONDENT compared the subject property to and derived adjusted sales prices for 10 comparable sales on his grid sheet, he asks the Commission to rely on the revised adjusted sales price he derived for only one of the comparables. Specifically, RESPONDENT asks the Commission to reduce the subject's value to the revised adjusted sales price of \$\$\$\$ that he derived for County Comparable #1 (which sold for \$\$\$\$ in May 2016).⁴ This comparable is nearly identical to the subject property in age and square footage. However, it has a significantly larger lot than the subject property, and it is not located in the same subdivision of the NAME OF DEVELOPMENT-1 in which the subject property is located. As a result, the Commission needs to determine if any of the County's other comparables should also receive some weight in estimating the subject's value.

Five of the County's 10 comparables were built between 2013 and 2015 (the "newer comparables"), while the remaining 5 comparables, like the subject property, were built between 2004 and 2008 (the "older comparables"). A review of the sales prices and adjusted sales prices of these 10 properties show a different market for the newer comparables than for the older comparables. The five newer comparables sold for prices ranging between \$\$\$\$ and \$\$\$\$\$, which were adjusted to adjusted sales prices ranging between \$\$\$\$ and \$\$\$\$\$. In comparison, the five older comparables sold for prices ranging between \$\$\$\$ and \$\$\$\$\$, which were adjusted to adjusted sales prices ranging between \$\$\$\$ and \$\$\$\$\$. Accordingly, the five newer

⁴ On the grid sheet the County proffered as evidence, RESPONDENT originally adjusted this comparable to \$\$\$\$\$. At the hearing, however, RESPONDENT stated that this comparable needed additional downward adjustments for time of sale and the golf membership that was included in its sales price. After making these additional adjustments, RESPONDENT derived a revised adjusted sales price of \$\$\$\$\$ for this comparable.

comparables (which appear to have a different style from the subject property and the older comparables) will receive no weight in determining a value for the subject property.

Admittedly, of the five older comparables that RESPONDENT used on his grid sheet, the subject property is most similar in age and square footage to County Comparable #1, which RESPONDENT has adjusted to a revised adjusted sales price of \$\$\$\$\$. However, it is not located in the same NAME OF SUBDIVISION-1 as the subject property, while two of the County's other four older comparables (County Comparables #6 and #7) are located in the subject's same subdivision. County Comparables #6 and #7 sold for prices of \$\$\$\$\$ and \$\$\$\$\$, and RESPONDENT adjusted them to adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$. Because these two comparables are similar in age to the subject property and located in the subject's same subdivision, the Commission finds that they should receive a significant amount of weight in determining the subject's 2016 value. It is noted that the taxpayers' proposed value of \$\$\$\$\$ is within the range of these adjusted sales prices that RESPONDENT derived for County Comparables #6 and #7.

Furthermore, the taxpayers proffered the 2016 sale of another older comparable in the NAME OF DEVELOPMENT-1 that is approximately 800 square feet larger than the subject property.⁵ It sold for \$\$\$\$\$. Although this comparable is located in a different subdivision of the NAME OF DEVELOPMENT-1 than the subject property and its \$\$\$\$\$ sales price has not been adjusted, its larger size suggests that the subject's value may be lower than this \$\$\$\$\$ sales price. Based on the foregoing, most of the older comparables suggest that the subject's 2016 value is lower than the County's proposed value of \$\$\$\$\$ and that most of them support a value that is closer to the taxpayers' proposed value of \$\$\$\$\$. For these reasons, the Commission should reduce the subject's current value of \$\$\$\$\$ to \$\$\$\$\$ for the 2016 tax year.

⁵ The taxpayers also proffered the 2015 sale of another older home in the NAME OF DEVELOPMENT-1 (but in a different subdivision) that is more than 4,000 square feet larger than the subject property. This comparable is too dissimilar in size from the subject property to be a convincing comparable and will receive no weight in the analysis.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2016 tax year. The COUNTY Auditor is ordered to adjust its records in accordance with this decision

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:

Appeal No. 16-1666

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