

16-1692
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 8/21/2017
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 16-1692 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, Trustee of TAXPAYER
 For Respondent: RESPONDENT, from the COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer")¹ brings this appeal from the decision of the COUNTY-1 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 June 19, 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 ADDRESS in CITY-1, Utah. The County BOE reduced the \$\$\$\$ value at which the subject property was originally assessed for the 2016 tax year to \$\$\$\$\$. The taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$.

¹ REPRESENTATIVE FOR TAXPAYER is the trustee of the taxpayer. For ease of reference, REPRESENTATIVE FOR TAXPAYER may also be referred to as the "Petitioner" or "taxpayer."

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 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.
- (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

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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 #####-acre lot and a single-family residence that was built in 2015. The subject's residence contains #####-square feet of "above-grade" living space (#####-square feet on the main floor and #####-square feet on the second floor). The home also has a finished basement that is #####-square feet in size. The home has a four-car, attached garage, five bedrooms, five and one-half baths, and three fireplaces.

The subject property was listed for sale on January 26, 2015 for \$\$\$\$\$, and the taxpayer purchased the subject property for \$\$\$\$\$ on September 18, 2015. The Multiple Listing Service ("MLS") remarks about the subject property are, as follows:

True Green Build, not just the window dressing. This house has been designed from the ground up to be as close to energy independent as possible. Electric net metering, Geothermal in-floor heating and cooling, Passive Solar window and roof design, Lifetime zinc roof and panel siding, super insulated, the list goes on, web-controlled HVAC system, full audio/video distribution, top of the line appliances, great resort and valley views.

The subject property is located in an unincorporated part of the County just outside of the CITY-1 limits. The subject property is accessed through the NAME OF SUBDIVISION-1 that is in CITY-1. As a result, the home located directly southeast of and on the same road as the subject property is located in CITY-1. Because the subject property is not located in CITY-1, however, it does not have access to city water. The subject property's water supply is from a well that is located on the property.

The subject's current value of \$\$\$\$\$ is the sum of a \$\$\$\$\$ land value and a \$\$\$\$\$ improvements value. The County derives the *total value* of a residential property with its mass appraisal computer program,

which is based on market information. The County also separately derives the *land value* of a residential property with the market approach and subtracts this land value from the total value to derive the *improvements value* of a residential property. As a result, the County did not use a separate valuation methodology (such as the cost approach) to derive the subject property's current improvements value of \$\$\$\$\$. Instead, the subject property's current improvements value is merely the remainder that results from subtracting the \$\$\$\$\$ land value from the \$\$\$\$\$ total value that the County derived.

The parties provide both "fair market value" and equalization information to support their respective proposed values. The Commission will first analyze the "fair market value" information, after which it will analyze the equalization information.

Fair Market Value. As previously mentioned, the taxpayer purchased the subject property for \$\$\$\$\$ on September 18, 2015 (approximately three months prior to the 2016 lien date). The taxpayer contends that the price at which he purchased the subject property did not reflect its "fair market value" because he was under pressure to move and because he did not have access to comparables to know whether or not he was overpaying for the home.² The taxpayer, however, proffered no evidence to show that the subject's "fair market value" as of the 2016 lien date would be less than its current value of \$\$\$\$\$ (i.e., that the price at which the subject property would have sold between a willing buyer and a willing seller, as of January 1, 2016, would be less than \$\$\$\$\$).

The taxpayer further contends that the Commission should not consider the subject's \$\$\$\$\$ sales price when determining its "fair market value" because of the action that the County BOE took on another property that he owns. The taxpayer proffered that he owns a #####-acre, vacant residential lot in the County that he

² The taxpayer did not indicate whether he obtained an appraisal of the subject property when he purchased it in September 2015 and, if so, whether the value estimated in the appraisal would support the price he paid for the property.

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purchased for \$\$\$\$\$ in 2014 (taxpayer's "vacant lot"). The taxpayer asked the County BOE to reduce the vacant lot's 2016 value to a value that he derived with its \$\$\$\$\$ purchase price. The County BOE denied the taxpayer's appeal concerning the vacant lot's value, in part, because the taxpayer had purchased the vacant lot through a foreclosure auction and because distressed sales are "typically below market." Because the County BOE disregarded his purchase price when establishing the value of his vacant lot, the taxpayer contends that the Commission should disregard his purchase price when establishing the value of the subject property.

The taxpayer's argument is misplaced because the subject property, unlike the vacant lot, was not a foreclosure or distressed property when it sold. Pursuant to Subsection 59-2-103(1), property is assessed on the basis of its "fair market value," which is defined in Subsection 59-2-102(13), in part, 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[.]" A person selling a foreclosed property may have different motivations for selling that property than a typical willing seller. As a result, the sales price of a distressed property is usually suspect until adequate supporting evidence is provided to show that its sales prices represented its "fair market value." For these reasons, the taxpayer's argument that the Commission should disregard the sales price of the subject property when determining its "fair market value" is not persuasive.

To support the subject's current value of \$\$\$\$\$, RESPONDENT (who is an appraiser in the County Assessor's Office) proffered "worksheets" on which he compared the subject property to 13 nearby comparable sales that sold between November 2014 and November 2016.³ The comparables were built between 1979 and 2015 and sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. RESPONDENT adjusted the comparables to adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$ and pointed out that subject's current value of \$\$\$\$\$ falls within this range.

³ Even though RESPONDENT made adjustments to the comparables sales, he indicated that he would not consider the worksheets to constitute an appraisal because he did not sign the worksheets and because he

Furthermore, RESPONDENT stated that a market in CITY-1 has recently arisen for “green” homes that are built to specifications similar to those to which the subject property was built. RESPONDENT stated that “green” homes cost more to build and typically sell for much higher prices than older homes not built to these specifications. Of the homes RESPONDENT included on his worksheets, he contends that County Comparables #2 and #3 are the only other homes that have been built to these “green” specifications. County Comparable #2 was built in 2014, was listed for sale in July 2016, and sold for \$\$\$\$\$ in October 2016. County Comparable #3 was built in 2015, was listed for sale in July 2015, and sold for \$\$\$\$\$ in November 2016. RESPONDENT adjusted these two comparables to adjusted sales prices of \$\$\$\$\$ and \$\$\$\$\$.⁴ As a result, these two comparables suggest that the \$\$\$\$\$ price the taxpayer paid for the subject property in September 2015 represented its “fair market value,” and they support the subject’s current value of \$\$\$\$\$ for the 2016 tax year.⁵

The taxpayer contends that the Commission should not consider County Comparables #2 or #3 when determining the subject’s 2016 “fair market value” because the two comparables sold after the January 1, 2016 lien date. The Commission disagrees. Where there are very few sales of homes built to the “green” specifications to which the subject property was built, it is useful to review the prices at which such homes sold, even though they may have sold after the lien date.⁶ Furthermore, the Commission notes that County

did not estimate a final value for the subject.

4 RESPONDENT admitted that he did not adjust either County Comparable #2 or #3 for “time of sale” even though they sold in late 2016 and even though he indicated that prices were “stable to increasing” between the January 1, 2016 lien date and late 2016. Even if a 10% downward adjustment were made to the adjusted sales prices of these two comparables, the revised adjusted sales prices (as well as the sales prices) would still support the subject’s current value of \$\$\$\$\$.

5 The older comparables that RESPONDENT included on his spreadsheet are somewhat similar in size to the subject property, but were not built to “green” specifications. As a result, the much lower prices at which these older properties sold do not appear to be as useful in determining the subject’s “fair market value” as the sales of the subject property itself and County Comparables #2 and #3.

6 The Commission has previously found that it may consider “post-lien date” information in property tax appeals. In *USTC Appeal No. 08-2281* (Findings of Fact, Conclusions of Law, and Final Decision Jan. 21,

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Comparable #3, which sold for \$\$\$\$\$, was listed for sale for more than \$\$\$\$\$ prior to the lien date. As a result, its list price and the subject's sales price of \$\$\$\$\$ would both have been known prior to the 2016 lien date. When all of this information is considered as a whole, the taxpayer has not met his burden of proof to show that the subject's "fair market value," as of January 1, 2016, is lower than \$\$\$\$\$.

Equalization. The Commission has determined that the subject's "fair market value," as of January 1, 2016, is not less than its current value of \$\$\$\$\$. Nevertheless, pursuant to Subsection 59-2-1006(5)(b), the subject's current value may be reduced for equalization purposes if the evidence the parties proffered shows that this value deviates more than 5% from the values at which other comparable properties are assessed. *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

For his equalization argument, the taxpayer contends that the subject's current *improvements value* of \$\$\$\$\$ is not equitable with the 2016 *improvements values* of five other homes that are located on the same

2010), the Commission found, as follows:

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 may find it necessary to base our decision on market transactions occurring after January 1.

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."

This and other selected decisions can be viewed in a redacted format on the Commission website at

street as the subject property. The taxpayer's equalization approach focuses only on the improvements values of the subject property and his comparables and not on their total values. The improvements values of the taxpayer's five equalization comparables range between \$\$\$\$\$ and \$\$\$\$\$, which are much lower than the subject's current improvements value of \$\$\$\$\$.

In addition, the taxpayer provided the square footages of three of his five comparables, which shows that these three homes are somewhat similar in size to the subject property.⁷ Using the improvements values and square footages of these three comparables, the taxpayer determined that these three comparables' improvements were assessed at values of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, with an average value of \$\$\$\$\$ per square foot. In comparison, the subject's current improvements value of \$\$\$\$\$ equates to \$\$\$\$\$ per square foot (based on the subject's #####-square feet of total above-grade and basement space). As a result, the taxpayer contends that in order for the subject property to be equitably assessed, its improvements value should be reduced to \$\$\$\$\$ per square foot, which equates to \$\$\$\$\$ (based on the subject's total above-grade and basement space). When the subject's current land value of \$\$\$\$\$ is added to the taxpayer's proposed improvements value of \$\$\$\$\$, the sum is \$\$\$\$\$. On this basis, the taxpayer asks the Commission to reduce the subject's 2016 value to \$\$\$\$\$.

The taxpayer's information is insufficient to show that either the subject's current improvements value or its current total value should be reduced for purposes of equalization. First, where the improvements values of a subject property and the comparables compared to it are merely remainder values that the County did not derive with a separate valuation methodology (as in the instant case), the Commission has previously found an equalization argument that addresses a subject property's improvements value alone to be suspect.⁸

<http://www.tax.utah.gov/commission-office/decisions>.

⁷ The taxpayer did not know the square footages of his other two equalization comparables.

⁸ See *Appeal No. 12-1402* (Findings of Fact, Conclusions of Law, and Final Decision Sept. 30, 2016), in which a property owner presented one equalization approach to contest a property's assessed land value and

Second, even if the Commission considers the taxpayer's equalization argument for the subject's improvements value alone, the taxpayer has not proffered sufficient information to show that the subject's current improvements value is inequitable. For the three comparables whose square footages were known by the taxpayer and for which he was able to compute their improvements values on a square footage basis, the taxpayer only knew the year in which one of them was built. Specifically, the taxpayer knew that the comparable whose improvements were assessed at \$\$\$\$ per square foot was built in 2005.⁹ As discussed earlier, however, the subject property and some other new homes in the CITY-1 area have recently been built to "green" specifications, and the information provided at the hearing indicates that such homes sell for higher prices than other similarly-sized homes that are older and/or not built to these specifications. The taxpayer has not shown that any of his five comparables have been built to these "green" specifications. As a result, the taxpayer has not shown that his five comparables are similar enough to the subject property to be convincing comparables for equalization purposes.

At the hearing, the County did not know the values at which other homes built to "green" specifications were assessed for the 2016 tax year (such as County Comparables #2 and #3 that were discussed

another equalization approach to contest the property's assessed improvements value, even though the improvements values of that property and the comparables were merely remainder values that had not been derived with a separate valuation methodology. In *Appeal No. 12-1402*, the Commission found that "where a property's *total* assessed value has been determined with an income approach, a separate equalization argument to contest the property's allocated land and/or improvements value is suspect" (emphasis in original). Similarly, in the instant appeal where the total value of the subject property has been determined with a market approach and where its improvements value is a remainder value not derived with a separate valuation methodology, a separate equalization argument to contest the subject's improvements value is suspect.

9 The taxpayer proffered that one of his five comparables was built in 2015 (the same year that the subject property was built) and that its improvements value is only \$\$\$\$\$. However, this is one of the comparables whose square footages the taxpayer did not know and for which he was not able to compute its improvements value on a square foot basis. As a result, it is unknown if the improvements value per square of this 2015-built comparable is less than the subject's current improvements value of \$\$\$\$ per square foot. For this reason and because the taxpayer does not know whether this comparable was built to "green" specifications, the taxpayer's information is insufficient to show that the subject's improvements value is inequitable when compared to this 2015-built comparable's improvements value.

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earlier). However, the County does not have the burden of proof in this matter. In conclusion, the taxpayer has not shown that the subject's current total value \$\$\$\$ is incorrect or provided a sound evidentiary basis for reducing this value. Accordingly, the Commission should sustain the subject's current value for the 2016 tax year.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject property's current value of \$\$\$\$\$ 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