

16-1732
TAX TYPE: PROPERTY TAX
TAX YEAR: 2016
DATE SIGNED: 9/26/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	
v.	Appeal No. 16-1732
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Parcel No. ##### Tax Type: Property Tax Tax Year: 2016
Respondent.	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE -1 FOR PETITIONER, By Telephone
REPRESENTATIVE-2 FOR PETITIONER
For Respondent: RESPONDENT, Appraiser, COUNTY

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the COUNTY Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on June 27, 2017, in accordance with Utah Code §59-1-502.5. The COUNTY Assessor’s Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2016 lien date that is at issue in this appeal. The County Board of Equalization (“County”) reduced the value to \$\$\$\$\$. At the hearing, the Property Owner requested a reduction to \$\$\$\$\$. The County asks the Commission to sustain the value at \$\$\$\$\$.

APPLICABLE LAW

Utah Code §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(13), 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).

DISCUSSION

The subject property is located at SUBJECT ADDRESS, CITY-1, Utah. It is a \$\$\$\$-acre parcel of land improved with a rambler residence with no basement. The residence has #####-square feet all on one, above grade level. The residence was built in 2011 with an excellent grade of construction. The residence is considered to be in excellent condition. The property is built on what the County considers a "view lot." There is an attached four-car garage, patio and swimming pool. This property is located in the DEVELOPMENT-1 in CITY-1, which is a gated community with 24-hour security. The residence is unusual for COUNTY as the County's appraiser noted there are only three residences in the County that have that much square footage on one level. Additionally, there are only two other communities in COUNTY that are both gated and have 24-hour security, which are DEVELOPMENT-2 and the DEVELOPMENT-3.

The Property Owner had the subject built in 2011 and has been actively listing the property for sale since that time. The Property Owner stated that he had it listed for \$\$\$\$ but at some point had lowered the listing to \$\$\$\$.

The Property Owner did not submit an appraisal and was asking for a value considerably lower than the price at which he was offering the property for sale. He provided nine comparable sales and made a mathematical analysis, which he argued supported his position. Of his comparables, three were from the DEVELOPMENT-1 like the subject and one from DEVELOPMENT-2, which was also gated with 24-hour security. The other sales were from communities that lacked these amenities. The listing reports provided by the Property Owner on these sales did not include the date of sale. The Property Owner stated that all of these comparable properties had a swimming pool like the subject. His comparable sales were as follows:

Address	Sale Price	GLA	BSM	Other Sq.Ft	Year Built	Gar-age	Lot Size	Development
SUBJECT ADDRESS		####				#	#	DEV. -1
1) ADDRESS-1	\$\$\$\$	#####	#	#	#	#	#	DEV. -4
2) ADDRESS-2	\$\$\$\$	#####	#	#	#	#	#	DEV. -5
3) ADDRESS-2 ¹	\$\$\$\$	#####	#	#	#	#	#	DEV. -5
4) ADDRESS-3	\$\$\$\$	#####	#	#	#	#	#	DEV. -6
5) ADDRESS-4	\$\$\$\$	#####	#	#	#	#	#	DEV.-7
6) ADDRESS-5	\$\$\$\$ ²	#####	#	#	#	#	#	DEV.-1
7) ADDRESS-6	\$\$\$\$	#####	#	#	#	#	#	DEV.-1
8) ADDRESS-7	\$\$\$\$ ³	#####	#	#	#	#	#	DEV.-2
9) ADDRESS-8	\$\$\$\$ ⁴	#####	#	#	#	#	#	DEV.-1

In review of the sales offered by the Property Owner, the sales from DEVELOPMENT-1 are better comparables as far as location. However, two of these three sales, comparables 6 and 9, were not reported over a listing service. The Property Owner did not provide evidence to substantiate the price at which comparable 6 had sold. He did have a letter from the builder/seller for comparable 9. The Property Owner had made an analysis based on the sale price per total square footage of the comparables, which included basement and “other” square footage and did not account for the fact that finished basement area contributes to value at a lower rate per square foot than above grade square footage. Value for a residential property is not based solely on price per square foot. The fair market value of a residential property is affected by location, quality of construction, age, condition, style, views and other factors.

The County’s representative criticized the comparable sales offered by the Property Owner that were not located in DEVELOPMENT-1, stating they were from inferior neighborhoods that were not gated with 24-hour security. He acknowledged that it was difficult to find comparables in the luxury home market because sales were sluggish and it took a long time

¹ This is the same property as comparable 2) and had sold twice.

² This was reported as the list price. The Property Owner did not provide documentation of a sale price for this property.

³ This was also reported as the list price.

⁴ The Property Owner provided a letter signed by NAME-1 who stated that he was the builder of this comparable and had sold this property for \$\$\$\$\$ in 2012. This sale was not reported over a listing service. NAME-1 indicated that he also had built the subject property and the subject was similar in quality of construction to this property. He also states the building lots are similar in size.

to sell homes in this price range. He also stated that the economic life of the residence is shorter in the luxury home market. All of the comparables provided by the Property Owner were older than the subject residence by several years or more.

The County submitted an appraisal, which indicated a value for the subject property of \$\$\$\$ as of the lien date January 1, 2016. The County’s appraiser, RESPONDENT, stated it was difficult to find good comparables for the subject property because there were very few properties in the County that were as large as the subject on one level. In addition, there were few sales in the DEVELOPMENT-1 or other comparable developments. He states that he had to look outside of the DEVELOPMENT-1 to find comparable sales in other gated communities and he expanded the time period for the date of sale due to lack of comparables. In addition, RESPONDENT indicated he was not aware of the sale price of the Property Owner’s comparable 9 because he had not seen that sale reported on a listing service. RESPONDENT made standard appraisal adjustments for differences between the comparables and the subject, but because there were substantial differences, the adjustments were also substantial. RESPONDENT’s comparables are the following:

Address	Sale Price	Sale Date	GLA	Bsmt	Lot Size	Age	Gar-ages	Gate & 24 Hr. Sec.	Adjusted Value
Subject: SUBJECT ADDRESS			#####	#	#				
1) ADDRESS-9	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
2) ADDRESS-10	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
3) ADDRESS-11	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
4) ADDRESS-12	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
5) ADDRESS-13	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
6) ADDRESS-14	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
7) ADDRESS-15	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
8) ADDRESS-16	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$
9) ADDRESS-17	\$\$\$\$	#	#####	#	#	#	#		\$\$\$\$

RESPONDENT noted in his appraisal that he had the listing information for his comparable 8) ADDRESS-16, which also was one of the comparables provided by the Property Owner, and he had heard that this property sold, but indicated in his appraisal, “there were some discrepancies between some sources in price paid . . .” He noted the list price in his appraisal, but gave no weight to this comparable in his conclusion.

The Property Owner criticized the County's use of subjective appraisal adjustments and argued the County's appraisal constituted data manipulation. However, the County had attempted standard appraisal adjustments and the County's appraiser is subject to professional licensing requirements. For the Tax Commission to determine a value for this property, it certainly would have been better to have comparable properties with residences over 10,000 square feet on one level, located in a gated community with 24 hour security, but there were apparently no sales like this available. Although the Property Owner offered criticism of the County's comparables, the comparables the Property Owner offered were generally not any better, many from inferior neighborhoods, and substantial appraisal adjustments would be needed to derive a value from these sales. The comparable offered by the Property Owner, comparable 9, is located very near the subject in DEVELOPMENT-1, was built by the same builder and did appear to be a similar property, except that it was not a single level residence. However, this was a private sale and the Property Owner has not provided sufficient information to establish that this comparable had been listed on the open market for a reasonable period of time prior to the sale.

In seeking a value lower than that established by the County Board of Equalization, the Property Owner 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. The subject property is unique and difficult to value. The County has offered an appraisal that supports the value set by the County Board of Equalization. The Property Owner has provided sales, but there are differences between the subject and comparables and appraisal adjustments would be necessary. The Property Owner did not provide better comparables than the County and has not met the burden of establishing error in the County's value. Additionally, under Utah Code Subsection 59-2-1006(4) the Tax Commission may consider the listing price of a property on the lien date and the Property Owner had the subject property listed for sale on the lien date at \$\$\$\$ or higher. This does not support a reduction in value. The County's value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2016 lien date. 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

Appeal No. 16-1732

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