

16-1909
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2016
DATE SIGNED: 1/5/2018
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-1, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 16-1909 Parcel No. Multiple – ##### parcels (see below) Tax Type: Property Tax / Locally Assessed Tax Year: 2016 Judge: Chapman
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Presiding:

John L. Valentine, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Trustee of TAXPAYER
For Respondent: RESPONDENT, Appraiser from COUNTY-1 Assessor’s Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 2#####,
2017. Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2016, with a lien date of January 1, 2016.
3. At issue are the fair market values of ##### residential UNIT in a PUD located at SUBJECT
ADDRESS, Utah. The ##### subject properties are owned by TAXPAYER (“Petitioner” or “taxpayer”).

REPRESENTATIVE FOR TAXPAYER testified that he is a trustee of the taxpayer.¹

4. The taxpayer has appealed to the Tax Commission the values that the COUNTY-1 Board of Equalization (“Respondent” or “County BOE”) established for the ##### subject properties for the 2016 tax year. The Tax Commission held a Mediation Conference in this matter on July 6, 2017. Because the matter was not resolved at the Mediation Conference, it was scheduled for a Formal Hearing.

#####. The PUD in which the subject properties are located consists of ##### residential UNITS that have separate parcel numbers and different street addresses and a #####-unit BUILDING. The value of the #####-unit BUILDING is not at issue, and only the values of the ##### UNITS identified in the following paragraph are at issue in the instant appeal. The entire project sits on ##### acres, and approximately ##### acres of land is allocated to each UNIT in the project.²

6. For each of the ##### subject properties, the following chart shows its parcel number, indicates whether it is an “end-row” unit (which only shares a common wall with one other unit) or a “mid-row” unit (which shares common walls with two other units), and indicates whether its basement is finished or unfinished. For each property, the chart also shows the value at which it was originally assessed, the value established by the County BOE, the value proposed by the taxpayer, and the value proposed by the County:

Parcel No.	Type of Unit	Basement Finish (Yes or No)	Original Assessed Value	County BOE Value	Taxpayer’s Proposed Value	County’s Proposed Value
#####	End-Row	Yes	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	Mid-Row	No	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	End-Row	Yes	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	End-Row	Yes	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	Mid-Row	No	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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

2 Petitioner’s Exhibit 1, p. VI; Testimony of REPRESENTATIVE FOR TAXPAYER.

#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	Mid-Row	No	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	Mid-Row	No	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Parcel No.	Type of Unit	Basement Finish (Yes or No)	Original Assessed Value	County BOE Value	Taxpayer's Proposed Value	County's Proposed Value
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	Mid-Row	No	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####	End-Row	Yes	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

7. The ##### subject properties are located in ##### UNIT buildings, each of which comprises two end-row units and one mid-row unit. Each of the ##### subject units has the same total square footage, but the mid-row units all have unfinished basements while the end-row units all have finished basements.³

8. The taxpayer's appraisal shows that the ##### subject properties have ##### square feet of living space on their main and second floors and ##### square feet of space in their basements.⁴ The County submitted a "Summary Appraisal Report" in which it showed that the subject properties have ##### square feet of living space on their main and second floors and ##### square feet of space in their basements.⁵ The primary difference in square footage concerns the parties' respective basement sizes. REPRESENTATIVE FOR TAXPAYER stated that he knew that the subject properties' basements are only about ##### square feet

3 Petitioner's Exhibit 1. This exhibit is an appraisal concerning a #####-UNIT project that is comprised of the ##### subject properties and will be referred to as the "taxpayer's appraisal."

4 Petitioner's Exhibit 1, p. 48.

5 Respondent's Exhibit 3. The County's appraisal is not signed, but indicates that the "date of signature" is July 22, 2015, and that the "effective date of appraisal" is January 1, 2015 (which would be the year prior to the 2016 tax year at issue in this appeal). It is possible that the January 1, 2015 effective date shown in the County's appraisal may be incorrect because the four comparable sales used in the appraisal sold between May 2015 and August 2016.

in size. In addition, the taxpayer's appraisal includes diagrams of a UNIT unit's different floors, including a diagram of the basement.⁶ For the County, RESPONDENT indicated that he had not measured the units and did not know how the County's square footages were derived. In addition, the County did not submit a diagram of the basement to support the ##### square feet of basement space it used in its appraisal. Based on this information, the Commission finds the square footages found in the taxpayer's appraisal to be more convincing. Accordingly, the Commission finds that each of the subject properties has ##### square feet of living space on its main and second floors, as well as a basement that is ##### square feet in size.

9. REPRESENTATIVE FOR TAXPAYER testified that he has decided to operate the UNIT in the subjects' PUD, including the ##### subject properties, as a BUILDING instead of selling the subject properties on an individual basis. However, he admits that other developments with UNITS surround the subject properties' PUD and that the UNITS in these other developments have been sold on an individual basis. For example, the taxpayer explained that one development located directly to the east of the subjects' PUD has ##### units that have been sold on an individual basis. There is also a UNIT development located directly to the south of the subjects' PUD where the units have been sold on an individual basis.

10. To support his proposed value of \$\$\$\$ for each of the ##### subject properties, the taxpayer submitted its afore-mentioned appraisal. The taxpayer's appraisal was prepared by NAME-1. The appraisal was prepared to assist with financing considerations for a #####-UNIT project. NAME-1 determined the value of the #####-unit project, as of November 19, 2015, to be \$\$\$\$ for "BUILDING use" and also to be \$\$\$\$ for "bulk UNIT use."⁷ Because the \$\$\$\$ value for a #####-unit bulk project comprised of the ##### subject properties equates to \$\$\$\$ per unit (\$\$\$\$ divided by ##### units), the taxpayer asks the Commission to reduce each of the ##### subject properties' values to \$\$\$\$.

6 Petitioner's Exhibit 1, p. 72.

11. In the taxpayer's appraisal, NAME-1 used a cost approach, an income approach, and a sales comparison approach to estimate the value of the #####-unit project at \$\$\$\$ for "BUILDING use." For the sales comparison approach, NAME-1 compared the #####-unit project to units in WORD REMOVED where each WORD REMOVED, but not each unit in the WORD REMOVED, appears to have a separate parcel number.⁸

12. NAME-1 also determined a "bulk UNIT use" value of \$\$\$\$ for the #####-unit project that comprises the ##### subject properties. For this approach, he first determined the "retail unit value" of each of the ##### units, after which he forecast the absorption rate needed to sell ##### units, projected and deducted development costs not yet incurred (such as holding costs), and discounted the future projected cash flows to the present to estimate a "bulk value" for the ##### units.⁹ NAME-1 prepared a sales approach adjustment grid to estimate the "retail unit value" of an end-row subject property at \$\$\$\$. NAME-1 did not prepare a separate sales approach adjustment grid for a mid-row unit. However, he estimated the "retail unit value" of a mid-row subject property to be "\$\$\$\$, reflective of the mid-row position and the unfinished basement areas."¹⁰ Based on the \$\$\$\$ "retail unit value" of an end-row unit and the \$\$\$\$ "retail unit value" of a mid-row unit, NAME-1 determined that the total "retail values" of the ##### subject properties was \$\$\$\$. After determining the absorption rate associated with selling ##### units, deducting development costs not yet incurred, and discounting the projected cash flows to the present, NAME-1 determined that the "bulk sale" value of the ##### subject properties would be \$\$\$\$.

7 Petitioner's Exhibit 1.

8 Petitioner's Exhibit 1, pp. 14-43. As a result, the individual units in these WORD REMOVED, unlike the ##### subject properties, could not be individually sold.

9 Petitioner's Exhibit 1, pp. 44-52.

10 At the hearing, REPRESENTATIVE FOR TAXPAYER agreed that end-row units are more valuable than mid-row units.

13. To estimate the “retail value” of a single end-row unit at \$\$\$\$\$, NAME-1 compared an end-row subject property to four comparable sales of individual UNIT that are located within two blocks of the subjects’ PUD. These four comparables sold between December 2014 and May 2015. The four comparables included three end-row comparables that sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$, and one mid-row unit that sold for a price of \$\$\$\$\$. NAME-1 adjusted these comparables and derived adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$. On the basis of these adjusted sales prices, NAME-1 estimated the “retail value” of an end-row subject property to be \$\$\$\$\$.¹¹

14. The County, however, contends that the \$\$\$\$\$ value that NAME-1 estimated for a #####-unit BUILDING comprised of the ##### subject properties and for the bulk sale of the ##### properties by a single owner is not helpful in establishing the fair market value of each UNIT for property tax purposes. For property tax purposes, the County contends that each individual property must be valued at its “highest and best use,” which the County contends is commonly defined as a use that is physically possible, legally permissible, and financially feasible and which would maximize the economic productivity of the property. Where the ##### subject properties have separate parcel numbers and different addresses, the County contends that it is physically possible and legally permissible to sell these UNIT on an individual basis. In addition, where the evidence shows that the subject properties would sell for more per unit if sold individually than as part of a BUILDING or bulk sale, the County further contends that it would be financially feasible and maximally productive to sell the UNIT individually. For these reasons, the County contends that the “highest and best use” of the ##### subject properties would be to sell them individually and that they should be valued at the prices at which they would individually sell.

15. The taxpayer does not refute the County’s claim that it is physically possible, legally permissible, and financially feasible to sell the ##### subject properties on an individual basis. In addition, he

11 Petitioner’s Exhibit 1, pp. 45-50.

does not refute the County's claim that it would maximize the value of each subject property to sell it individually than to sell it as part of a #####-unit BUILDING or part of a #####-UNIT bulk sale. The taxpayer, however, asks the Commission to consider that he has decided not to sell the UNIT in the subjects' PUD on an individual basis, but to operate them, instead, together as a multi-unit BUILDING complex. In addition, the taxpayer asks the Commission to consider that "absorption" is a reality in the development of multi-unit properties. As a result, the taxpayer contends that NAME-1 properly applied an absorption rate when he discounted the "retail values" of the ##### subject properties in order to estimate the value of the #####-unit bulk project that he appraised. Furthermore, the taxpayer notes that NAME-1 determined in his appraisal that the "highest and best use" of the property he was appraising would be a #####-UNIT development.¹² For these reasons, the taxpayer contends that the \$\$\$\$ value that NAME-1 estimated for the #####-UNIT project he appraised should be allocated between the ##### UNIT and that such an allocation will result in an individual value of \$\$\$\$ for each subject property.

16. In the taxpayer's appraisal, however, NAME-1 was determining the "highest and best use" of a #####-UNIT project, not the "highest and best use" of an *individual UNIT* located in that bulk project. NAME-1 also did not determine that the "highest and best use" of an individual UNIT in the subjects' PUD would be to use it as part of a multi-unit BUILDING or to sell it as part of a bulk sale instead of selling that UNIT on an individual basis.¹³ Furthermore, NAME-1's analysis suggests that the highest and best use of an individual UNIT would be to sell it individually, because he determined that the ##### units in the projects

12 Petitioner's Exhibit 1, pp. 12-14.

13 It is further noted that nowhere in the taxpayer's appraisal does NAME-1 indicate that the ##### subject properties that comprise the #####-unit project he was appraising could not be sold on an individual basis.

would have sold for a total of \$\$\$\$ (\$\$\$\$ for an end-row unit and \$\$\$\$ for a mid-row unit) if the units were sold individually instead of in a bulk sale.¹⁴

17. Moreover, the Utah Supreme Court has found that where a property owner owns a number of individual properties, it is inappropriate to determine the value of those properties with a bulk-sale methodology that has been discounted for absorption. In *Bd. of Equalization v. Utah State Tax Comm'n ex rel. Benchmark, Inc.*, 864 P.2d 882 (Utah 1993), the Court considered the fair market value of ##### residential building lots owned by a real estate developer. The Commission had applied an absorption discount to value these ##### lots because of the number of years it would take for the developer to sell all ##### lots that it owned. The board of equalization appealed the Commission's decision and argued that each lot should be taxed on the "retail value" at which it would individually sell.¹⁵ The Court noted that the Commission's method contemplated a "hypothetical sale in bulk from one developer to another" and found that this valuation methodology is inconsistent with the Utah Constitution and with the statutory scheme for ad valorem taxation. The Court further explained that such a valuation methodology would allow two properties with the same "retail value" to be taxed at different rates and result in an owner of multiple properties not shouldering the burden of taxation in proportion to the value of the property he or she owned. In accordance with the Utah Supreme Court's ruling in *Benchmark*, the Commission finds that the \$\$\$\$ value that NAME-1 estimated for the #####-UNIT bulk project may not be allocated and used to determine the value of each of the subject properties that comprises this bulk project.

18. That being said, in his appraisal, NAME-1 determined the "retail values" of an end-row subject property and a mid-row subject property. Because all end-row UNIT in the subjects' PUD are identical or nearly identical, the \$\$\$\$ retail value that NAME-1 determined for an end-row UNIT may be helpful in

14 Petitioner's Exhibit 1, p. 50.

15 The Court indicated that the "retail value" of each lot was "not in serious dispute."

determining the fair market values of the ##### subject properties that are end-row UNIT. Similarly, because all mid-row UNIT in the subjects' PUD are identical or nearly identical, the \$\$\$\$ retail value that NAME-1 determined for a mid-row UNIT may be helpful in determining the fair market values of the ##### subject properties that are mid-row UNIT.

19. Before establishing the fair market value of each individual subject property, however, the County's appraisal should also be analyzed. In its appraisal, the County compared an end-row subject property to the sales of ##### end-row UNIT located less than two blocks away from the subjects' PUD. The comparables sold between May 2015 and August 2016, and the appraisal indicates that they sold for prices ranging between \$\$\$\$ and \$\$\$\$ (for the three comparables with basements) and \$\$\$\$ (for a comparable without a basement). The comparable *without a basement* is significantly different from the UNIT in the subjects' PUD and from the County's other comparables and will not be considered any further. As to the other three County comparables that do have basements, they were adjusted to adjusted sales prices ranging between \$\$\$\$ and \$\$\$\$. Based on the adjusted sales prices derived in the County's appraisal, the County has estimated the value of an end-row subject property to be \$\$\$\$.¹⁶

20. The County did not provide an appraisal or other evidence to estimate the value of a mid-row subject property.

21. As to the fair market value of an individual end-row subject property, the \$\$\$\$ value estimated in the taxpayer's appraisal is more convincing than the \$\$\$\$ value estimated in the County's appraisal. Admittedly, the County's comparables, in general, sold closer to the 2016 lien date than the comparables used in the taxpayer's appraisal. The County, however, did not adjust its comparables for date of sale, unlike the taxpayer's appraiser who made such adjustments. Furthermore, the County's appraisal appears to overestimate the value of an end-row subject property for a number of other reasons. First, the Commission

previously found that the County overestimated the basement square footage of a UNIT in the subject's PUD by approximately ##### square feet. Second, the County did not deduct concessions when determining the sales prices of its comparables. Third, for the larger County Comparable #1, the County did not make a negative adjustment for its additional above-grade living space, even though it made a positive adjustment for a somewhat similar difference in basement space. For these reasons, the Commission finds the \$\$\$\$ value estimated in the taxpayer's appraisal to be the most convincing estimate of value for an end-row UNIT in the subjects' PUD.

22. Based on the foregoing, the taxpayer's evidence shows that the \$\$\$\$ current value of each of the ##### end-row UNIT at issue is incorrect and provides a sound evidentiary basis to reduce the value of each end-row UNIT to \$\$\$\$ for the 2016 tax year. The taxpayer, however, has not provided a sound evidentiary basis to reduce the value of any of these end-row UNITS to a lesser amount. Accordingly, for the ##### end-row UNIT at issue in this appeal, the value of each UNIT is \$\$\$\$ for the 2016 tax year.

23. As to fair market value of an individual mid-row subject property, the taxpayer's appraiser did not provide much detail to show how he derived a value of \$\$\$\$ for such UNIT. For this reason and because the County did not ask the Commission to increase the \$\$\$\$ current value of any of the mid-row UNIT at issue to \$\$\$\$, the Commission finds that neither party has shown the \$\$\$\$ current value of a mid-row subject property to be incorrect. In addition, the taxpayer has not provided a sound evidentiary basis to reduce the value of any mid-row subject property to a lesser amount. Accordingly, for the ##### mid-row UNIT at issue in this appeal, the value of each UNIT shall remain at \$\$\$\$ for the 2016 tax year.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll 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.”

2. 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 a 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.

3. UCA §59-2-106 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 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 322 (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).

CONCLUSIONS OF LAW

1. For the 2016 tax year at issue, Subsection 59-2-103(1) provides for each subject property to be taxed on the basis of its “fair market value” as of January 1, 2016. Subsection 59-2-102(13) defines “fair market value” 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 and both having reasonable knowledge of the relevant facts.”

2. For each of the ##### properties at issue in this appeal, the County does not request a value that is different from the value established by the County BOE. As a result, the value that the County BOE established for each of the subject properties has the presumption of correctness. Accordingly, for each of the ##### subject properties, the taxpayer has the burden not only to demonstrate that the value established by the County BOE is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the property’s value to the amount that the taxpayer proposes.

3. For reasons explained earlier, the taxpayer has shown that the \$\$\$\$ value the County BOE established for each of the ##### end-row UNIT at issue is incorrect. In addition, the taxpayer has provided a sound evidentiary basis for reducing this \$\$\$\$ value to \$\$\$\$ for each of these properties. The taxpayer, however, has not provided a sound evidentiary basis to reduce the value of any end-row subject property to an amount that is lower than \$\$\$\$. Accordingly, for the ##### end-row UNIT at issue in this appeal, the Commission should find that each of their fair market values, as of the January 1, 2016 lien date, is \$\$\$\$.

4. For reasons also explained earlier, neither party has shown that the \$\$\$\$ value the County BOE established for each of the ##### mid-row UNIT at issue is incorrect. In addition, the taxpayer has not provided a sound evidentiary basis to reduce the current value of any of these properties to a lesser amount.

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Accordingly, for the ##### mid-row UNIT at issue in this appeal, the Commission should find that each of their fair market values, as of the January 1, 2016 lien date, is \$\$\$\$\$.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of each of the ##### subject properties, as of the January 1, 2016 lien date, is the “Commission Value” reflected in the following chart:

Parcel No.	Commission Value
#####	\$\$\$\$\$
#####	\$\$\$\$\$
#####	\$\$\$\$\$
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#####	\$\$\$\$\$

The COUNTY-1 Auditor is ordered to adjust its records in accordance with this decision.

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DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.