

16-1963  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2016  
DATE SIGNED: 01/26/2018  
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL  
EXCUSED: J VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 &amp; PETITIONER-2,  Petitioners,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 16-1963</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2016</p> <p>Judge: Phan</p>
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**Presiding:**

Michael Cragun, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER-1  
For Respondent: RESPONDENT, Appraiser, COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 25, 2017, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners ("Property Owners") filed an appeal of the decision of the COUNTY-1 Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.
2. The lien date at issue in this appeal is January 1, 2016.
3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization ("County") sustained the value. At the hearing, the Property

Owner requested a reduction to \$\$\$\$\$. The representative for the County requested that the value remain as set by the County Board of Equalization.

4. The property that is the subject of this appeal is parcel no. ##### and is located at ADDRESS-1, Utah.

5. The subject property is ##### acres of land improved with a single family residence. The residence had been constructed in 1999 and has ##### square feet on the main floor. There is a partial second story, with ##### square feet. The basement has ##### square feet of which ##### are finished. The residence has an attached #####-car garage of ##### square feet. The subject lot is on the corner and irregular in shape. There is not a valley view from the subject, as the homes across the street are on the view side of the hill overlooking the valley. The exterior style of the subject is unique in that there is a turret on one end of the structure and it has a porch that wraps all the way around the front and one side of the structure. The lot of the subject is sloped from back to front. There is a second kitchen that is located in the basement. As of the lien date, the lawn had been ruined due to neglect and the Property Owners replaced the lawn in the spring of 2017.

6. The Property Owners were requesting a reduction to \$\$\$\$\$, which was the price that they had paid for the property when they purchased it on November 27, 2015; just prior to the lien date. The Property Owners provided the listing history for the subject property and pointed out that the subject property had been listed for sale on the multiple listing services for ##### months prior to their purchase.<sup>1</sup> The subject had been listed for sale on April 9, 2015 for \$\$\$\$\$. The price was reduced to \$\$\$\$\$ on May 15, 2015. It was listed for much of the summer at that price, over the period when residential listings tend to be the most active. As it did not sell, the price was lowered again to \$\$\$\$\$ on August 12, 2015 and then to \$\$\$\$\$ on October 1, 2015. It was after that when the Property Owners found the property and made a full price offer on October 22, 2015, which was accepted.

7. The Property Owner testified that the residential real estate market was very active at the time he and his wife purchased the subject property and properties were selling fast. He explained that he and his wife had been looking for a property to purchase and had already at that time made multiple offers and missed other residential properties. He states he made the full price offer on the subject at his wife's prodding, so they would not lose the subject property.

8. The subject property was appraised for purposes of the Property Owners' obtaining financing for their purchase. The Property Owners submitted as evidence in this appeal an appraisal with the effective date of October 23, 2015. The appraiser had concluded the value of the property as of that date was \$\$\$\$\$.<sup>2</sup> This appraisal had been prepared by NAME-1, who indicated in his report that, "Due

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<sup>1</sup> Petitioners' Exhibit 3.

<sup>2</sup> Petitioners' Exhibit 5.

to the subject's GLA and location there is a lack of sales in this area." He indicated that it was necessary to use sales farther away from the subject and different style properties.<sup>3</sup> He did find three comparables, however, which were located very near the subject, within ##### of a mile. These three properties had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. After appraisal adjustments, they indicated a range for the subject from \$\$\$\$\$ to \$\$\$\$\$. One of these properties was located on the same street as the subject at ADDRESS-2. It had sold for \$\$\$\$\$ in November 2014. This property had been constructed in 2001. It had ##### square feet above grade and a basement of ##### square feet. This comparable has a much smaller lot than the subject. The appraiser had concluded a value for the subject of \$\$\$\$\$ from this sale. The appraiser had found two additional sales, but they were located more than #####-mile from the subject. These had sold in September and July 2015 for \$\$\$\$\$ and \$\$\$\$\$. These properties indicated a value for the subject of \$\$\$\$\$ and \$\$\$\$\$ respectively. This appraiser had been inside the subject residence and interior photographs were provided in the appraisal.

9. After purchasing the property, the Property Owners made some improvements, some of which were finished before the January 1, 2016 lien date. For instance, they found out the furnace was not working so they replaced it. The Property Owner testified that he was not aware of this problem when he made his offer on the house. They also replaced the flooring in the eating area to laminate wood and removed a urinal from the master bathroom. In addition, they painted trim work white, which had been black previously.

10. In April 2016, the Property Owners had another appraisal prepared because they wanted to refinance the property at a more favorable rate. The Property Owner testified that it was their motivation to get the highest appraised value possible. This second appraisal found that as of April 23, 2016, the value of the subject residence was \$\$\$\$\$.<sup>4</sup> This appraiser noted in the appraisal, "The current owners purchased the property in November for \$\$\$\$\$, which appears to have been slightly below market."<sup>5</sup> In this appraisal, three comparables and one listing were used. These comparables were farther in location from the subject, from ##### of a mile to ##### miles. They had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. This appraiser had concluded that they indicated a range of value for the subject from \$\$\$\$\$ to \$\$\$\$\$. It is not explained in the appraisal why he concluded \$\$\$\$\$ for the subject. He had been inside the subject and provided interior photographs of the residence. These photos showed what appeared to be an original kitchen and original master bathroom in an interior that was somewhat dated.

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<sup>3</sup> Petitioners' Exhibit 5, pg. 3.

<sup>4</sup> Petitioners' Exhibit 4.

<sup>5</sup> *Id.* at page 2.

11. The County did not submit an appraisal of the subject property. The representative for the County relied on three sales and the adjustments generated by the County's Prognoses valuation system, which he submitted at the hearing.<sup>6</sup> The first sale was the same as one in the October 23, 2015 appraisal, the comparable located on the same street as the subject at ADDRESS-2, which had sold for \$\$\$\$ on November 24, 2014. However, although the conclusion from the October 23, 2015 appraisal had been that this sale indicated a value for the subject of \$\$\$\$\$, the Prognoses conclusion was this indicated a value of \$\$\$\$\$. The two biggest factors that resulted in this difference were the Prognoses time adjustment and the lot size adjustment. The time adjustment in the County's Prognoses report was a positive adjustment of \$\$\$\$\$. There had been no time adjustment in the October 23, 2015 appraisal. This comparable had a lot size of only ##### acres while the subject was ##### acres. The Prognoses report made a plus 10.51% adjustment for land size. The October 23, 2015 appraisal provided only a \$5,000 adjustment for this difference. The County's other comparables were a property that sold for \$\$\$\$ on February 26, 2015 and one that sold for \$\$\$\$ on October 14, 2015. Both of these properties were near in location to the subject, but were newer in construction and in better condition. They also had lots around the size that appeared standard of the neighborhood of ##### acres, so large adjustments were made for the lot sizes. All three of the Prognoses comparables were two-story properties.

12. The County's representative also argued that the April 23, 2016 appraisal supported the County's value, because regardless of that appraiser's conclusion, two of the comparables in that appraisal indicated a value for the subject around \$\$\$\$\$, while only one indicated a value of \$\$\$\$\$. The County's representative pointed out that the two higher comparables were ramblers, which were more similar to the subject.

13. The County provided a market study from the NEWSPAPER that showed increases in the average market prices per zip code in COUNTY-1. This indicated a 9.7% increase from the second quarter 2015 to the second quarter of 2016.<sup>7</sup>

14. In its assessment, the County gave no weight at all to the purchase price of the subject property less than two months prior to the lien date because it was a bank owned property. The County's representative stated that the County does not rely on bank owned sales because they are duress sales. He provided the opinion that banks sell the properties for less than market value. He did not present a study or published report that supported this argument. He also alleged that the Property Owner had some private inside information about this listing so was able to purchase it fast at the below market price.

15. The Property Owner testified that the allegations about having inside information or an inside contact with the bank that had sold this property was false. He argued that banks generally by 2015

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<sup>6</sup> Respondent's Exhibit A.

<sup>7</sup> Respondent's Exhibit C.

were not in duress and could hold onto properties long enough to maximize their return when they were sold. He pointed out that this property had been actively marketed and listed on the MLS for months before he purchased it.

16. The County's allegation that the Property Owner had some inside connection at the bank that had sold the property to him was unsupported and spurious. It is not known what the bank that sold this property's motivation was when selling this property, but it does appear the bank did make an effort to get a higher price, but there were no buyers at that price.

17. The subject property is unusual compared to surrounding properties and although the County criticized the comparables provided in the Property Owners' appraisals, the County did not submit any that were more similar. The County's comparables were all two-story style properties and all had lots of only ##### or ##### acres in size. There were no ramblers with bonus second story turret space and wrap around porches on large, sloped lots. The Property Owner testified that due to the slope on the subject lot, the extra land was not very usable. The subject appears to be an outlier stylistically and size wise in its neighborhood. The actual sale prices of the County's comparables were substantially lower than the \$\$\$\$ the County is requesting and it is only with the substantial appraisal adjustments that a higher value is indicated.

18. After reviewing the evidence submitted in this matter, the County's refusal to give any weight to the purchase price of the subject property is not appropriate. This property was listed for sale on the multiple listing services for ##### months and had significant market exposure during a period of time when properties were selling and the market values were increasing generally. The property is also unique compared to other properties in the neighborhood. The County has concluded a value of \$\$\$\$\$, however this property was never listed that high during the #####-month listing period. The listing started at \$\$\$\$ and the property was listed for \$\$\$\$ for ##### full months during the summer, but did not receive offers at that price. There were no buyers until the listing was lowered to \$\$\$\$.

19. Additionally the County gives no weight to two appraisals that were prepared near the lien date. Two different appraisers inspected the interior and exterior of the property and issued their conclusions. They took photos and presumably took into account the somewhat dated interiors and the unusual exterior. Property is assessed at "fair market value." "Fair market value" is the price at which the property would change hands between a willing buyer and a willing seller. The amount at which people are willing to pay or willing sell a property for is not just based on objective criteria like square footage and acreage. There are subjective concerns like curb appeal, style and layout that affect value. In this appeal, there is a purchase price near the lien date of \$\$\$\$ and evidence showing that people were not willing to purchase this residence for \$\$\$\$ or \$\$\$\$.

20. As both parties had indicated in this hearing, the Property Owners purchased the property during a period when market values were increasing. The Tax Commission must determine the value of the subject as of January 1, 2016. The Property Owners made their offer on the subject in October 2015. The Property Owners had also made some minor changes to the property by the lien date. Therefore, presumably the value would be a little higher on January 1, 2016 than it was in October 2015. The April 23, 2016 appraisal would have captured the minor changes made by the Property Owners and some of the increase in market value that occurred after the lien date. The County's Exhibit E indicates a 9.7% increase from the second quarter of 2016 over the second quarter of 2015, basically a 0.81% increase per month. If two months of increase is added to the purchase price, or 3.5 months of this increase is subtracted from the April 23, 2016 appraisal, either way it results in a value of approximately \$\$\$\$ as of the lien date January 1, 2016. The value should be reduced to this amount.

APPLICABLE LAW

Utah Code Ann. §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.

#### CONCLUSIONS OF LAW

1. In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. For the Property Owners' 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 COUNTY-1*, 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).

2. In this appeal, the Property Owners have submitted ample evidence to show the value set by the County Assessor and sustained by the County Board of Equalization was too high. The Property Owners had purchased the subject property around the lien date and had two appraisals, one prior to the lien date and one post lien date. These supported a lower value for the subject property. The County had only an unsupported assertion that because the property had been bank owned, the sale was below market value and the appraisals were not accurate because the appraisers took into account the purchase price. The assertion that the bank had sold for below market value was refuted by the amount of time the property had been actively listed for sale on the MLS. The actual sale prices of the County's own comparables support a value lower than the \$\$\$\$ as well. It is only due to substantial appraisal adjustments because the County's comparables were so dissimilar and had sold so far pre lien date that the County can argue a higher value.

The value should be reduced to \$\$\$\$ as of the lien date at issue in this appeal.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that the fair market value for the subject property as of January 1, 2016 is \$\$\$\$\$. The County Auditor is order to adjust the records accordingly. It is so ordered.

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.