

16-704
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2015
DATE SIGNED: 12-19-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1, ET AL., ¹	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 16-704
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2015
	Judge: Chapman

Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, Prior Owner
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 24, 2016. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2015, with a lien date of January 1, 2015.
3. At issue is the fair market value of Parcel No. #####. The subject property is an #####-acre parcel of undevelopable, mountainous land located at SUBJECT ADDRESS in CITY-1, Utah.

1 TAXPAYER-2 and his siblings owned the subject property on the January 1, 2015 lien date at issue in this appeal. TAXPAYER-2 filed the appeal of the subject's 2015 value to the COUNTY-1 Board of Equalization ("County BOE") in September 2015. As will be explained in more detail later, TAXPAYER-2 and his siblings sold the subject property to TAXPAYER-1, *et al.* in December 2015. At

4. The subject property is currently owned by TAXPAYER-1, *et al.* For ease of reference, TAXPAYER-1, *et al.* will be referred to as “TAXPAYER-1.” In addition, TAXPAYER-2 and his siblings, the prior owners, will be referred to as “TAXPAYER-2.” Furthermore, TAXPAYER-1 and/or TAXPAYER-2 may be referred to as the “taxpayer.” The taxpayer brings this appeal from a decision of the County BOE.

5. The Commission held a Mediation Conference in this matter on June 30, 2016. Because the matter was not resolved through mediation, it was scheduled for a Formal Hearing.

6. The County BOE reduced the \$\$\$\$ value at which the subject property was originally assessed for the 2015 tax year to \$\$\$\$\$. The taxpayer asks the Commission to reduce the subject’s value to \$\$\$\$ (which equates to approximately \$\$\$\$ per acre). The County asks the Commission to sustain the subject’s current value of \$\$\$\$ (which equates to \$\$\$\$ per acre).

7. The subject property “straddles” the mountain crest between CANYON-1 and CANYON-2. The taxpayer explains that the subject property cannot be reached by vehicle. To reach the property, the taxpayer explains that one first has to drive about five miles up an improved road in CANYON-2 (which can be accessed at the locked gate maintained by the U.S. Forest Service (“Forest Service”) at the bottom of the canyon), after which one needs to walk about two to three miles up the mountain (at a 45% slope) to reach the subject property.² The taxpayer also explains that there is no place to park a vehicle on the road where one would begin the hike up to the subject property. In addition, the taxpayer explains that the only way to access the subject property in the winter is by snowshoe because no snowmobiles are allowed. The County did not refute the taxpayers’ description of the subject’s location or the difficulty in accessing it.

the Formal Hearing, TAXPAYER-2 explained that he keeps TAXPAYER-1 apprised of developments concerning the appeal of the subject’s 2015 value.

² The taxpayer explained that the Forest Service has always allowed access through the gate and use of the improved road, but notes that the Forest Service could possibly “withdraw access” through the gate, which would require a much longer walk to access the subject property from the bottom of CANYON-2.

8. TAXPAYER-2 explained that the subject property cannot be developed because of watershed issues and because of the steepness of the property. He stated that most of the privately-owned land in CANYON-2 is located on the south side of the canyon, whereas the subject property is located on the north side of the canyon and is surrounded by parcels primarily owned by governmental entities.³ The taxpayer further states that there are no developed properties near the subject property, which the County did not refute. TAXPAYER-2 explained that his family had used the subject property for riding horses. He stated that the property might also be used for Boy Scout activities or for deer hunting. TAXPAYER-2 stated that he and his siblings decided to sell the subject property because of the increase in property taxes in recent years.

9. In 2014, TAXPAYER-2 obtained an appraisal of the subject property from APPRAISER-1, in which the subject's value, as of January 1, 2014 (one year prior to the 2015 lien date at issue in the instant appeal), was estimated to be \$\$\$\$\$ with a marketing time of 12 months or less.⁴ In the appraisal, the subject property was compared to one listing and six comparable sales that sold between 2007 and 2013 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. The listing and two of the comparable sales were located in COUNTY-1, while the remaining comparable sales were located in COUNTY-2 and COUNTY-3. The appraiser who prepared the appraisal adjusted the sales prices of the comparable sales to adjusted sales prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. On the basis of these adjusted sales prices, the appraiser estimated the subject's value, as of January 1, 2014, to be \$\$\$\$\$ per acre (which equates to \$\$\$\$\$).

10. TAXPAYER-2 does not believe that the appraisal he obtained in 2014 is particularly useful in determining the subject's "fair market value" because of the unique characteristics of the subject

³ The taxpayer submitted a map that shows that with the exception of one parcel owned by the UNIVERSITY, all parcels that surround the subject property are owned by CITY-1 or by the federal government. Petitioner's Exhibit 3, p. 3.

⁴ Respondent's Exhibit 1. It is unknown who prepared this appraisal because the County only submitted a few pages from the appraisal in support of the subject's current value of \$\$\$\$\$. The appraisal pages the County submitted do not show the name of the appraiser.

property and because it is difficult to estimate the value of such a property until it sells. As a result, the taxpayer asks the Commission to consider the 2015 prices at which the subject property was marketed for sale, at which it was initially contracted to sell, and at which it eventually sold.

11. TAXPAYER-2 explained that he listed the subject property for sale with REAL ESTATE COMPANY in February 2015 for a price of \$\$\$\$\$. TAXPAYER-2 submitted a copy of the Multiple Listing Service (“MLS”) information showing that the subject property was listed for sale on February 19, 2015 and that it has “no road access.” TAXPAYER-2 also provided the “listing history” of the property, which shows that the subject property’s list price was reduced at least three times between February 2015 and August 2015, as follows:⁵

<u>Date of Change</u>	<u>Old Value</u>	<u>New Value</u>
04/09/2015	\$\$\$\$\$	\$\$\$\$\$
06/09/2015	\$\$\$\$\$	\$\$\$\$\$
08/13/2015	\$\$\$\$\$	\$\$\$\$\$

12. Two days after the subject property’s list price was reduced from \$\$\$\$\$ to \$\$\$\$\$ on June 9, 2015, TAXPAYER-2 received a June 11, 2015 offer from TAXPAYER-1 to purchase the subject property for \$\$\$\$\$.⁶

13. TAXPAYER-2 stated that after he received the \$\$\$\$\$ offer from TAXPAYER-1, he received an offer of \$\$\$\$\$ from some water department within COUNTY-1.⁷ TAXPAYER-2 stated that after receiving the \$\$\$\$\$ offer from the water department, he contacted TAXPAYER-1 to see if he would

5 Petitioner’s Exhibit 1. The listing documents do not show that the subject property was originally listed at \$\$\$\$\$. TAXPAYER-2, however, states that he remembers that the original list price was \$\$\$\$\$ because it was close to the \$\$\$\$\$ estimate of value from the 2014 appraisal he obtained.

6 Petitioner’s Exhibit 2 (Real Estate Purchase Contract for Land). It is noted that in the COUNTY-1 Board of Equalization Hearing Record that was forwarded to the Tax Commission with the taxpayer’s appeal, the hearing officer at the County BOE found that “[t]he most reliable evidence of a ceiling for the subject’s value appears to be the 6/9/15 \$\$\$\$\$ listing.” The hearing officer, however, did not explain why the \$\$\$\$\$ price at which the subject property was initially listed on June 9, 2015, is a better indicator of the subject’s value than the \$\$\$\$\$ price to which the listing was changed later that same date. In addition, the hearing officer did not mention the \$\$\$\$\$ offer that TAXPAYER-1 made two days later to purchase the property.

7 TAXPAYER-2 could not recall the name of the governmental entity that made the \$\$\$\$\$ offer.

increase his initial offer of \$\$\$\$\$. TAXPAYER-2 stated that TAXPAYER-1 increased his offer to \$\$\$\$\$, which TAXPAYER-2 accepted. The dates that the water department made the \$\$\$\$\$ offer and that TAXPAYER-1 made his revised offer of \$\$\$\$\$ were not provided. However, TAXPAYER-2 sold the subject property to TAXPAYER-1 on December 11, 2015, which is the “settlement date” shown on the Settlement Statement signed by TAXPAYER-2 and TAXPAYER-1.⁸ Based on this evidence, the taxpayer asks the Commission to reduce the subject’s 2015 value to \$\$\$\$\$.

14. RESPONDENT, an appraiser in the County Assessor’s Office, stated that in his opinion, values of residual land remained constant between the beginning of 2015 and the end of 2015.

15. The County did not perform its own formal appraisal of the subject property, nor did the County adjust any comparable sales to support its request for the Commission to sustain the subject’s current value of \$\$\$\$\$. Instead, the County explained that it has several different classifications for land and that it has classified the subject property as “residual” land because it cannot be built on. The County explained that it generally assesses residual mountain land in the county at \$\$\$\$\$ per acre because this is the value at which the Property Tax Division of the Utah State Tax Commission assesses centrally-assessed land that cannot be built on and because this value is near the mid-point or average of sales prices that the County has seen for sales of residual land in the county for the past 30 years. The County stressed that it does not use the low end or the high end of the prices at which residual land sells to assess such properties.

16. RESPONDENT admitted that the sale of the subject property at \$\$\$\$\$ per acre involved a “willing buyer” and a “willing seller.” However, he contends that the County’s general practice of assessing residual land at \$\$\$\$\$ per acre results in a uniform and equal rate of assessment and that a further lowering of the subject’s value to the taxpayers’ proposed value of \$\$\$\$\$ per acre could result in an inequity of assessment. The County acknowledges that the \$\$\$\$\$ per acre value established for the subject property by the County BOE is lower than the \$\$\$\$\$ per acre at which most residual land is

8 Petitioner’s Exhibit 4.

valued and at which the subject property was originally assessed. Nevertheless, the County is asking the Commission to sustain the \$\$\$\$\$ per acre value established by the County BOE. The County suggests that the subject's value may be even more inequitable to the values at which other residual properties are assessed if the Commission were to further reduce the subject's value.

17. In further support of the County's position that the Commission should not reduce the subject's value below \$\$\$\$\$ per acre (\$\$\$\$\$), the County asks the Commission to consider that the taxpayer's own appraiser estimated the subject's value to be approximately \$\$\$\$\$ per acre one year before the 2015 lien date at issue. The County pointed out that the only two comparable sales in the taxpayer's appraisal that are located in COUNTY-1 sold for \$\$\$\$\$ and \$\$\$\$\$ per acre.⁹ The County admitted that neither of these two comparable sales are located near the subject property and that the comparable that sold for \$\$\$\$\$ per acre can be accessed by road. The County also admitted that it does not know whether the comparable sale that sold for \$\$\$\$\$ per acre can be accessed by road or not. However, the County contends that these two comparables are similar to the subject property because they cannot be built on and/or are steep. As a result, the County contends that the taxpayer's appraisal and the comparables contained in it support the subject's current value of \$\$\$\$\$ per acre better than they support the taxpayer's proposed value of approximately \$\$\$\$\$ per acre.

18. In addition, the County submitted approximately 30 sales of properties located primarily in mountain areas of COUNTY-1 that cannot be built on.¹⁰ The sales of these comparables occurred between 1987 and 2015, and they sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. The County pointed out that some of these comparable sales are located near ski resorts and that some have year-round access. The County did not adjust any of the comparables' sales prices for differences between the comparables and the subject property. The County also did not indicate which of the comparables have access issues similar to the subject's access issues or whether any of the comparables were located on the mountain crest of two canyons like the subject property. In fact, the County did not identify any of its

9 Respondent's Exhibit 1.

comparable sales as being similar to the subject property except to point out that none of them could be built on.

19. The County's equalization argument is misplaced. If anything, the County's suggestion that mountainous properties that cannot be built on should generally be valued at the same rate is questionable where the County's own evidence shows such disparate sales prices for this type of property. Furthermore, the appraisal obtained by the taxpayer in 2015 and the sale of the property in 2015 show that the subject's value is less than the \$\$\$\$ per acre rate at which the County generally assesses such properties.

20. However, difficulties exist in determining whether the subject's "fair market value" is less than its current value of \$\$\$\$ per acre. The County BOE's decision that the subject property was worth \$\$\$\$ per acre because it was listed for sale at this price on June 9, 2015, is not particularly convincing. On this same June 9, 2015 date, the subject's value was reduced to \$\$\$\$ (\$\$\$\$ per acre). Furthermore, on June 11, 2015 (just two days later than the June 9, 2015 date the County BOE considered critical to determining the subject's value), TAXPAYER-1 offered \$\$\$\$ (\$\$\$\$ per acre) to purchase the subject property.

21. TAXPAYER-2 explained that he was able to get TAXPAYER-1 to increase his offer to the eventual sales price of \$\$\$\$ (approximately \$\$\$\$ per acre) after the water department offered \$\$\$\$ (\$\$\$\$ per acre) for the subject property. A value based on the subject's eventual sales price of approximately \$\$\$\$ per acre is convincing because the subject property was listed at \$\$\$\$ per acre less than six months after the 2015 lien date and because two parties submitted offers until TAXPAYER-2 accepted the final offer of approximately \$\$\$\$ per acre. In addition, the sale of the subject property occurred between a willing buyer and a willing seller, and values for properties like the subject property

remained stagnant throughout 2015. For these reasons, the subject's December 2015 sales price of \$\$\$\$\$ per acre is compelling evidence of its "fair market value" as of the 2015 lien date.¹¹

22. That being said, the subject's sale price of \$\$\$\$\$ per acre is not supported by other evidence that was submitted. The taxpayer's appraiser estimated the subject's value at approximately \$\$\$\$\$ per acre one year prior to the 2015 lien date, and the taxpayer has submitted no comparables (other than the sale of the subject itself) in support of the subject's sales price. The Commission, however, is less convinced that an appraisal with an effective date one year prior to the 2015 lien date is a better estimate of the subject's value than the price at which it sold in 2015 between a willing buyer and a willing seller. For a property as unique as the subject property, an appraisal that is derived with comparables that are not similar to the subject property in many aspects may or may not provide a good estimate of the value at which the property would eventually sell. In addition, too little information is known about the comparables submitted by the County to know whether those that sold near \$\$\$\$\$ per acre are similar to or superior to the subject property in terms of road access, year-round access, and utility. Furthermore, the County has not identified the comparables most like the subject property and adjusted them. Without such evidence and because values for residual properties remained stagnant during 2015, the subject's sales price of approximately \$\$\$\$\$ per acre in December 2015 is the most convincing evidence of its 2015 value.

23. Based on the foregoing, the taxpayer has shown that the subject's current value of \$\$\$\$\$ is incorrect and has provided a sound evidentiary basis for reducing the subject's value to \$\$\$\$\$. Accordingly, the subject's value, as of January 1, 2015, is \$\$\$\$\$.

¹¹ The Commission notes that the Legislature has expressly provided in Utah Code Ann. §59-2-1006(4) for a county board of equalization to "consider and weigh . . . the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date [and] the sales offering price of property that was offered for sale as of the lien date but did not sell[.]" As of the 2015 lien date at issue, the subject property was neither under contract for sale or had been offered for sale. Nevertheless, the Commission finds that the subject's list prices and sales price from 2015 is relevant information and can be considered because the Legislature did not expressly forbid such information from being considered and because the Legislature stated in Subsection 59-2-1006(4)(d) that evidence that is "relevant to determining the fair market value of the property" can be considered and weighed.

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(12), 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 §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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 a county board of equalization by or on behalf of an owner or a county assessor, the county board of equalization shall consider and weigh:

- (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county assessor;
- (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.

. . . .

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 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 49, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. For the 2015 tax year at issue, Subsection 59-2-103(1) provides for the subject property to be taxed on the basis of its "fair market value" as of January 1, 2015. Subsection 59-2-102(12) 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. The County does not request a value for the subject property that is different from the \$\$\$\$ value that was established by the County BOE. Accordingly, the subject's current value of \$\$\$\$ has the presumption of correctness. As a result, the taxpayer has the burden not only to demonstrate that the \$\$\$\$ value is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject's value to the \$\$\$\$ amount he proposes.

3. The County asked the Commission not to further reduce the subject's value, in part, because of equity. The County pointed out that it generally assesses mountainous properties that cannot be built on at the same rate, specifically \$\$\$\$ per acre, and that reducing the subject's value would result in an additional inequity of assessment. The County's mass appraisal of mountainous properties that cannot be built on is difficult where those properties have different locations and different levels of access and utility. As a result, the Commission will not comment further on whether the County's general policy to assess all such properties at the same rate is a reasonable mass appraisal technique. However, once a property's value is appealed, the Commission gives little weight to the value determined for that property

through the County's mass appraisal system and believes that valuation evidence specific to that property is the best evidence with which to determine its "fair market value."

4. As explained earlier, the Commission has considered the evidence that is specific to the subject property and found that a preponderance of it shows the subject's "fair market value," as of the 2015 lien date, to be \$\$\$\$\$ (approximately \$\$\$\$\$ per acre).

5. Once the Commission has found that the subject's "fair market value" is \$\$\$\$\$, it would be inappropriate for the Commission to find that the subject should be assessed and taxed at a higher value, as the County suggests. The County, in effect, is asking the Commission to sustain a value for the subject property that is higher than its "fair market value" because the higher value would be more equitable with the values at which comparable properties were taxed. The County's equalization argument is not convincing. First, there is little information provided about the "comparable" properties that the County assessed at \$\$\$\$\$ per acre to know if they are actually comparable to the subject property, especially in regards to location, access, and utility. Second, and more importantly, the County has provided no court decisions to show that for purposes of equity, a property may be assessed and taxed at a value that is higher than its "fair market value."¹²

6. For these reasons, the Commission should reduce the subject's current value of \$\$\$\$\$ to \$\$\$\$\$ for the 2015 tax year.

Kerry R. Chapman
Administrative Law Judge

12 Courts have indicated that a property's accurate fair market value assessment may need to be reduced because of equity where comparable properties are undervalued. *See Mt. Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 6, 100 P.3d 1206 (Utah 2004); *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 109 S.Ct. 633 (1989). The Commission, however, is unaware of any case in which a federal or state court has indicated that a property's accurate fair market value would need to be increased because of equity concerns.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property's current value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2015 tax year. The COUNTY-1 Auditor is ordered to adjust its records in accordance with this decision.

DATED this _____ day of _____, 2016.

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.