

17-458
TAX TYPE: LOCALLY ASSESSED PROPERTY TAX
TAX YEAR: 2016
DATE SIGNED: 02/05/2018
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL
EXCUSED: J VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 17-458</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2016</p> <p>Judge: Chapman</p>
---	--

Presiding:

Rebecca L. Rockwell, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, from the COUNTY Assessor's
Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 4, 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 is the fair market value of Parcel No. #####. The subject property is a single-family residence located at ADDRESS-1, Utah. The subject property is owned by TAXPAYER ("Petitioner" or "taxpayer").

4. The COUNTY Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2016 tax year. The taxpayer appealed the County BOE’s decision to the Tax Commission.

5. A Mediation Conference was held in this matter on July 13, 2017. Because the matter was not resolved at the Mediation Conference, it was scheduled for a Formal Hearing.

6. The taxpayer asks the Commission to reduce the subject’s 2016 value to \$\$\$\$\$, while the County asks the Commission to reduce the subject’s 2016 value to \$\$\$\$\$.

7. The subject property consists of a #####-acre lot and a #####-story home that was built in 1937. The subject property has ##### square feet of living space on the main floor and ##### square feet of living space on the second floor (i.e., a total of ##### square feet of above-grade living space). Together, the subject’s main and second floors have ##### or ##### bedrooms and ##### baths. The subject property also has one fireplace and a detached structure that is the “width” of a two-car garage (but functions as a one-car garage and a shop because it only has a one-car door or opening).

8. The subject property also has a finished basement that is ##### square feet in size. The basement includes ##### bedroom(s), a small bath, and a kitchen. The basement ceiling is only about ##### feet in height (and lower in some places).¹ The taxpayer sometimes rents out the basement. The basement does not have a separate exit to the exterior, and the basement’s utilities are not separately metered.

1 When the subject’s current value of \$\$\$\$ was derived with the County’s mass appraisal computer system (i.e., which the County refers to as its “Prognose” system), the value was based on the subject’s having a basement with a “fair” grade that was ##### square feet in size (as reflected in County records). Subsequent to this appeal arising, REPRESENTATIVE FOR RESPONDENT, an appraiser in the County Assessor’s Office, visited the subject property and inspected its basement. REPRESENTATIVE FOR RESPONDENT determined that the County records concerning the subject property’s basement were incorrect. She determined that the basement was only ##### square feet in size and that its grade should be reduced from “fair” to “poor.”

As will be explained in more detail later in the decision, another County employee determined that the County records on which the subject’s current value of \$\$\$\$ was derived contained another error, specifically

9. The taxpayer estimates that much of the subject property was updated between 20 years ago (approximately 1997) and 2008 (when he purchased the property). For example, the taxpayer explained that the subject's windows were replaced with double-pane windows sometime before he purchased the property. The taxpayer further explained that since he purchased the subject property in 2008, he has only painted, installed some tile, and upgraded appliances. The taxpayer further explained that although the subject's roof was replaced prior to his 2008 purchase of the property, the roof was improperly installed and that it has leakage problems. In addition, the taxpayer explained that the wood floors on the subject's main floor have been sanded down so many times that they need to be replaced.

10. The taxpayer contends that the subject's value is negatively impacted by the noise and congestion caused by heavy traffic on ADDRESS-2 (the subject is located on LOCATION REMOVED). LOCATION REMOVED is a two-way road with parking on both sides of the road. The taxpayer contends that when he purchased the subject property in 2008, there were not any traffic problems at the subject property. He explained, however, that more commercial and multi-unit residential properties have been developed around LOCATION REMOVED in recent years and that these properties have encroached on the subject's neighborhood and now cause traffic to regularly back up from LOCATION REMOVED to the subject property. The taxpayer contends that some of these commercial and/or multi-unit residential properties are located near to or across the street from the subject property, which has resulted in tenants or customers

that its "effective year built" of 1990, as reflected in County records, was incorrect. This other County employee increased the subject's "effective year built" from 1990 to 1991 sometime after the taxpayer filed his appeal of the subject's 2016 value. REPRESENTATIVE FOR RESPONDENT testified that she did not know which County employee increased the subject's "effective year built" and why this employee concluded that an "effective year built" of 1990 was incorrect while an "effective year built" of 1991 would be correct. No information was provided for the Commission to know whether this other employee inspected the interior of the subject property when he or she decided to increase its "effective year built." Based on the County's evidence, however, it appears that this other County employee increased the subject's "effective year built" prior to REPRESENTATIVE FOR RESPONDENT's inspecting the basement and determining that its grade, as reflected in County records, was too high.

parking along the portion of LOCATION REMOVED on which the subject is located. The taxpayer explained that traffic now backs up on LOCATION REMOVED to the subject property on most days from 7:30 a.m. to 9:00 a.m. in the morning and from 4:30 p.m. to 6:30 p.m. in the afternoon.²

11. The taxpayer explained that because of the traffic problems that exist along the subject's area of LOCATION REMOVED, it is often dangerous to back out of the subject's driveway and he cannot allow his young child to play in the subject's front yard. In addition, the taxpayer stated that when he tried to rent out the subject property several years ago, he had difficulty finding renters (especially ones with families) who would rent a home with such traffic problems. The taxpayer also explained that he works in the real estate industry and has knowledge that properties with such traffic problems are much less desirable than nearby properties that are situated on "quiet" streets without such traffic problems.

12. To estimate the value of the subject property, the taxpayer submitted comparable sales of homes that he contends are located on streets that have relatively heavy traffic. The taxpayer first submitted six comparable sales that sold between November 2015 and August 2016 for prices (after concessions are subtracted) of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. These six comparables are located between 9 and 15 blocks away from the subject property, and some of them are located on relatively busy streets such as EXAMPLE ADDRESS-1.³

13. Next, the taxpayer submitted two additional comparables that sold further away from the January 1, 2016 lien date at issue. One of these comparables, which is located on LOCATION REMOVED at

2 REPRESENTATIVE FOR RESPONDENT indicated that a "heavy" traffic factor has been attributed to the subject property in the County records and that this factor results in a 15% downward valuation adjustment. REPRESENTATIVE FOR RESPONDENT explained that in County records, a property may be assigned a "light," "medium," "heavy," or "extra heavy" traffic factor. REPRESENTATIVE FOR RESPONDENT indicated that a property with "heavy" traffic should receive a negative 15% valuation adjustment, while a property with "extra heavy" traffic may receive a negative valuation adjustment of 30% or more.

3 Petitioner's Exhibit 1.

LOCATION REMOVED (about seven blocks away from the subject property), sold for \$\$\$\$\$ in November 2016. The other comparable, which is located on EXAMPLE ADDRESS-2 (about 15 blocks away from the subject property), sold for \$\$\$\$\$ in April 2017.⁴ The sales prices of these two comparables and the six comparables described in the preceding paragraph range from \$\$\$\$\$ to \$\$\$\$\$. Based on these comparables, the taxpayer asks the Commission to reduce the subject's 2016 value from \$\$\$\$\$ to \$\$\$\$\$.

14. The taxpayer also contends that the subject's current 2016 value of \$\$\$\$\$ is incorrect because it represents an increase of approximately 20.0% over the subject's 2015 assessed value. The taxpayer contends that because home values in CITY did not increase at such a rate between January 1, 2015 and January 1, 2016, the subject's 2016 value of \$\$\$\$\$ is erroneously high. County records show that the subject property was assessed a value of \$\$\$\$\$ for the 2015 tax year.⁵ As a result, the subject's 2016 value of \$\$\$\$\$ represents a 16.2% increase over the subject's 2015 assessed value. Regardless of whether the 2016 value represents a 16.2% or a 20.0% increase in value between 2015 and 2016, a property's value for a prior or subsequent tax year is *generally* not useful in establishing its current year's value because it is usually unknown whether that prior or subsequent tax year's value was correct. It is apparent that the taxpayer does not believe that all assessed values are correct. Otherwise, he would not have appealed the subject's 2016 value. Because it is unknown whether the subject's 2015 assessed value of \$\$\$\$\$ correctly reflected the subject's "fair market value" as of January 1, 2015, this value is not useful in determining whether the subject's 2016 value is correct or incorrect.⁶

4 Petitioner's Exhibit 2. This exhibit actually contains three "Taxpayer Comparables," but one of them is the same comparable as one found in Petitioner's Exhibit 1 (specifically the comparable that is located at EXAMPLE ADDRESS-3 and sold for \$\$\$\$\$ in August 2016). As a result, the Commission finds that Petitioner's Exhibit 2 only has two additional "Taxpayer Comparables."

5 Respondent's Exhibit 2.

6 On some occasions, however, a property's final value for a prior year may be useful in determining the property's current year's value. Effective for the tax year 2013, Utah Code Ann. §59-2-301.4(1) and (2) provide that where a property's value has been reduced within the three years before the lien date at issue, a

15. As to the taxpayer's eight comparable sales, seven of them sold within one year of the 2016 lien date (in 2015 and 2016), while the eighth comparable sold in 2017 (more than a year after the 2016 lien date at issue). Where a number of comparables that sold within one year of the 2016 lien date are available for review, the Commission is hesitant to give much, if any, weight to a comparable that sold in 2017 (more than a year after the 2016 lien date). Accordingly, the Commission will only analyze the taxpayer's seven comparables that sold in 2015 and 2016.

16. The taxpayer's seven remaining comparables sold for prices of \$\$\$\$\$, \$\$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. Only two of these comparables have homes that, like the subject property, have second-floor living space (specifically the first and second comparables found in Petitioner's Exhibit 1, which will be referred to as "Taxpayer's Comparable #1" and "Taxpayer's Comparable #2"). The Commission considers these two of the taxpayer's comparables to be most similar to the subject property. Accordingly, they will receive more weight in the Commission's analysis than the taxpayer's other comparables.

17. Taxpayer's Comparable #1, which is located on EXAMPLE ADDRESS-3, sold for \$\$\$\$\$, while Taxpayer's Comparable #2, which is located on EXAMPLE ADDRESS-3, sold for \$\$\$\$\$. The MLS information for these two comparables indicates that Taxpayer's Comparable #1 had been updated and had updated baths, while Taxpayer's Comparable #2 was a "Remodeled Craftsman Home" with a "Viking Stove."⁷ Based on the MLS descriptions of these two comparables, they may have updated and/or remodeled

county assessor shall consider "any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal" and "whether the reasons for the valuation reduction continue to influence the fair market value of the property." In addition, Subsection 59-2-301.4(3) provides that the statute "does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property." In applying this relatively new law, the Commission has, on occasion, found that the value to which a property was reduced for a prior year is useful in establishing and/or should be used to establish the property's current year's value. In the instant case, however, there is no evidence to suggest that the subject's 2013, 2014, or 2015 value was reduced by the County BOE or the Commission. As a result, Subsections 59-2-301.4(1) and (2) are not applicable to this case.

more recently than the subject property, which would require downward adjustments to their sales prices to estimate a value for the subject property.⁸ No evidence was submitted to show otherwise.

18. In addition, Taxpayer's Comparables #1 and #2 are located on streets that appear to have relatively less traffic and/or traffic problems than LOCATION REMOVED on which the subject property is located. As mentioned earlier, the County has determined that the subject property has "heavy" traffic, which comports with the taxpayer's description of the traffic that is detrimental to the subject property and its value. Furthermore, REPRESENTATIVE FOR RESPONDENT testified the taxpayer's comparables in Petitioner's Exhibit 1 (which includes Taxpayer's Comparables #1 and #2) did not have as much traffic as the subject property. As a result, these two comparables appear to be superior to the subject property in regards to traffic, which would require additional downward adjustments to the \$\$\$\$\$ and \$\$\$\$\$ sales prices of these two comparables.⁹

19. Nevertheless, some upwards adjustments to the sales prices of Taxpayer's Comparables #1 and #2 would also need to be made because neither of these two comparables, unlike the subject property, has a garage and because they may not be located in neighborhoods that are as desirable as the subject's

7 Petitioner's Exhibit 1.

8 Such a conclusion is supported by the County's own information, which shows that both of these comparables have a newer "effective year built" than the subject property. Respondent's Exhibit 2. Admittedly, it has been established that County records may be incorrect. Regardless, the County did not suggest that any of the County records information that it submitted for these two of the taxpayer's comparables was incorrect. For this reason and because the County records appear to comport with the MLS information for each of the comparables, the Commission finds that these two of the taxpayers comparables were in better condition than the subject property as of the lien date.

9 Such a conclusion is also supported by information from County records about Taxpayer's Comparables #1 and #2. Respondent's Exhibit 2. This information shows that Taxpayer's Comparable #1 has "medium" traffic and that Taxpayer's Comparable #2 has "light" traffic. Again, it has been established that County records may be incorrect. However, REPRESENTATIVE FOR RESPONDENT testified that the streets on which the taxpayer's comparables were located have less traffic than 1100 East (where the subject is located), which appeared to be information she had gleaned from her own experience as an appraiser and which is consistent with the "traffic" characteristics found in County records for Taxpayer's Comparables #1 and #2. Accordingly, the Commission finds that Taxpayer's Comparables #1 and #2 are superior to the subject

neighborhood. These downward adjustments, however, may be offset by the upward adjustments discussed in the prior two paragraphs. Neither party has shown otherwise.¹⁰ Because Taxpayer's Comparable #1 (which sold for \$\$\$\$\$) has less above-grade living space than the subject property and because Taxpayer's Comparable #2 (which sold for \$\$\$\$\$) has more above-grade living space than the subject property, the taxpayer's evidence suggests that the subject's 2016 value would be higher than \$\$\$\$\$, but lower than \$\$\$\$\$.

Before making a final decision about the subject's 2016 value, however, the County's evidence should also be analyzed.

20. The County asks the Commission to reduce the subject's 2016 value from \$\$\$\$\$ to \$\$\$\$\$ because the County's mass appraisal computer system derived a value of \$\$\$\$\$ for the subject property after the changes described earlier were made to the subject's County records.¹¹ To show that the County's mass appraisal computer system derived this \$\$\$\$\$ value, the County submitted a sheet of paper dated November 29, 2017 that appears to be titled "Prognose/Home/Index."¹² This sheet of paper shows the subject's ADDRESS-1 and parcel number and indicates that its 2016 "predicted value" is \$\$\$\$\$. Because the County's mass appraisal computer system derived this \$\$\$\$\$ value for the subject property, the County contends that it shows that the subject's value, as of January 1, 2016, should be reduced to \$\$\$\$\$. REPRESENTATIVE FOR

property in regards to the traffic that affects them.

10 REPRESENTATIVE FOR RESPONDENT criticized the taxpayer for not adjusting the comparables he submitted. However, REPRESENTATIVE FOR RESPONDENT did not make any adjustments to the taxpayer's comparables or submit any evidence to show how she would have adjusted the taxpayer's comparables, based on her experience as an appraiser.

11 These changes consisted of an unknown County employee changing the subject's "effective year built" from 1990 to 1991 and REPRESENTATIVE FOR RESPONDENT reducing the size of the subject's basement by ##### square feet and changing the basement's grade from "fair" to "poor."

12 Respondent's Exhibit 2. This exhibit consists of many different documents that are not numbered. Regardless, the sheet of paper on which the \$\$\$\$\$ value appears is the first page of the exhibit.

RESPONDENT testified that as far as she can tell, values derived with the County's mass appraisal computer system are always correct.

21. The Commission, however, has never found that values derived with a mass appraisal computer program are always correct. The Commission has found that the County's mass appraisal computer system is a useful tool to assess the many thousands of residential properties that the County must assess each year. In addition, the Commission has no reason to believe that the County's mass appraisal computer system does not produce reasonable estimates of value for a vast majority of homes for which it derives value estimates. However, the Commission does not believe that any mass appraisal methodology, including the County's mass appraisal computer system, derives a correct value 100% of the time (even if all factors in the County's records are correct). The County has not convinced the Commission that its mass appraisal computer system will not produce some "outlier" values that are not representative of "fair market value."

22. For these reasons, in the appeals process, the Commission is not determining whether a county's mass appraisal methodology does a good job at estimating the values of most properties. Instead, the Commission is looking at the property under appeal on an *individual* basis to determine whether its mass appraisal value is an "outlier." For a residential property, the best evidence to determine whether its *individual* value is correct is generally with detailed market or sales comparison information, not by showing that its value was produced by a mass appraisal computer system that does a good job at estimating the values of most properties.¹³ For these reasons, the Commission will analyze the remaining market evidence that the County

13 The Commission recognizes that in the appeals process, a value produced by the County's mass appraisal computer program is often sustained by the County BOE, which may result in that value having the presumption of correctness and a party with the burden of proof being required to show that the value is incorrect. However, just because a value produced by the County's mass appraisal computer program may have the presumption of correctness does not mean that the value accurately reflects the property's "fair market value." The Commission often changes values that were produced by the County's mass appraisal computer program and which had the presumption of correctness.

Appeal No. 17-458

has submitted to determine whether it is sufficient to show that the subject's value should be reduced to \$\$\$\$ (as the County proposes) and/or that the subject's value should not be reduced to a value somewhere in between \$\$\$\$ and \$\$\$\$ (as the taxpayer's evidence indicates).

23. First, the County asks the Commission to consider that the taxpayer purchased the subject property for \$\$\$\$ in 2008 (which would be seven to eight years prior to the 2016 lien date at issue). The price at which a property was purchased seven to eight years prior to a lien date at issue would rarely, if ever, be convincing evidence of a property's value as of that lien date. Market conditions change over such a long period. Furthermore, other factors may also change over such a long period. For example, the taxpayer testified that when he purchased the subject property in 2008, the adverse traffic conditions on LOCATION REMOVED that have affected the property over the past several years did not exist. For these reasons, the 2008 sales price of the subject property is not useful in determining its value as of January 1, 2016.

24. Second, REPRESENTATIVE FOR RESPONDENT testified that the County offered to reduce the subject property's 2016 value to \$\$\$\$ to settle this appeal and that the taxpayer refused the County's settlement offer. This evidence, if considered, could suggest that a value that is lower than the County's proposed value of \$\$\$\$ may be appropriate. The Commission, however, will not consider this settlement offer when reaching a decision in this appeal. Utah Admin. Rule R861-1A-33(5)(b) specifically provides that "[o]ffers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings."

25. Third, the County submitted two gridsheets produced by its mass appraisal computer system. One of the gridsheets is dated November 3, 2016, which is more than a year prior to the Formal Hearing date. The other gridsheet is undated. On both of these gridsheets, the County's mass appraisal computer system compared the subject property to three comparable sales (which are different from the taxpayer's comparable sales). The County's three comparable sales sold between March 2015 and March 2016 for prices of \$\$\$\$,

\$\$\$\$\$, and \$\$\$\$\$, and the County's mass appraisal computer system adjusted them to adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ (on both of its gridsheets).¹⁴ The County's three comparables are located between two and six blocks away from the subject property, but none of them appears to be located on busy streets with traffic problems. The County contends that the prices at which these comparables sold and the prices to which its mass appraisal computer system adjusted them support its proposed value of \$\$\$\$\$. The Commission will first discuss the sales prices of the County's three comparables, after which it will discuss the adjusted sales prices that the County's mass appraisal computer system derived for them.

26. The County's three comparables sold for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. If these comparables were similar to the subject property, their sales prices would tend to support the \$\$\$\$\$ value that the County proposes for the subject property. It appears that all of these comparables are superior to the subject property in regards to traffic because they are located on "quieter" streets that do not have traffic problems similar to those experienced by the subject property.

27. However, there is insufficient information for the Commission to know how similar these comparables' conditions are to the condition of the subject property (which has had no major updating or remodeling in at least seven to eight years and which has issues with its roof, flooring, and basement). REPRESENTATIVE FOR RESPONDENT explained that the County is contractually prohibited from providing any MLS information about its comparables, including any verbal representation of what information can be gleaned from the MLS remarks and photographs for each comparable. As a result, REPRESENTATIVE FOR RESPONDENT stated that she could not tell the Commission whether the MLS information she had viewed for the County's comparables showed that they had been remodeled and/or

14 Petitioner's Exhibit 2. Because of the time adjustments that the County's mass appraisal computer system made on these gridsheets, it appears to the Commission that the system was deriving adjusted sales prices that would apply to the January 1, 2016 lien date at issue. REPRESENTATIVE FOR RESPONDENT, however, could not confirm this.

updated prior to their sales. The Commission respects the County's contractual obligations. However, the County's inability to provide information about its comparables as of "the time of their sales" leads the Commission to question whether the conditions of these properties are superior to, inferior to, or similar to the condition of the subject property.

28. For example, REPRESENTATIVE FOR RESPONDENT explained that when the County's mass appraisal computer system prepared the gridsheets on which it adjusted the County's three comparables, the system "pulled" from County records the information for the comparables that it compared to the subject property. REPRESENTATIVE FOR RESPONDENT explained that the information that the County's mass appraisal computer system pulled for the three comparables may have been information that the County obtained for the comparables during its last reappraisal cycle for these properties. The Commission is aware that many residential properties are remodeled or updated (sometimes extensively) before they are sold. As a result, if the County's three comparables were remodeled and/or updated *before* they were sold but *after* the last reappraisal cycle that affected them, the "condition" and "effective year built" information showed for these comparables on the County's gridsheets may be incorrect. Because the County has not submitted convincing evidence to show that its three comparables were not remodeled and/or updated after their last reappraisal cycle, the sales prices of these comparables are not as helpful in establishing the subject's value as they might have otherwise been.¹⁵

15 It is noted that the taxpayer also submitted three "Assessor Comparables" that the County had provided the taxpayer. These comparables sold between October 2016 and April 2017 for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. Petitioner's Exhibit 2. Because no MLS or other information was provided to show these comparables' conditions near their sales dates, it is also unknown whether these comparables were remodeled and/or updated after their last reappraisal cycle. Accordingly, the sales prices of these comparables are also not as helpful in establishing the subject's value as they might have otherwise been. In addition, these comparables are not particularly convincing because one of them sold in 2017 and because none of them have second-floor living space like the subject property.

29. The adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ that the County's mass appraisal computer system derived for its three comparables are also not convincing. As explained earlier, the Commission does not believe that a mass appraisal computer system derives correct values 100% of the time. Similarly, the Commission does not believe that a mass appraisal computer system will derive correct adjusted sales prices 100% of the time (even if all factors in County records for the subject property and the comparables are correct). As a result, this mass appraisal information is not particularly useful where the Commission is determining the subject's value on an *individual* basis in the appeals process.

30. In addition, the gridsheets that the County submitted as evidence were prepared prior to REPRESENTATIVE FOR RESPONDENT visiting the subject property and reducing the square footage and "grade" of the subject's basement. As a result, the gridsheets show the incorrect square footage and grade for the subject's basement. Accordingly, the adjusted sales prices \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ that the County's mass appraisal system derived would appear to be erroneously high.

31. Furthermore, neither the taxpayer nor the Commission has had an opportunity to question the County employee who increased the subject's "effective year built" from 1990 to 1991 and find out why this employee believed that an "effective year built" of 1990 would be incorrect, while an "effective year built" of 1991 would be correct (which appears to result in a \$\$\$\$\$ increase to value).¹⁶ This unknown employee increased the subject's "effective year built" before REPRESENTATIVE FOR RESPONDENT visited the property and before she determined that the basement's square footage and "grade" needed to be reduced. It is also unclear whether this unknown employee would have increased the subject's "effective year built" if he or she had known about the issues that REPRESENTATIVE FOR RESPONDENT subsequently discovered

¹⁶ Respondent's Exhibit 2. The County's gridsheets show that after changing the subject's "effective year built" to 1991 (but before REPRESENTATIVE FOR RESPONDENT's basements changes were made), the County's mass appraisal computer system derived a value of approximately \$\$\$\$\$ for the subject property, which is \$\$\$\$\$ higher than the subject's originally assessed and current value of \$\$\$\$\$.

about the subject's basement. Without more information about this unknown employee's change to the subject's "effective year built," the Commission is not convinced that the change was correct. As a result, the Commission is not convinced that the values derived for the subject property or the adjusted sales prices derived for its comparables, all of which were based on this higher "effective year built" for the subject property, are correct.

32. Also, because of the changes that needed to be made in County records for the subject property, it is clear that County records are not always correct. As a result, questions exist as to whether the information that the County's mass appraisal computer system pulled for the County's three comparables is correct, especially where this information may relate more to the date(s) of a prior reappraisal cycle than to the dates the comparables sold. Again, neither the taxpayer nor the Commission has had the opportunity to question the employee(s) who made the determinations as to what "grades," "effective years built," and other information was entered into County records for the County's comparables.¹⁷ In addition, no written explanation as to how the County employee(s) made these determinations was provided.¹⁸ For these reasons, the adjusted sales prices that the County's mass appraisal computer system derived for the County's three comparables are also not particularly useful in determining the subject's 2016 value.

33. Based on the foregoing, it appears evident that the subject's current value of \$\$\$\$ is incorrect. The County, however, has not provided a sound evidentiary basis to show that the subject's value,

17 Similarly, the taxpayer and the Commission have not had an opportunity to question the employee who decided that a negative valuation adjustment of 15% should apply to a property with "heavy" traffic like the subject property. Based on the taxpayer's convincing descriptions of the subject's traffic problems, the Commission would not be surprised that a greater adjustment is warranted.

18 The Commission recognizes that where appraisals prepared by a licensed appraiser are submitted as evidence in an appeal, the appraiser who prepared the appraisal is not always present to testify. However, appraisers often provide written statements in their appraisals to explain the various determinations they made in their appraisals.

as of January 1, 2016, is \$\$\$\$\$ (as it proposes) or \$\$\$\$\$ (as shown on the gridsheets the County provided as evidence).

34. Because the taxpayer provided MLS information for a majority of his comparables, the Commission was able to review information about the taxpayer's comparables that applied at the times of their sales. As a result, the Commission was better able to determine how the sales prices of the taxpayer's comparables reflected the subject's 2016 value than how the sales prices of the County's comparables reflected the subject's 2016 value. With this information, the Commission has determined that Taxpayer's Comparables #1 and #2 show that the subject's value is higher than \$\$\$\$\$, but lower than \$\$\$\$\$. As a result, the Commission finds that \$\$\$\$\$ is a reasonable estimate of the subject's value as of January 1, 2016.

35. The County has not shown that the subject's 2016 value is higher than \$\$\$\$\$. In addition, the taxpayer has not only shown that the subject's current value of \$\$\$\$\$ is incorrect, but has also provided a sound evidentiary basis for reducing the subject's 2016 value to \$\$\$\$\$. Accordingly, the subject property's value, as of the January 1, 2016 lien date, is \$\$\$\$\$.

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 §59-2-1006 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.

. . . .

4. In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value different from the subject property's current value but not higher than the value originally assessed, the respondent has the burden of proof to support its position. For either party's 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*, 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 2016 tax year at issue, Subsection 59-2-103(1) provides for the subject 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. Both parties request a value that is lower than the \$\$\$\$ value at which the subject property was originally assessed for 2016 and which the County BOE sustained. Accordingly, each party has the burden of proof not only to demonstrate that this \$\$\$\$ value is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject’s value to the amount that each party proposes.

3. For reasons explained earlier, the taxpayer has shown that the subject’s current value of \$\$\$\$ is incorrect. The taxpayer has also provided a sound evidentiary basis to reduce the subject’s 2016 value to \$\$\$\$. The County, however, has not provided a sound evidentiary basis to show that the subject’s value should be decreased to \$\$\$\$ (as it proposes) or that the subject’s value should not be reduced to the \$\$\$\$ value indicated by the taxpayer’s evidence.

4. Based on the foregoing, the Commission should reduce the subject’s current value of \$\$\$\$ to \$\$\$\$ for the 2016 tax year.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 17-458

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2016 tax year. The COUNTY Auditor is ordered to adjust its records in accordance with this decision.

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.