

18-1860
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 04/30/2019
COMMISSIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 18-1860</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2017</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: REPRESENTATIVE FOR RESPONDENT, COUNTY Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY Board of Equalization pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on February 5, 2019, in accordance with Utah Code §59-1-502.5. The COUNTY Assessor's Office originally valued the subject property at \$\$\$\$ as of the January 1, 2017 lien date. The COUNTY Board of Equalization ("County") sustained the value. At the hearing, the Property Owner requested a reduction to \$\$\$\$\$. At the hearing, the County asked that the value be raised to \$\$\$\$.

APPLICABLE LAW

Utah Code §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, “fair market value” is defined in Utah Code §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 §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...
- (3) In reviewing the county board’s decision, the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
 - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (5) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
 - (a) the issue of equalization of property values is raised; and
 - (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value higher than the value originally assessed, Utah Code Ann. §59-2-109(2) places the burden of proof on the respondent to support its position, as follows:

(2) Notwithstanding Section 59-1-604, in an action appealing the value of property assessed by an assessing authority, the assessing authority has the burden of proof before a board of equalization, the commission, or a court of competent jurisdiction, if the assessing authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the value originally assessed by the assessing authority for that calendar year.

To prevail in this case, the Property Owner must show error in the subject property's current value, while the respondent must show error in the property's originally assessed value; and 2) either party must 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 Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

DISCUSSION

The property at issue in this appeal is parcel no. ##### and is located at ADDRESS-1. The parcel is ##### acres of land and is improved with a 2-story residence. The residence has ##### above grade square feet and a basement of ##### square feet. The County records indicate the basement is unfinished. The County representative stated at the hearing that they have never been inside the residence and the state of the basement was based on information from the Property Owner. The house was constructed in 1989 of average plus construction and the County considers the residence to be in good condition. The County provided photographs of the exterior of the residence, which appears to have been taken from the street, and they supported a "good" condition for this property. There is also an attached garage of 700 feet and a covered, elevated deck off the backside of the house. The lot is sloped towards the back, so at the back of the house, the basement is above grade with a door that walks out at ground level.

At the hearing, the Property Owner did not submit an appraisal or comparable sales to support a lower market value for the subject property. Instead he argued that the value be reduced to \$\$\$\$\$ because the 2016 value had been \$\$\$\$\$ and it was his position that a 7% market appreciation rate should be added to the 2016 value. The County's assessed value of \$\$\$\$\$ was a 12.3% increase from the 2016 value. The Property Owner argued that the increase was too high

based on general market appreciation information and also based on how three other properties were assessed by the County.

At the hearing, the Property Owner provided excerpts from four published sources that indicated housing prices in Utah increased from 5% to 9.1%. Two of the sources, which were Zillow and the SOURCE, were specific to the ##### zip code where the subject was located. The Zillow increase was 9.1% and the SOURCE increase was 6.3%. Based on this he argued the County's 12.3% increase for his property was in error.

In addition to the general statistical data, the Property Owner provided three properties in COUNTY and their assessment histories. One of the properties at ADDRESS-2 was located one block from the subject, and the Property Owner had calculated that the County's assessment for this property had increased 11.7% from 2016 to 2017, near the 12.3% of the subject. The two other properties were located some considerable distance from the subject and based on the Property Owner's calculations had increased 5.4% and .02% respectively. The subject is located in a subdivision, so there were other properties he could have chosen for this comparison that were much nearer in location to the subject than the last two properties he used in this analysis. In addition to offering these properties to support his market value argument, the Property Owner argued these sales showed his assessed value was inequitable.

The Property Owner also had other arguments regarding the County Board of Equalization procedures, including the manner or format of how the County Board of Equalization had issued its decision. These arguments were addressed previously in Order on Open Appeal, Dated November 21, 2018 and incorporated herein, and will not be addressed further in this Order. As noted in Order on Open Appeal, the County Board of Equalization had issued a final decision and the Commission has treated the Property Owner's submission as a timely appeal. Therefore, the Property Owner had the right to a hearing on the merits of the appeal, which, as noted in that order, means the Property Owner could contest at this hearing the assessment based on fair market value, equalization or both pursuant to Utah Code §59-2-1006.

As evidence for the hearing, the County offered an appraisal prepared by NAME-1, Certified Residential Appraiser, which indicated that the fair market value of the subject property as of January 1, 2017 was \$\$\$\$\$. NAME-1 attended the hearing to explain his appraisal. The County also offered an equalization argument that the subject was undervalued compared to the neighboring properties and based on the equalization, it was the County's conclusion that the value should be raised to \$\$\$\$\$, as of the lien date January 1, 2017. The County's request was

for the value to be raised to \$\$\$\$\$, which is higher than the County's original assessed value for this property.

The appraiser, NAME-1, considered four comparable sales in his appraisal. Three properties were located in CITY-1, Utah, where the subject is located and these properties were only 0.12 to 0.55 of a mile from the subject. The fourth comparable was in CITY-2. NAME-1 explained the fourth was to bracket the value. The County's appraisal conclusion was supported by the three CITY-1 comparable sales. These were all two-story style residences on larger residential lots that were constructed within ten years of the subject. They had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. After appraisal adjustments, the County's indicated range from these three CITY-1 comparables was from \$\$\$\$\$ to \$\$\$\$\$. This appraisal did support a fair market value for the subject property at \$\$\$\$\$.

The Property Owner tried to discredit this appraisal arguing that NAME-1 made technical violations of USPAP. NAME-1 argued he had not violated USPAP. NAME-1 is a Certified Residential Appraiser and the Property Owner is not an appraiser, nor did he explain any credentials at the hearing that would make him an expert on USPAP. He also did not provide copies of the current USPAP provisions, which he asserted NAME-1 had failed to comply with. Upon review of the information presented, the Property Owner did not support his argument that NAME-1's appraisal violated USPAP.

In addition, the Property Owner made the point that the appraiser worked for the COUNTY Assessor's Office, so his employer was the County Assessor, a fact the County acknowledged. The Property Owner could have hired an appraiser to prepare an appraisal to submit at the hearing, but did not do so. There is no law that requires a County Assessor in Utah to obtain appraisals from an appraiser who is not a County employee.

Regardless, NAME-1's appraisal was the best evidence of market value submitted at the hearing. The comparables were located near the subject and were reasonable appraisal comparables. The appraisal adjustments were typical for an appraisal. The Property Owner did not provide better comparables for the subject property, support different appraisal adjustments or correct data in regards to size, condition or other factors regarding the property. He did not provide an appraisal of his own. This is the type of evidence that is generally provided to support a reduction based on fair market value for a residential property.

In seeking a lower value than that established by the County Board of Equalization, a property owner has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide a sound evidentiary basis to support a new

value. Property tax is based on the market value of the property as of January 1 of the tax year at issue, under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “fair market value” as the amount for which property would exchange hands between a willing buyer and seller. In Utah, therefore, “fair market value” is the estimate of the sales price between a willing buyer and willing seller for each lien date, it is not limited to a general County wide or neighborhood wide percentage increase or decrease. The sales prices of different types of properties and properties in different neighborhoods, even within the same zip code, may increase or decrease at different rates depending on market demand and other factors. The Property Owner’s percentage increase from one year to the next is just a general average and less reliable for valuing a specific property. The appraisal evidence specific to the lien date shows comparable properties sold in the same neighborhood as the subject for prices ranging from \$\$\$\$\$ to \$\$\$\$\$ and supports that the subject property was undervalued as of the lien date based on fair market value.

The County had also prepared an equalization analysis in which the County looked at twenty properties, which the County representatives stated were similar in size, condition, quality and acreage. The County looked at the assessed value for these twenty properties based on gross living area, total living area and total finished living area and compared that to the assessed value of the subject. Looking at total living area, the subject was assessed at \$\$\$\$\$ per square foot, the lowest of the twenty comparables. Based on gross living area (GLA), the subject was valued second lowest of the twenty and based on total finished area the subject was valued ninth lowest of the twenty comparables.

From the twenty equalization comparables, the County then chose the five that the County represented were the most similar. The County made market value appraisal adjustments to get to an indicated assessed value for the subject property, which was the \$\$\$\$\$ the County concluded from its equalization analysis. Although the County’s representative had indicated the five equalization comparables were the most similar to the subject, the assessed values of these five comparables were \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. It is only with the appraisal adjustments of the type that would be applied in a fair market value appraisal that the County reached the value of \$\$\$\$\$ based on equalization. It is clear that the subject’s total assessed value of \$\$\$\$\$ was in line with the assessed values of four out of the five of these properties.

In this appeal, the County is arguing for an increase in value based on equalization and the Property Owner seems to be making an argument to reduce the value on the basis that other properties’ assessed values increased at a lower percentage rate. Under Utah Code Sec. 59-2-1006, a property owner or County Assessor may appeal the assessment based on fair market value

or equalization. Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other properties if the issue of equalization is raised and “the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.” In arguing an adjustment based on equalization, a party needs to show that properties that are actually comparable to the subject are valued lower or valued higher. In this appeal, the Property Owner has shown that two properties not located in the immediate neighborhood of the subject had a smaller percentage increase from the subject and one property in the same neighborhood as the subject had increased at a percentage near what the subject had. This does not establish a basis for reduction based on equalization.¹

The County, on the other hand, has also made an equalization argument to raise the value. The County has provided 20 properties located near the subject that were somewhat comparable. On an unadjusted price per square foot analysis, the subject is at or towards the bottom of this range, but still within the range. The County pulled out the five most comparable properties from the twenty. However, the total assessed value of the subject is right in range with the total assessed value of four of these five “best” comparables. To make an argument based on equalization, the County then provided an analysis using appraisal adjustments appropriate for a market value appraisal, which indicated a higher value for the subject. However, under Subsection 59-2-1006(5), equalization requires a showing that “the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.” Without the appraisal adjustments, four of the five best comparables are assessed in the same range as the subject property. If the value of the subject property was increased, the subject would be assessed higher than four of these five comparables.

Equalization has been argued at the Tax Commission and to the Utah Supreme Court. The court has put a high burden on parties generally to show that an adjustment is warranted under equalization. *See Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206 (Utah 2004) & *Decker Lake Ventures v. Utah State Tax Comm’n*, 2015 UT 66. In this appeal, neither the Property Owner nor the County has met the burden to establish a reduction or increase based on equalization.

The County has provided convincing evidence with its appraisal that the fair market value of the subject property is \$\$\$\$\$, which is substantially higher than the assessed value of

¹ The Property Owner had also provided some factual information about his comparables and concluded that the average assessed value per square foot of these three comparables was \$\$\$\$\$ while the assessed value of the subject was \$\$\$\$\$, which clearly does not support that the subject is over assessed.

\$\$\$\$\$. When evidence is presented at a hearing that a property is assessed too low, the Commission should generally raise the value up to fair market value.² However, if the value of the subject property is raised to its fair market value, it would be assessed higher than the best of the equalization comparables; thereby the assessment would become unequal.³ Additionally, when the County asks for an increase in value above the original assessed value, the County has the burden of proof under Utah Code Subsection 59-2-109(2). Taking these issues into consideration, the value should remain as set by the County Assessor and affirmed by the County Board of Equalization at \$\$\$\$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2017 lien date. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West

² See *County Board of Equalization of Salt Lake County v. Tax Commission of the State of Utah ex rel. Schneider Enterprises, Ltd.*, 899 P.2d 1228 (Utah 1995).

³In *Mountain Ranch Estates v. Utah State Tax Comm'n*, 100 P.3d 1206, 1210 (Utah 2004) the Utah Supreme Court held:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner "singled out" for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

Appeal No. 18-1860

Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner