

18-2245

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 12/09/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNERS,

Petitioners,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 18-2245

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2018

Judge: Phan

Presiding:

John L. Valentine, Commission Chair

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: Property Owners

For Respondent: APPRAISER-1, Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2019, in accordance with Utah Code Ann. §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”) have filed an appeal of the decision of the COUNTY 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 DATE, 2018.

3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) reduced the value to \$\$\$\$\$. At the hearing, the Property Owners requested a reduction to \$\$\$\$\$. At the hearing, the representative for the County recommended a reduction in the value to \$\$\$\$\$.

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

5. The subject property is ##### acres of land improved with a single-family residence that was constructed in 2014. The residence is a two-story-modern style building with #####-square feet above grade according to the County records and #####-square feet in the basement, which is unfinished. The property has an attached three-car garage. The subject has a valley view and is a wooded private lot backing onto open space, but it is very steep. The driveway into the property is also very steep, and, as of the lien date, had not yet been paved and is not heated. There is a 30-foot wide drainage easement that runs all the way through the subject lot between where the residence is located and the side yard of the property. The lot is not yet landscaped and lacks sprinklers, but much of it is wooded.

6. A factual issue that was addressed by both parties at the hearing was the grade and actual condition or finish of the subject residence. The Property Owners had performed a lot of the work on the residence themselves and at the hearing testified that although the residence is architecturally high end, because they did much of the work themselves it looks unprofessional or is still incomplete. They testified at the hearing that their home is a “work in progress.” They also testified it was finished enough to obtain an occupancy permit in 2014, but it is still not finished. They testified that there are no sprinklers or landscaping in the yard, no basement finish, no shelves in pantry or closets, the garage is unfinished, the rockwork on the exterior of the property is unfinished, and door trim and moldings are unfinished. The deck was unfinished and there were no stairs to get outside from two of the exterior doors. The driveway was not completely finished and should be heated due to the extreme slope, but it is not heated.

7. The Property Owners had submitted an appraisal prepared for the subject property as of the lien date, DATE, 2018. The appraisal had been prepared by APPRAISER-2, SRA, who had inspected both the interior and exterior of the property and provided a number of photographs. In the appraisal regarding unfinished items, APPRAISER-2, had noted,¹ “Unfinished closets, missing shelving, unfinished deck (needs a new surface and water proofing), unfinished rock work (missing rocks and mortar), missing base moldings in some areas, no vapor barrier below floor or sub-base and some loose hardwood planking, missing soffit and some unfinished fascia, missing wood railing cap, non functioning fire sprinklers (reportedly freeze in winter if turned on), steep driveway making winter access during snow and ice periods difficult and unsafe, sub-standard appliance quality for home of this caliber, no landscaping, but large part of site is naturally wooded, missing steps to two exterior doors, no foundation plaster, no laundry room (there is an area where one could be added) and some exterior doors and

¹ Petitioners’ Exhibit 1, pg. 3.

woodwork need refinishing.” APPRAISER-2 had taken photographs of all these items noted and included them in his appraisal.

8. In addition to the appraisal, the Property Owners provided as evidence in this matter letters from three different real estate agents who sold luxury homes in the area.² All three agents noted that the subject would sell for much less than one \$\$\$\$\$ in its current state. They noted the unfinished state of the subject and that buyers in that price range would be looking for a home that was completely finished. They also noted the steepness of the driveway was an issue. One letter from NAME-1, BUSINESS-1 Residential Brokerage, stated, “The home has no landscaping and a driveway so steep that most buyers would run from it or turn away and not want to see the home. It should be heated.” NAME-2, Associate Broker with BUSINESS-2, stated, “I have seen the home that PROPERTY OWNERS have built by themselves. It is not complete and would not sell for more than \$\$\$\$\$ in its current condition.”

9. The Property Owners had obtained bids from three different residential building contractors for finishing the interior and exterior of the property as well as the landscaping and putting in a heated driveway.³ The prices from these bids to finish the subject property were \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$.

10. In his appraisal, APPRAISER-2 had concluded based on a sales comparison approach that as of DATE, 2018, the value of the subject property was \$\$\$\$\$. He considered five comparable sales, the first three of which were within less than one mile from the subject and the Property Owners testified were in the immediate neighborhood of the subject. Comparables 4 & 5 were more distant from the subject. APPRAISER-2 had measured the property and obtained slightly different numbers as to the size of the residence from what the County had on its records and had made adjustments for size based on his actual measurements of the subject. His comparables and his adjusted value for the subject from the comparables are the following:

Address	Sale Price	Sale Date	GLA	Bsmt/ Finish	Age	Lot Size	# of Gar-ages	Adjusted Price
SUBJECT PROPERTY			#####	#####	X	#####	X	\$\$\$\$\$
COMPARABLE PROPERTY-1	\$\$\$\$\$	DATE	#####	#####	X	#####	X	\$\$\$\$\$
COMPARABLE PROPERTY-2	\$\$\$\$\$	DATE	#####	#####	X	#####	X	\$\$\$\$\$
COMPARABLE PROPERTY-3	\$\$\$\$\$	DATE	#####	#####	X	#####	X	\$\$\$\$\$
COMPARABLE PROPERTY-4	\$\$\$\$\$	DATE	#####	#####	X	#####	X	\$\$\$\$\$
COMPARABLE PROPERTY-5	\$\$\$\$\$	DATE	#####	#####	X	#####	X	\$\$\$\$\$

² Petitioners’ Exhibit 7.

³ Petitioners’ Exhibit 8.

11. APPRAISER-2 did not attend the hearing to testify, but submitted a letter dated DATE, 2019 to respond to some of the criticisms of his appraisal.⁴ He explained the reason he had made no appraisal adjustments for the fact that the subject lot was so much larger than the lot sizes of the comparables was his opinion that effective lot size was more important than actual lot size for steep lots like the subject. He points out that there are restrictions on what parts of the subject lot could be built on or landscaped and there was very little usable area for a yard. The Property Owners provided a copy of their site plan that shows a large drainage area cuts down through the subject lot separating where the residence is constructed from the side yard. Additionally, the site plan showed the extreme slope of the lot.⁵

12. APPRAISER-2's letter also addressed why he had used properties that were older than the subject as comparables. He explained it was his opinion that the subject property suffers from significant deferred maintenance, so the effective ages of the comparables were similar to the effective age of the subject. He also addressed in his letter that the subject was "a mix of quality; with some items being high quality and other being lower quality than expected." He goes on to note that the subject includes many incomplete items and that reduces its overall quality and appeal.

13. He also discussed in his letter the location of his comparables. His letter states, "Four of the five comps are from the subject's general neighborhood. One comp is from NAME OF NEIGHBORHOOD, which is a competing, but slightly lower priced neighborhood. The NAME OF NEIGHBORHOOD comp is included because the property is similar in many ways to the subject and the location difference was easily adjusted for."⁶ The NAME OF NEIGHBORHOOD property was APPRAISER-2's comparable no. 4, located at COMPARABLE PROPERTY-4 and he had made a +##### adjustment for location.⁷

14. At the hearing, the County acknowledged error in the value set by the County Board of Equalization and recommended the value be lowered to \$\$\$\$\$. The County's representative testified that this was his new conclusion after he made corrections to the property record based on information the Property Owners had previously provided in this matter. The County did not offer an appraisal or even a printout from its Prognose computer valuation system showing which comparables were used to come up with this new value. The representative for the County explained that he had adjusted the land record due to the non-disturbable drainage easement, so the lot now shows #####-acres as the primary lot and ##### as secondary acreage. He also testified that he lowered the livability category to average and lowered the

⁴ Petitioners' Exhibit 9.

⁵ Petitioners' Exhibits 4 & 5.

⁶ Petitioners' Exhibit 9, pg. 2.

⁷ Petitioners' Exhibit 1, pg. 4.

interior grade to good, to account for the issues with the unfinished items. After he made the changes, he testified that he ran it through the County's valuation modeling system and the system indicated a value of \$\$\$\$\$. He did not, however, offer this report as evidence at the hearing.

15. The County's representative did criticize the comparables used by APPRAISER-2 in his appraisal noting that they were older properties. He also argued that the subject was a newer construction, which did not really have deferred maintenance, it was, instead, unfinished. However, the County did not present an appraisal at the Formal Hearing or even any comparable sales, adjusted or unadjusted. The County did present a copy of the "Assessor's Proposed Conference Record" which had been submitted to the County Board of Equalization Hearing and proposed the value of \$\$\$\$\$,⁸ which the County was no longer requesting. He provided the Building Permit Inspection History, which showed the first footing inspection was passed on DATE, 2014 and the final building inspection was passed on DATE 1, 2015.⁹ He provided two aerial photographs of the subject, which showed some exterior high-end architectural features, as well as the topography of the lot.¹⁰ The County also provided aerial photographs of the comparables used by APPRAISER-2 in his appraisal.¹¹ A final document provided as evidence was the County Board of Equalization Hearing Record, which did not list any sales comparables offered by the County to support its value at that time.¹²

16. From the evidence provided by the parties, the subject property is a unique property that is difficult to value. It is on a large, wooded, secluded lot with a valley view, but also one that is steeply sloped with a very steep driveway and little usable yard space. The house itself has some nice high-end architectural features, which are evidenced by photographs and testimony, but also a large number of unfinished items on the interior and the exterior. It is a 'work in progress' and any prospective buyer would take that into account in the amount he or she would be willing to pay for this property. The County has acknowledged error in the value set by the County Board of Equalization and the County's representative at the hearing testified that after making corrections to the County's data card for the subject property and re-running those changes through Prognose, he concluded a lower value, but he did not support the lower value with an appraisal, or even the adjusted Prognose comparables or report. The Property Owners have submitted an appraisal as well as statements from real estate agents and bids regarding the cost to bring the residence up to an expected level. The Property Owners have supported their value of \$\$\$\$\$ and the value should be lowered to that amount as of the lien date at issue.

⁸ Respondent's Exhibit 1.

⁹ Respondent's Exhibit 2.

¹⁰ Respondent's Exhibit 3.

¹¹ Respondent's Exhibit 4.

¹² Respondent's Exhibit 5.

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 DATE, 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.

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 46, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate." Utah statute implements the constitutional provision and provides that property tax is assessed on the basis of the property's "fair market value" pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102.

2. As recently noted by the Utah Court of Appeals in *Fraughton v. Tax Commission*, 2019 UT App 6, ¶10, "the protesting taxpayer is required not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation (Citation Omitted)." Therefore, the Property Owners have a two-fold burden of proof. However, in this appeal the County is also requesting a value different from the value set by the County Board of Equalization. For either party to prevail in this case, the party must meet the two-fold burden of proof by demonstrating that the subject property's current value contains error and providing 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 46, 5 P.3d 652 (Utah 2000).

3. In this appeal, error in the County's value has been established by both the Property Owners and the County, which has also recommended a lower value. In addition, the Property Owners

have met the second prong of their burden of proof. The Property Owners have provided a sound evidentiary basis to support the lower value they are requesting. The property has many unique characteristics and the appraiser has taken those into account in appraising the subject property. The County's representative has stated his value conclusion for the subject but provided no appraisal or even Prognose Report that shows how that was derived from comparables, failing to meet his burden of proof to provide a sound evidentiary basis to support the value he is requesting.

After reviewing the evidence and the applicable law in this matter, the value for the subject property should be reduced to \$\$\$\$\$ for tax year 2018.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of DATE, 2018, is \$\$\$\$\$. The County Auditor is to adjust its records accordingly. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.