

19-2499

TAX TYPE:

TAX YEARS:

DATE SIGNED:

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
PETITIONER, <p style="text-align: center;">Petitioner,</p> v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> Appeal No. 19-2499 Parcel No. ##### Tax Type: Property Tax Tax Year: 2019 Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, Appraiser, COUNTY Assessor’s Office

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 June 22, 2021, in accordance with Utah Code §59-1-502.5. The COUNTY Assessor’s Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2019 lien date. The County Board of Equalization (“the County”) reduced the value to \$\$\$\$\$. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$. At the hearing, the County asked that the value set by the County Board of Equalization of \$\$\$\$ be upheld.

APPLICABLE LAW

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

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

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(13), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

Utah Administrative Rule R884-24P-20 (“Rule 20”) provides guidance on how properties that are under construction on the lien date are to be valued for property tax assessment purposes. As the subject property is a residential property and is not valued under the unit method, the relevant portions of Rule 20 are as follows:

E. Appraisal of Properties not Valued under the Unit Method.

...

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- (a) The full cash value of the project expected upon completion.
- (b) The expected date of functional completion of the project currently under construction.

...

(c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

- (a) 10- Excavation foundation
- (b) 30- Rough lumber, rough labor
- (c) 50- Roofing, rough plumbing; rough electrical, heating
- (d) 65- Insulation, drywall, exterior finish
- (e) 75- Finish lumber, finish labor, painting
- (f) 90- Cabinets, cabinet tops, tile, finish plumbing, finish electrical
- (g) 100- Floor coverings, appliances, exterior concrete, misc.

...

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

- (a) Multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion;

....

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.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4, below, in pertinent part:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section 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...

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
 - (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by a county board of equalization after the appeal;
 - (ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:
 - (A) the commission, if the commission has issued a decision in the appeal; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal; or
 - (iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.
 - (b) "Inflation adjusted value" means the value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection 59-2-1004(2)(c).
 - (c) "Qualified real property" means real property:
 - (i) that is assessed by a county assessor in accordance with Part 3, County Assessment;
 - (ii) for which:
 - (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;
 - (B) as a result of the appeal described in Subsection (1)(c)(ii)(A), a county board of equalization or the commission gave a final assessed value that was lower than the assessed value; and
 - (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and
 - (iii) that, between January 1 of the previous taxable year and January 1 of the current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.
- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
 - (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
 - (C) if Subsection (3) applies, the original assessed value; or

- (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.
- (3)
 - (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:
 - (i) that is not qualified real property; and
 - (ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (b) For purposes of Subsection (3)(a), the following have the burden of proof:
 - (i) for property assessed under Part 3, County Assessment:
 - (A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:
 - (i) the original assessed value shall lose the presumption of correctness;
 - (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties; and
 - (iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.
- (4)
 - (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.
 - (b) For purposes of Subsection (4)(a):
 - (i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or
 - (ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.
 - (c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:

- (i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or
- (ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. 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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the petitioner must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

DISCUSSION

The parties reported that there had been no appeals filed with respect to the subject property for tax years 2016, 2017 or 2018. Therefore, for tax year 2019, this property is not a "qualified real property" for purposes of Utah Code §59-2-109 and Utah Code §59-2-301.4 is not applicable in this appeal.

The subject property is ##### acres of land that as of the lien date at issue, January 1, 2019, had been improved with a residence that was mostly complete, but did not yet have a Certificate of Occupancy. The property is located at SUBJECT PROPERTY ADDRESS, CITY-1, Utah. The residence is in the "modern mountain" style with ##### square feet. The property is located in the residential development called RESIDENTIAL DEVELOPMENT-1. This property is a ski-in, ski-out property and there are ski resort and mountain views. The property had been listed for sale on the Multiple Listing Service several times during construction and was listed again on DATE, 2018 through DATE, 2019, which was a period that spanned the lien date at issue in this appeal. The County provided as evidence copies of these listings. As of the lien date, the property was listed for sale for \$\$\$\$\$ and the MLS listing provided that the residence has ##### bedrooms, ##### total

bathrooms, ##### fireplaces, an oversized #####-car garage and ##### additional covered parking spaces. The MLS as of the lien date provided the following description:

This newly completed modern mountain masterpiece will stun you. Located in the high-security ski community, RESIDENTIAL DEVELOPMENT-1. The estate sits on a ##### acre lot and is skiable to (X) ski resort, directly from your personal ski lounge room. Enjoy mature evergreens and southern ski run views from your ##### deck or the private master suite, located on its own wing, or enjoy the wow factor views from your bathroom. There is a #####-person saltwater infinity hot tub controlled remotely, whether you're landing at the airport or skiing in the mountains, it will be ready for you overlooking the ##### long water feature. Other luxuries include a true chef's kitchen, custom home theater, private gym, wet bar with wine room attached, and a spacious family room for gatherings for all family and entertainment.

This DATE, 2018 MLS listing did indicate that the "construction status" was "complete." The MLS listing provided a number of interior and exterior photographs, which show the construction was complete. The photos show finished rooms with furniture. The walls and ceilings are painted or otherwise finished, the flooring is installed, and the kitchen and bathrooms have all the cabinets and countertops, faucets and plumbing fixtures. The trim work appears to be complete. The County's representative had visited the subject property near the lien date and provided photographs of the exterior. He reported that he was able to see in through windows and that the property appeared to be fully finished and had furniture and artwork.

The County Assessor's assessment had originally been based on the property being fully finished on the lien date. However, at the County Board of Equalization hearing the Property Owner had provided a copy of the COUNTY Building Inspector Report that indicated as of the lien date the property still had a punch list of items that needed to be finished before a Certificate of Occupancy would be issued. This report indicated an inspection was performed on DATE, 2018 and as of that date there were many "unresolved" issues. For instance, the report listed that the builder needed to pull a retaining wall permit, protect an exterior fireplace, provide "blower door test and results," and finish fireplaces, floor finishes and floor receptacles. The report also noted that one bedroom and another closet had no power and noted a number of items that were relatively small but still needed to be finished. Based on this information, the County Assessor had recommended reducing the value of the subject property and assessing it based on it being %%%% finished on the lien date. The County Board of Equalization reduced the property from \$\$\$\$ to \$\$\$\$ on that basis.

At the hearing before the Commission, the parties did discuss one additional item that had to be resolved after the lien date. This item was not a County building code requirement, but instead a requirement from the homeowners association in which the property was located. The residence

had been constructed with very large windows or glass visible from the ski runs and the homeowners association required that fins be added to the exterior of the large expanse of glass to reduce the glare off of the glass from the sun. The County had asked what the cost would be to add the fins and the Property Owner never provided that information. Additionally, the Property Owner had stated at the hearing that the infloor heating system had failed in 2018 and the snow melt system for the driveway was not functioning and needed to be redone. He did not provide the specific date these issues had been resolved or the costs to resolve these issues and the failed heating was not listed on the December 3, 2018 building inspection report other than the notation “complete boiler t&p’s.” The Property Owner argued at the hearing that the property was only %%%% or %%%% complete on the lien date, but that did appear contrary to the interior photographs provided on the DATE, 2018 MLS listing.

The Property Owner obtained the Certificate of Occupancy on DATE, 2020 and sold the property for \$\$\$\$ on DATE, 2020.

The Property Owner requested a reduction in value to \$\$\$\$ as of the lien date at issue. This was not based on an appraisal of the property as of that date, comparable sales or any other market value evidence. His request was based on his argument that because the property was not fully finished and because there was no Certificate of Occupancy as of the lien date, it should have been valued by the County as a construction site and not as a completed residence minus some percentage for the incomplete portion. He argued that the “highest and best use” of the property as of the lien date was as a construction site because it would have been the only legal use of the property. The Property Owner asserted this “highest and best use” argument, but provided no statutory citation or case law that supported the argument.

Furthermore, it was unclear how the Property Owner had come to the conclusion that the value was \$\$\$\$ as of the lien date, based on its value as a construction site. He did not provide evidence of the actual costs of the land or construction costs incurred up to January 1, 2019, which might show a cost value as of that date. He did not provide any of the bids or invoices of the costs incurred to finish the property between the lien date January 1, 2019 and when the property was sold for \$\$\$\$ on DATE, 2020, which might have established a different percentage complete adjustment than the %%%% complete the County had concluded.

The Property Owner pointed to the 2018 assessment for the subject property, which had been only \$\$\$\$ and noted it was significantly lower than the 2019 assessment. The County records provided did indicate that the County assessed the residence for 2018 as being %%%% complete. The 2019 assessment had been originally based on the property being %%%% complete, but the County Board of Equalization reduced the value to \$\$\$\$ based on the residence

being %%%% complete. The Property Owner made the argument that “the math does not add up” regarding the differences in the assessments.

At the hearing the County’s representative pointed out that it is the Property Owner who has the burden of proof in this matter and the Property Owner had provided no evidence of what the fair market value of the subject property was as of January 1, 2019. Furthermore, the County asserted that the property owner did not even provide any evidence of the costs incurred between January 1, 2019 and when the property was sold for \$\$\$\$ on DATE, 2020. The County’s current value was \$\$\$\$ as of the lien date at issue. Given the fact that the subject was listed for sale on the lien date for \$\$\$\$ and had sold for \$\$\$\$ in MONTH 2020, even taking into account inflation and the relatively minor items that needed to be finished, the County pointed out that its current value for 2019 was more than supported. The County also pointed out that it valued the subject property based on the standard for valuing construction work in progress, which for a residential property requires determining the percentage of completion of the property as of the lien date and the expected value upon completion.

The County’s representative did explain the reason for the large increase in value from 2018 to 2019. He indicated that when construction first commences and the County is unable to tell the grade and quality of the construction, the County uses the value of the residence stated by the applicant on the building permit. The County provided a copy of the building permit, which had been issued DATE, 2016. On that permit the valuation filled in by the applicant was \$\$\$\$\$, far below the actual final value. The County’s representative stated that once a residence was %%%% to %%%% complete, the County could better determine the grade and quality of construction and would assess the unfinished property based on the expected value upon completion. This did not happen for 2018 so the County had undervalued the property significantly for the 2018 property tax assessment. The County’s representative did visit the subject property near the January 1, 2019 lien date and realized at that point that the expected value upon completion would be much higher than the value claimed by the applicant who filed for the building permit.

To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the Property Owner must: 1) demonstrate that the subject property’s current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property’s current value to the amount it proposes. The Property Owner has failed to meet this two prong burden of proof. In fact, the evidence in this appeal clearly supports at least the current value for the subject property as of the lien date. The County did not request an increase in value at this Initial Hearing. What the Property Owner has argued, that the County may not assess the property based on the expected value once the property is finished because that is not the highest and best use of the

property on the lien date, is contrary to Utah law. The Property Owner cited no legal authority to support this assertion.

Utah law provides that 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 change hands between a willing buyer and seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.” Utah Admin. Rule R884-24P-20 specifically sets out how fair market value is to be determined for a residential property that is under construction as of the lien date. Subsection R884-24P-20(E)(3)(a) dictates the assessor is to “multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion.” The County has followed the law in its assessment of the subject property and the Property Owner’s argument lacks merit. The Property Owner’s appeal should be denied.

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, 2019 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
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 _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Appeal No. 19-2499

Rebecca L. Rockwell
Commissioner