

17-1808
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 07/12/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 17-1808 Parcel No. ##### Tax Type: Property Tax Tax Year: 2017 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
TAXPAYER-2

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Appraiser Supervisor,
COUNTY
REPRESENTATIVE FOR RESPONDENT-2, Residential

Appraiser, COUNTY

STATEMENT OF THE CASE

Petitioners ("Property Owners") bring this appeal from the decision of the COUNTY Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on April 24, 2018, in accordance with Utah Code §59-1-502.5. The COUNTY Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2017 lien date. The County Board of Equalization ("County") sustained that value. At the hearing, the Property Owners request a reduction to \$\$\$\$\$. The County is asking the Commission to uphold the value at \$\$\$\$\$.

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.

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 Utah Legislature has adopted the following provisions for when there has previously been a reduction in value on a property at Utah Code Sec. 59-2-301.4 as follows:

- (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 of property any other factor affecting the fair market value of the property.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property’s current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property’s current value to the amount it proposes. See *Nelson v. Bd. Of Equalization of 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 that is at issue in this appeal is located at ADDRESS. It is ##### acres of land improved with a two-story residence. The residence was constructed in 2014 of a “good+” grade of construction and is in excellent condition. The residence has ##### square feet above grade. There is also a basement of ##### total square feet. In the basement, ##### square feet are finished. The Property Owners represented that about ##### of the unfinished basement square footage is cold storage. This property has three full bathrooms, two ¾ bathrooms and one-half bath. The residence has seven bedrooms. There is an attached garage of ##### square feet. There is also a detached garage with workshop space of ##### square feet.

The Property Owners report that the detached garage building was on the property before they constructed their residence. They stated it had lower ceilings than typical garage space. They stated they thought maybe seven-foot ceilings, but did not present interior photos of this space or testify that they had actually measured the ceiling height.

Although ##### acres in size, the subject lot has narrow frontage and is a long, narrow rectangular lot that backs onto a public bike path. Both the County and the Property Owners were in agreement that the subject lot could not be subdivided into additional residential lots.

The Property Owners had constructed the subject residence and stated that they had finished the interior of the residence nicely, but it was not extravagant. They did not provide photographs of the interior of the residence. Regardless, the Property Owners' description is not inconsistent with a "good +" grade.

The Property Owners explained that they had appealed the 2016 assessed value to the County Board of Equalization and the County BOE had reduced the value to \$\$\$\$\$ for 2016. They point out the increase from the 2016 value of \$\$\$\$\$ to the 2017 value of \$\$\$\$\$ is a 20% increase in value, which they felt was too high considering the market.

For the hearing, the Property Owners submitted as evidence a CMA Comparison Report that had been prepared by a real estate agent. The agent had used six properties that sold as comparable sales. These properties all sold after the lien date. These sales were all located in CITY, but the CMA did not provide the distance from the subject. All of the comparables used in the CMA report had both significantly smaller houses and significantly smaller lots. In the CMA, adjustments were made for the size of the residence, although at only \$40 per square foot for above grade space. All of these comparables were two-story properties. An adjustment was also made for the acreage that was fairly in line with how the County had adjusted for the acreage. The CMA comparables and the values concluded from each comparable are as follows:

Address	Sale Price	Sale Date	GLA	Acres	Year Built	Garages	Adjusted Value
Subject: ADDRESS			4,796	#####	2014	3 ¹	
COMPARABLE-1	\$\$\$\$\$	8/17	2,750	#####	2016	3	\$\$\$\$\$
COMPARABLE-2	\$\$\$\$\$	4/17	2,644	#####	2007	4	\$\$\$\$\$
COMPARABLE-3	\$\$\$\$\$	7/17	3,605	#####	2007	3	\$\$\$\$\$
COMPARABLE-4	\$\$\$\$\$	12/17	3,118	#####	2010	3	\$\$\$\$\$
COMPARABLE-5	\$\$\$\$\$	11/17	3,659	#####	2007	4	\$\$\$\$\$
COMPARABLE-6	\$\$\$\$\$	12/17	3,170	#####	2017	5	\$\$\$\$\$

¹ The CMA listed the subject as having only a three-car garage space. This does not account for the detached garage with ##### square feet.

The County pointed out that the CMA did not account for the detached garage area of ##### square feet and so no value was added for this space. Because the detached garage was not mentioned in the CMA, it was unclear whether the real estate agent who prepared the CMA was even aware of this space. The real estate agent did not attend the hearing to answer questions regarding the CMA. The County also pointed out that some of the Property Owner's CMA comparables were pulled from inferior locations to the subject.

The County's representatives submitted an appraisal at the hearing that indicated the value for the subject property was \$\$\$\$\$ as of the lien date January 1, 2017. Although this was higher than the 2017 assessed value of \$\$\$\$\$, they did not request an increase in value, and instead asked that the \$\$\$\$\$ be upheld. The representatives for the County stated that market values had really been increasing over the last few years. They acknowledged at the hearing that the County Board of Equalization had reduced the value for the subject property for tax year 2016, and stated that because of that reduction in value they had stayed conservative in their appraisal for tax year 2017, with a conclusion near the low end of the indicated appraisal range. It was their conclusion that comparable sales relevant to the lien date at issue in this appeal supported a higher value for tax year 2017 than the value set by the County Board for 2016.

Although the County was able to find some larger lot sizes and larger residences than those used in the Property Owner's CMA, the County's comparables were also significantly smaller as far as both the residence and lot size than the subject property. As there are no properties as large as the subject, or even to bracket the subject, it does make the subject more difficult to appraise. The County's comparables were the following:

Address	Sale Price	Sale Date	GLA	Acres	Year Built	Garages	Adjusted Value
Subject: ADDRESS			4,796	#####	2014	5+	
COMPARABLE-1	\$\$\$\$\$	2/17	3,152	#####	1999	3+	\$\$\$\$\$
COMPARABLE-2	\$\$\$\$\$	3/16	3,609	#####	2007	4	\$\$\$\$\$
COMPARABLE-3	\$\$\$\$\$	5/16	3,821	#####	2016	4	\$\$\$\$\$
COMPARABLE-4	\$\$\$\$\$	11/16	2,594	#####	2015	4	\$\$\$\$\$
COMPARABLE-5	\$\$\$\$\$	12/16	2,860	#####	1996	3	\$\$\$\$\$
COMPARABLE-5	\$\$\$\$\$	8/16	3,399	#####	2004	5	\$\$\$\$\$

In appraising the subject property, the County's appraiser did find that the detached garage added value and at the hearing he indicated that even if it had a low ceiling it would still add value for storage and workshop space. However, the adjustments he made for garage space

were both inconsistent and seemed excessive. He explained at the hearing that the adjustment was based on a percentage and not a consistent adjustment like \$5,000 for each additional garage space. Therefore, the appraisal adjustments for most of the comparables appeared opposite of what they should have been, with many of the comparables having the least garage space compared to the subject having smaller adjustments than the comparables that had the most garage space and, therefore, were more similar to the subject. These garage space adjustments ranged from \$\$\$\$\$ to \$\$\$\$\$ and were substantial considering that all of the comparables appeared to have at least 3-car garage spaces. However, even if the adjustment were changed in the County's appraisal to the fairly standard appraisal adjustment of \$5,000 per additional garage space, which would reduce the adjusted value for all of the comparables, the adjusted value would still be over \$\$\$\$\$ for all but one of the comparables (comparable 2) and still support the County Board of Equalization value.

One other difference between the County appraisal and the CMA was the adjustment made for square footage of the residence. Because the subject residence was larger than all of the comparables, this was a positive adjustment for all in both the appraisal and CMA. The County's appraisal adjustment was approximately \$77 per square foot of above grade space. The CMA adjustment was \$40 per square foot. The County's appraiser at the hearing provided the opinion that \$40 was too small of an adjustment for this grade of house. The real estate agent who prepared the CMA was not at the hearing to explain why he had used \$40 per square foot. Because there were no larger homes to bracket the subject, or even homes the size of the subject, there is the concern that at some point the economic principle of diminishing returns as to the additional square footage might begin to be a factor and where that point is has not been established with the comparables. However, the value set by the County Board does have a presumption of being correct and neither side presented evidence on this point. Generally, in seeking a value other than that established by the board of equalization, a party 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. The Property Owners have not met this burden.

The Commission also needs to consider the reduction in value provisions of Utah Code Sec. 59-2-301.4, because the County Board of Equalization had lowered the value for the subject property for the 2016 tax year. If a valuation reduction occurs within three years before the lien date at issue, a county assessor is required to consider the valuation reduction in assessing the fair market value of the property. Subsection 59-2-301.4(2) notes factors that the County "shall consider." Subsection 59-2-301.4(2)(a) indicates these to be "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.” In this case, the County’s representatives acknowledged that there had been a reduction in value for the prior year. They explained that the market values were escalating in general over this time period, but also stated that they had stayed at the low end of the indicated value range to be conservative because of the prior reduction in value. However, the comparable sales that occurred in 2016 did support raising the market value for the 2017 tax year to \$\$\$\$\$. Considering all the factors, the value should remain as set by the County Board of Equalization for tax year 2017.

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
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 _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner