

17-1981
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 09/07/2018
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 17-1981 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2017 Judge: Chapman
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative

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

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decision of the COUNTY Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on August 6, 2018.

At issue is the fair market value, as of the January 1, 2017 lien date, of a former residential property that was converted into an office building many years ago. The subject property is located at ADDRESS, Utah. The County BOE sustained the \$\$\$\$ value at which the subject property was assessed for the 2017 tax year. The taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$.

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. UCA §59-2-102(13) defines “fair market value” to mean “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.”

3. UCA §59-2-301.4 provides for a county assessor to consider certain prior valuation reductions when assessing a property, as follows 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.

....

4. 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.

....

5. 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 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).

DISCUSSION

The subject property is comprised of ##### acres of land and a one-story building that was built in YEAR and which has ##### square feet of above-grade space. The subject property also has basement space that can be used for storage only because of its low ceiling height and dirt floor. The subject property was

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originally built as a residential property, but was converted to office space prior to the taxpayer's purchase of the property 13 years ago. The subject property is divided into three separate office spaces, and it has a small foyer and two bathrooms (one half-bath and one three-quarter bath). The subject property does not have a kitchen, which was removed at some point before the taxpayer purchased the property. The taxpayer proffers that the subject property was updated around 15 years ago, when it was painted and its carpets, baseboards, and windows were replaced. The taxpayer further proffers that with the exception of replacing the tile in one of the bathrooms, the subject property has not been updated since it purchased the property 13 years ago.

The subject property is located in an area that is primarily residential in nature, but which has some commercial properties. REPRESENTATIVE FOR TAXPAYER proffers that even though CITY will not formally designate the subject property as a commercial property, the city does recognize that the subject property is "grandfathered" for commercial use. As a result, REPRESENTATIVE FOR TAXPAYER indicates that the subject property could continue to be used for commercial purposes if the taxpayer were to sell it.

The taxpayer is concerned that the subject property's 2017 value is \$\$\$\$\$, even though it and the County entered into a stipulation to reduce the \$\$\$\$\$ value at which the subject was originally assessed for the 2016 tax year to \$\$\$\$\$. The taxpayer contends that the subject's 2017 value of \$\$\$\$\$ represents a \$\$\$\$\$ increase over the 2016 stipulated value of \$\$\$\$\$ (which equates to an increase of approximately 26%). The taxpayer contends that the subject's value did not increase 26% between 2016 and 2017. As a result, the taxpayer contends that the subject's 2017 value should be reduced to \$\$\$\$\$ to better reflect not only its "fair market value" as of January 1, 2017, but also the \$\$\$\$\$ value to which it was reduced for the 2016 tax year. The taxpayer's proposed 2017 value of \$\$\$\$\$ represents an increase of approximately 3% over the \$\$\$\$\$ value to which the parties stipulated for 2016.

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The subject's 2016 value was addressed in *USTC Appeal No. 16-1827* (Stipulation and Order of Approval Jul. 6, 2017). The Commission reduced the subject's 2016 value from \$\$\$\$\$ to \$\$\$\$\$, based on a stipulation that the parties signed in June 2017. At the bottom of this stipulation, the parties explained that they were agreeing to the \$\$\$\$\$ value for 2016 because:

By interior inspection of the basement, determined the fact, the basement is unfinished, and not used as an office basement as previously stipulated. The rentable square footage calculated as office basement, was deleted, arriving at the proposed value.

At the hearing, the parties explained that the original 2016 value of \$\$\$\$\$ was based on County records incorrectly showing that the subject's basement could also be rented as office space.

The County admitted that the subject's current 2017 value of \$\$\$\$\$ was also derived on the basis of incorrect County records showing that the subject's basement was usable office space. The County explained that because the parties did not stipulate to the subject's 2016 value until June 2017 (which occurred after the 2017 tax rolls had closed), it was unable to correct County records concerning the subject's basement before the subject's current 2017 value of \$\$\$\$\$ was derived. When asked how much values increased in the subject's area between 2016 and 2017, the County indicated that values on the "east side" of the County increased approximately 6.8% between 2016 and 2017. Increasing the \$\$\$\$\$ value to which the parties agreed for the 2016 tax year by 6.8% would result in a 2017 value of \$\$\$\$\$ for the subject property. The County, however, asks the Commission to sustain the subject's current 2017 value of \$\$\$\$\$.

In support of the subject's current 2017 value of \$\$\$\$\$, REPRESENTATIVE FOR RESPONDENT, an appraiser with the County Assessor's Office, prepared a sales grid on which he compared the subject property to four comparable sales located in the Sugarhouse area (which is where the subject is located). The four comparable sales sold between July 2014 and December 2016 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ (which equated to \$\$\$\$\$ to \$\$\$\$\$ per square foot). REPRESENTATIVE FOR RESPONDENT adjusted the comparables on a square foot basis and derived adjusted sale prices ranging between \$\$\$\$\$ and

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\$\$\$\$ per square foot for the subject property. Based on these adjusted prices per square foot, REPRESENTATIVE FOR RESPONDENT estimated the subject's 2017 value at \$\$\$\$ per square foot, which when applied to the subject's square footage equates to approximately \$\$\$\$\$. With this methodology, REPRESENTATIVE FOR RESPONDENT estimated the subject's value, as of the January 1, 2017 lien date, to be \$\$\$\$\$. The County, however, does not ask the Commission to increase the subject's 2017 value to \$\$\$\$\$. Instead, the County asks the Commission to sustain the subject's current 2017 value of \$\$\$\$\$ and offers the sales grid in support of this value.

The taxpayer, however, does not believe that the County's sales grid accurately reflects the subject's 2017 value. First, the taxpayer stated that he lives next door to the subject property, that he is familiar with the County's four comparable sales, and that he believes that three of the comparables (specifically County comparables #2, #3, and #4) are used for residential, not commercial, purposes. REPRESENTATIVE FOR TAXPAYER indicates that the subject property could not be used for residential purposes without significant and costly changes, including the addition of a kitchen.

REPRESENTATIVE FOR RESPONDENT admitted that he does not know whether County comparables #2, #3, and #4 are used as commercial office space or not. Regardless, REPRESENTATIVE FOR RESPONDENT stated that he relied primarily on County comparable #1, which he knows to be used as commercial office space and which is located two doors away from the subject property. County comparable #1 is also a former residence that was converted to office space. It sold for \$\$\$\$\$ in July 2014 (approximately 2½ years prior to the 2017 lien date at issue) and has ##### square feet of above-grade space on its main floor (it does not have a basement). On the basis of this square footage, County comparable #1's sales price of \$\$\$\$\$ equates to \$\$\$\$\$ per square foot. REPRESENTATIVE FOR RESPONDENT made only one adjustment to this comparable, specifically an upward time of sale adjustment of 7.3% to account for an appreciating market between the comparable's July 2014 sales date and the January 1, 2017 lien date at issue.

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The 7.3% time of sale adjustment reflects an appreciation rate of approximately 3% per year. After making this one adjustment, REPRESENTATIVE FOR RESPONDENT derived an adjusted sales price of \$\$\$\$ for County comparable #1 (which when applied to the subject's square footage would result in a value of \$\$\$\$ for the subject).

The taxpayer, however, contends that REPRESENTATIVE FOR RESPONDENT did not make negative adjustments to County comparable #1 to account for the comparable's superior features. The taxpayer contends that County comparable #1 is superior to the subject property because it, unlike the subject property, has a kitchen, handicapped parking, and a large foyer to accommodate customers. The taxpayer also contends that County comparable #1 is in better condition than the subject property. For these reasons and because County comparable #1 was considered when the parties agreed that the subject's 2016 value should be substantially reduced, the taxpayer reiterates its request that the subject's 2017 value be reduced to a value that better reflects the 2016 value that was previously established for the subject property.

The County did not refute the taxpayer's assertions that County comparable #1 is superior to the subject property and would need negative adjustments before its 2014 sales price should be used to estimate a value for the subject property. As a result, the adjusted sales price that the County derived for this comparable is suspect. In addition, the \$\$\$\$ value that the County derived on its sales grid for the subject property is suspect because it is unclear whether three of the four comparables that the County used on the grid may be residential properties.

Most importantly, however, the subject's current 2017 value of \$\$\$\$ was derived by the County based on incorrect information in the County records about the utility of the subject's basement space. When the parties agreed to correct the subject's basement information for the 2016 tax year, they determined that the correction would result in the subject's 2016 value being reduced to \$\$. Subsection 59-2-301.4(2) provides that when "assessing the fair market value of property subject to a valuation reduction [during the past

three years], a county assessor shall consider . . . whether the reasons for the valuation reduction continue to influence the fair market value of the property.”¹ It is clear that the reasons for the 2016 valuation reduction (specifically the incorrect information in County records about the subject’s basement) continued to influence the subject’s assessed value as of the 2017 lien date because the utility of the subject’s basement remained the same between the 2016 and 2017 lien dates. For this reason and because of the concerns about the comparables the County proffered to support the subject’s current 2017 value of \$\$\$\$\$, it would be appropriate to consider the 2016 reduction when establishing the subject’s 2017 value.

All evidence indicates that the values in the subject’s area increased between 2016 and 2017. As a result, the subject’s 2017 value should be higher than the \$\$\$\$\$ value to which the parties agreed for the 2016 tax year. At the hearing, the County indicated that prices increased on the “east side” of the County by 6.8% during 2016. However, in its sales grid, the County used a time of sale adjustment of approximately 3% to adjust all comparables in the subject’s Sugarhouse area that sold before the 2017 lien date, including comparables that sold in mid-2014, mid-2015, and mid-2016. The 3% time of sale adjustment that the County used for properties in the same Sugarhouse area as the subject property is more convincing than the 6.8% time of sale adjustment for the entire east side of the County (which may or may not reflect the rate at which prices were appreciating in the subject’s neighborhood). For this reason and because the taxpayer’s proposed value of \$\$\$\$\$ represents an increase of approximately 3% over the \$\$\$\$\$ value to which the parties agreed for the 2016 tax year, the Commission should reduce the subject’s 2017 value to \$\$\$\$\$.

1 The taxpayer also raised the 2016 valuation reduction at the County BOE hearing concerning the subject’s 2017 value. In the County BOE’s 2017 tax year decision, the County BOE appears to dismiss the taxpayer’s argument concerning the 2016 tax year reduction by explaining that “[t]he Board of Equalization is tasked with addressing the 2017 tax year value only and unable to address any earlier values.” It is unclear whether the County BOE is aware of Section 59-2-301.4, which became effective for the 2013 tax year. Regardless, the County BOE did not address whether the reasons for the 2016 valuation reduction continued to influence the subject’s 2017 value.

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Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2017 tax year. The COUNTY Auditor is ordered to adjust its records in accordance with this decision. 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
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