

18-331

TAX TYPE: PROPERTY TAX

TAX YEAR: 2017

DATE SIGNED: 08/08/2018

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 18-331</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2017</p> <p>Judge: Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, from the COUNTY Assessor's Office  
REPRESENTATIVE FOR RESPONDENT-2, 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 July 10, 2018.

At issue is the fair market value of the subject property as of the January 1, 2017 lien date. The subject property is a single-family residence located at ADDRESS-1 (approximately WORDS REMOVED) in CITY-1, Utah. The County BOE reduced the \$\$\$\$ value at which the subject was originally assessed for the 2017 tax year to \$\$\$\$\$. The taxpayer asks the Commission to reduce the subject's value to an amount that is less than \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll tangible taxable property 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.”

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.”

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.

. . . .

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 49, 5 P.3d 652 (Utah 2000).

### DISCUSSION

The subject property consists of a #####-acre lot and a two-story home that was built in 2014. The home contains ##### square feet of “above-grade” living space on the main and second floors.<sup>1</sup> It also has an unfinished “walk-out” basement that is ##### square feet in size. The home has a three-car garage, two and one-half baths, and one fireplace. In addition, underneath the garage and adjacent to the walk-out basement is approximately ##### square feet of unfinished, walk-out storage space that is accessed with a garage door that opens up to the back yard. The home’s driveway, however, does not extend to the back yard and, thus, does not connect to the unfinished storage space that is underneath the garage and adjacent to the home’s basement. The subject property is located to the east of WORD REMOVED and has valley views. Exterior photographs of the subject show that the home has ordinary exterior features. Interior photographs of the subject show that the home has a two-story living room with a stone fireplace that is two stories in height.

Taxpayer’s Evidence. In support of his argument that the subject’s current value of \$\$\$\$\$ should be reduced to an amount that is less than \$\$\$\$\$, the taxpayer proffered: 1) a comparison market analysis (“CMA”) report in which the subject property is compared to four comparable sales; and 2) six additional comparable sales that are unadjusted and which are different from the four comparable sales found in the CMA report.

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1 This square footage is from County records and is based on measurements that REPRESENTATIVE FOR RESPONDENT-1, an appraiser in the COUNTY Assessor’s Office, took of the subject home. The taxpayer, however, explains that he is a builder who built the subject home and that the home’s plans indicate that it only has ##### square feet of above-grade living space. The taxpayer, however, did not provide a copy of the home’s plans so that the plans could be compared to the measurements that REPRESENTATIVE FOR RESPONDENT-1 obtained and so that the Commission could determine whether any deviations from the plans occurred when the home was built. The taxpayer has the burden of proof in this matter. Based on the evidence proffered at the Initial Hearing, the Commission finds that the subject’s home has ##### square feet

The CMA report compares the subject property to four comparable sales located in CITY-1 that sold between November 2016 and April 2017 for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The computer program that produced the CMA report adjusted the four comparables and derived adjusted sales prices that ranged between \$\$\$\$\$ and \$\$\$\$\$, the average of which is \$\$\$\$\$. Based on the average of these adjusted sales prices, the CMA report estimated the subject's value at \$\$\$\$\$.

The CMA report's \$\$\$\$\$ estimate of value is not convincing for a number of reasons. First, the CMA report does not include any adjustments for condition or quality of construction, which may explain why the one comparable that was built in 1998 and sold for \$\$\$\$\$ had a significantly lower adjusted sales price (\$\$\$\$\$) than the other three comparables that were built between 2005 and 2010 (none of which sold below \$\$\$\$\$ and which had adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$). There is no information to suggest that the comparable that was built in 1998 had been remodeled prior to its December 2016 sale. As a result, its inclusion in the CMA report likely results in an underestimation of the subject's 2017 "fair market value." Furthermore, it is likely that the subject property, which was less than three years old as of the January 1, 2017 lien date, would be in better condition than some, if not all, of the remaining three comparables that are four to nine years older than the subject. If so, upwards adjustments may be needed for the other comparables, as well.

Second, the CMA report does not attribute any value to the approximately ##### square feet of unfinished, walk-out storage space that is underneath the subject's garage and adjacent to its basement. Third, the subject property has valley views, and the CMA report does not attribute any value to feature. Fourth, the CMA report adjusted for differences in above-grade square footage at \$35 per square foot, unfinished basement space at \$10 per square foot, and basement finish at \$15 per square foot. The County's appraisers contend that such adjustments are much too low for homes that sell in the \$\$\$\$\$ to \$\$\$\$\$ range, which seems

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of above-grade living space.

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reasonable and was not refuted by the taxpayer. For these reasons, the taxpayer's CMA report and its \$\$\$\$ estimate of value are suspect.

The taxpayer also proffered six unadjusted comparable sales that are different from the four comparable sales found in the taxpayer's CMA report. These six comparables are located in CITY-1 and CITY-2 and sold between December 2016 and September 2017 for prices ranging between \$\$\$\$ and \$\$\$\$. Four of these comparables, however, were built in the 1990's, and the taxpayer does not know if any of these 1990's-built comparables were remodeled prior to their sales. As a result, the taxpayer has not shown that any of these comparables are similar enough to the 2014-built subject property to be convincing comparables.

The taxpayer's other two unadjusted comparables were built in 2009 and 2017 and, thus are more similar in age to the 2014-built subject property. The comparable built in 2009 is located to the west of LOCATION REMOVED and, thus, does not appear to have a view lot. It sold for \$\$\$\$ in September 2017, and has ##### less square feet of above-grade living space than the subject property. However, its basement, unlike the subject's basement, is finished. It is not implausible that this comparable, if adjusted, would have an adjusted sales price that is significantly higher than its \$\$\$\$ sales price.

The taxpayer's unadjusted comparable that was built in 2017 sold for \$\$\$\$ in July 2017. This comparable, like the subject property, has an unfinished basement, is located to the east of LOCATION REMOVED, and has a view lot. For these reasons and because of its new age, this comparable appears to be more similar to the subject property than any of the taxpayer's other unadjusted comparable sales. Nevertheless, this comparable appears to be inferior to the subject property for a number of reasons. First, it has ##### less square feet of above-grade living space than the subject property. The County estimates the value of above-grade living space to be approximately \$60 per square foot, which would require an upward adjustment of \$\$\$\$ (##### square feet times \$60 per square foot) to this comparable's sales price. In addition, the comparable only has a #####-acre lot, whereas the subject has a #####-acre lot, which the County

estimates would require an upward adjustment in excess of \$\$\$\$\$. Finally, unlike the subject property, the comparable does not have an additional ##### square feet of unfinished storage space, which would also require an upward adjustment that the County has estimated to be in excess of \$\$\$\$\$.

If the upward adjustments discussed in the prior paragraph are applied to the 2017-built comparable's sales price of \$\$\$\$\$, they result in an adjusted sales price of approximately \$\$\$\$\$ for the comparable, which suggests that a value of less than \$\$\$\$\$ that the taxpayer is proposing for the subject property is too low. The Commission also notes that the three homes in the taxpayers' CMA report that were built between 2005 and 2010 sold for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. Based on this information, the taxpayer's evidence suggests that \$\$\$\$\$ (the highest value at which one of the taxpayer's comparables sold) may be a reasonable estimate of the subject's 2017 value. However, before the Commission makes a final determination of the subject's value, the County's evidence should also be analyzed.

County's Evidence. To estimate the subject's value, the County proffered an unsigned appraisal in which the subject's value, as of the January 1, 2017 lien date, is estimated to be \$\$\$\$\$. The County's appraisal was prepared by REPRESENTATIVE FOR RESPONDENT-2, an appraiser in the County Assessor's Office. In the appraisal, the subject property is compared to five comparables that sold between February 2016 and April 2017 for prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

In the County's appraisal, the County's five comparables are adjusted to adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. However, REPRESENTATIVE FOR RESPONDENT-2, who prepared the appraisal, did not make most of these adjustments. Almost all of the adjustments were made by the County's mass appraisal regression computer program (the County's "mass appraisal computer program"), which the County also uses to assess all residential properties located in the County. REPRESENTATIVE FOR RESPONDENT-2 stated that he did make one of the adjustments found in the appraisal, specifically the

adjustments for differences in garage space, because he believes that the County's mass appraisal computer program does not accurately adjust this feature.

Based on the adjusted sales prices that were primarily derived by the County's mass appraisal computer program and which ranged from \$\$\$\$\$ to \$\$\$\$\$, REPRESENTATIVE FOR RESPONDENT-2 estimated the subject's value, as of the 2017 lien date, to be \$\$\$\$\$ (i.e. near the bottom of the adjusted sales price range). The County, however, does not ask the Commission to increase the subject's current value of \$\$\$\$\$ to \$\$\$\$\$. Instead, the County asks the Commission to sustain the subject's current value of \$\$\$\$\$ and proffers its appraisal in support of this value.

The Commission, however, is not convinced that the adjusted sales prices that were primarily estimated by the County's mass appraisal computer program and which range from \$\$\$\$\$ to \$\$\$\$\$ are accurate reflections of the subject's 2017 value, especially where none of the comparables that either party proffered sold above \$\$\$\$\$ and where the County admitted at the hearing that it is not aware of any home in CITY-1 selling for more than \$\$\$\$\$ within a year of the 2017 lien date. Furthermore, the County admits that its mass appraisal computer program does not accurately estimate the "fair market value" of every residential property. This admission leads the Commission to also believe that not all adjustments made to comparable sales by the County's mass appraisal computer program sales are accurate, especially where REPRESENTATIVE FOR RESPONDENT-2 himself proffered that he changed one of the program's adjustments because he did not believe it to be accurate.<sup>2</sup>

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2 In this case, the County has essentially proffered a value derived by its mass appraisal computer program to support its proposed value. The Commission has never found that values derived with a county's mass appraisal computer program are *always* correct. The Commission has found that counties' mass appraisal computer systems are useful tools with which to assess the many thousands of residential properties that some counties must assess each year. In addition, the Commission has no reason to believe that the County's mass appraisal computer program does not produce reasonable estimates of value for a vast majority of homes for which it derives value estimates. However, the Commission does not believe that any mass appraisal methodology, including the County's mass appraisal computer program, derives a correct value 100% of the

The Commission notes that the use of the County's mass appraisal computer program to primarily adjust the County's five comparables results in adjusted sales prices that are significantly higher than the comparables' sales prices (i.e., the comparables' adjusted sales prices are as much as 62% higher than the comparables' sales prices). This, alone, is suspect. However, when the Commission looks at the individual adjustments that the County's mass appraisal computer program made to the County's comparables, two of the adjustments stand out, specifically the adjustments for "quality grade" and "condition." These two adjustments can be best analyzed by reviewing the one comparable that was adjusted in both the taxpayer's CMA report and in the County's appraisal.

The comparable adjusted in both the CMA report and the County's appraisal is located at ADDRESS-2 in CITY-1, Utah, which is approximately ##### miles away from the subject property. This comparable was built in 2005 and sold for \$\$\$\$\$ in April 2017. Its \$\$\$\$\$ sales price, however, was adjusted to adjusted sales prices of \$\$\$\$\$ in the taxpayer's CMA report and \$\$\$\$\$ in the County's appraisal. The difference between these adjusted sales prices is \$\$\$\$\$ (\$\$\$\$\$ minus \$\$\$\$\$). Approximately 75% of this difference relates to the taxpayer's CMA report not adjusting for differences in "quality grade" and "condition" and the County's mass appraisal computer program adjusting for differences in "quality grade" at \$\$\$\$\$ and "condition" at \$\$\$\$\$.

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time (even if all factors in the County's records are correct). The County has not convinced the Commission that its mass appraisal computer program will not produce some "outlier" values that are not representative of "fair market value."

For these reasons, *in the appeals process*, the Commission is not determining whether a county's mass appraisal methodology does a good job at estimating the values of most properties. Instead, the Commission is looking at the property under appeal on an *individual* basis to determine whether its mass appraisal value is an "outlier." For a residential property, the best evidence to determine whether its *individual* value is correct is generally with detailed market or sales comparison information; not by showing that the value it proposes is supported by a value that was produced by a mass appraisal computer system that does a good job at estimating the values of most properties.

The County's mass appraisal computer program adjusted the difference in "quality grade" at \$\$\$\$\$, even though the "quality grades" of the subject and the comparable (as designated by County appraisers and found in County records) are almost the same. While the subject's "quality grade" is listed in County records as "very good," the comparable's "quality grade" is listed as "good plus" (which appears to be only slightly lower than the subject's "quality grade"). No information was provided to show that the "quality grade" of each of these properties, as found in County records, is correct. Regardless, the County indicates that it cannot show that the \$\$\$\$\$ adjustment that its mass appraisal computer program made for two homes whose "quality grades" were so similar was correct. REPRESENTATIVE FOR RESPONDENT-1 even admitted that the "quality grade" adjustments that the County's mass appraisal computer program made to its five comparables (which ranged between \$\$\$\$\$ and \$\$\$\$\$) "could be smaller."<sup>3</sup> For these reasons, the Commission finds at least some of the adjustments that the County's mass appraisal computer program made in the County's appraisal to be suspect, which leads to the County's appraisal also being suspect.

As a result, the taxpayer's CMA report and the County's appraisal is both suspect. In addition, the taxpayer has not met his burden of proof to show that the subject's 2017 value is an amount that is less than \$\$\$\$\$. For reasons explained earlier, when adjustments are made to the taxpayer's unadjusted comparable that is most similar to the subject property; it results in an adjusted sales price of approximately \$\$\$\$\$. However, where no comparable that either party proffered sold for a value higher than \$\$\$\$\$ and where the County indicates that it is not aware of any home in CITY-1 selling for more than \$\$\$\$\$ within a year of the lien date,

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3 This is not the only adjustment that the County's mass appraisal computer program made that is questionable. Earlier, the Commission notes that REPRESENTATIVE FOR RESPONDENT-2 did not believe that the mass appraisal computer program made reasonable adjustments for differences in garage space. Furthermore, REPRESENTATIVE FOR RESPONDENT-1 admitted that he found it odd that the County's mass appraisal computer program adjusted differences in basement square footage at \$24 per square foot, while it adjusted differences in basement finish at a lower amount of \$22 per square foot. REPRESENTATIVE FOR RESPONDENT-1 indicated that differences in basement finish are usually adjusted at higher rates, not lower rates, than differences in basement square footage.

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the Commission finds that there is little, if any, convincing evidence to support the subject's current value of \$\$\$\$\$. As a result, the Commission finds that the evidence is sufficient to show that the subject's current value of \$\$\$\$\$ is incorrect and that \$\$\$\$\$ would be a reasonable estimate of the subject's value as of the January 1, 2017 lien date. For these reasons, the subject's 2017 value should be reduced from \$\$\$\$\$ to \$\$\$\$\$.

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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  
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