

18-517
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 02/21/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<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>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 18-517</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2017</p> <p>Judge: Phan</p>
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Presiding:

Rebecca L. Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Appraiser, COUNTY
REPRESENTATIVE FOR RESPONDENT-2, Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 7, 2018, in accordance with Utah Code §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. Petitioner ("Property Owner") has filed an appeal of the decision issued by the County Board of Equalization regarding the assessed value of the subject property for the lien date January 1, 2017.
2. The County Assessor had originally assessed the subject property as of the lien date at \$\$\$\$\$. The Property Owner had appealed to the County Board of Equalization ("County") and the County reduced the value to \$\$\$\$\$. At the hearing, the Property Owner asked for a reduction to \$\$\$\$\$. The County asked that the value remain as set at \$\$\$\$\$.
3. The subject property, parcel no. #####, is located at ADDRESS-1 in CITY, Utah.

4. The subject property is .28 acres of land and is improved with a single family residence. The residence is a Bi-Level/Split that was constructed in 1972. The County has the overall condition and grade of the subject as average. The residence has ##### square feet above grade and a basement of ##### square feet, which the County considers to be finished. There is an attached ##### square foot garage.

5. Although the subject fronts onto STREET-1, which is a low traffic street, the subject is located on the corner of STREET-1 and STREET-2. The traffic on STREET-2 is heavier than the typical residential streets and the County considers the traffic to negatively impact that value. The County has made a traffic adjustment in its value.

6. The Property Owner testified at the hearing that the residence had been a build it yourself type project, constructed by the original owner who was not a building contractor. He testified that the residence was not constructed to code and there are significant problems with the sewer, plumbing and electrical. He indicated the house has been flooded twice by the plumbing issues and there is mold. He stated that the best thing to do would be to tear down the house and start over. He also indicates there are problems with the roof, there is no fascia on the house and there are no proper soffits or place to attach rain gutters, so there are no rain gutters. In his written explanation submitted as appeal evidence, he stated, "overall it would take \$\$\$\$\$ to bring this house up to code."¹ The one thing that the Property Owner acknowledges had been constructed correctly was the brickwork on the exterior. The exterior walls of the subject property are brick.

7. Although the Property Owner had testified about the poor construction and condition of the residence, most of which would only be visible on the interior of the residence, he had refused to allow appraisers from the County Assessor's Office to inspect the interior of the residence. At the hearing, he testified he refused because he thought they might condemn the property and expressed other concerns with what the County would do with the information. The Property Owner did not submit as evidence at the hearing photographs of the interior of the property. He also did not submit bids for the costs of repairs.

8. The Property Owner had purchased the property on November 9, 2012 for \$\$\$\$\$ and provided a copy of the Settlement Statement.² He testified that the property was not listed for sale over the multiple listing service and was a private sale. He testified that he had found out about the prior owner wanting to sell the property from the handyman who had been working on the property for the prior owner.

¹ Petitioner's Exhibit 1, Handwritten Statement pg. 3.

² Petitioner's Exhibit 1.

9. The Property Owner argued the value for the subject should be reduced to \$\$\$\$\$, based on a mathematical analysis looking at his purchase price in 2012 and the average market increases each year from the time of purchase up to the lien date in this appeal. He had looked at data published by the NEWSPAPER that was specific to his CITY zip code.³ He also explained that after he had purchased the property in 2012, the assessed value had increased at roughly 4.5% each year to 2016, which he felt had been reasonable based on market appreciation. Then it jumped 35% between 2016 and 2017. He testified that when he asked the County about the big jump, he was told by the clerk at the front desk that the County had upgraded the grade and condition of the residence from fair to average.

10. The representatives for the County testified at the hearing that although the subject residence was the newest residence as far as date of construction compared to the 8 properties on STREET-1, it was the lowest valued of the eight properties on that street. The County provided the values for each of the other residences on STREET-1 and they ranged from \$\$\$\$\$ to \$\$\$\$\$.⁴

11. The County also testified that the subject property had been reappraised for 2017 and the effective age had been increased. However, the County testified that the property had been listed as average grade and average condition for years, so that had not been changed for 2017.

12. The County representatives testified that the Property Owner’s purchase of the subject property in 2012 was not a sale that had been listed on the open market and was a private-transaction, so it was the County’s position that it may have been a below market sale in 2012. The County argued as the sale was likely below market in 2012, trending it up based on average market appreciation would still result in a below market value.

13. The County’s representatives testified that they had tried to meet with the Property Owner to inspect the interior of the subject property and had been denied entry to the subject. For this reason, they were not able to determine what the interior grades and conditions were.

14. The County supported its value of \$\$\$\$\$ based on sales comparables. The County had run the sales through its Prognose system, which makes appraisal adjustments for differences between the subject property and the comparables. These comparables had all sold relatively near the lien date and were located less than one mile from the subject. The County’s comparables were the following:

Address	Sale Price	Above Grade	Basement/ Finished	Year Built	Lot Size	Sale Adjusted Value
Subject: ADDRESS-1		1072	#####	1972	.28	
ADDRESS-2	\$\$\$\$\$	1128	#####	1961	.23	\$\$\$\$\$

³ Petitioner’s Exhibit 1 & Petitioner’s Exhibit 2.

⁴ Respondent’s Exhibit 1.

ADDRESS-3	\$\$\$\$\$	1166	#####	1960	.18	\$\$\$\$\$
ADDRESS-4	\$\$\$\$\$	1032	#####	1957	.20	\$\$\$\$\$

15. After reviewing the evidence submitted in this matter, and noting that the Property Owner has a two-fold burden to show error in the value set by the County Board and provide an evidentiary basis to support a new value, the Property Owner failed to meet this burden. The Property Owner is arguing issues with the grade and condition, that plumbing, sewer and electrical are not up to code and have numerous problems, that there has been flooding and there is mold. However, the Property Owner has refused to allow appraisers from the County inside the residence. Additionally the Property Owner has not provided other supportive evidence like dated photographs of the interior or bids for repairs. Because of this, he has failed to support his arguments regarding the interior condition and grade. The County has assigned an average grade and average condition based on inspection of the exterior and no adjustment should be made for condition based on the evidence presented at the hearing.

16. The Property Owner’s purchase in 2012 was a private transaction. There was not reasonable market exposure with a market listing. For that reason, the 2012 purchase price may not have been a purchase at fair market value. Since the purchase price may have been below market, trending the purchase price up to the 2017 value, as the Property Owner has done, is less reliable for determining the 2017 value than looking at market comparable sales that occurred near the lien date at issue in this appeal and making appraisal adjustments, which is what the County has done in this matter. The County’s market value evidence supports the value set by the County Board of Equalization and the value should remain 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.

CONCLUSIONS OF LAW

1. 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 46, 5 P.3d 652 (Utah 2000). The Property Owner has not met this burden and the value should remain as set by the County Board of Equalization.

2. An issue argued by the Property Owner in this appeal was that the County's grade and condition for the subject residence was too high, that the grade and condition were worse than average. The Property Owner also asserted that most of the problems with the residence were not visible from the exterior of the property. However, the Property Owner refused to allow the County inside the residence and did not submit as evidence photographs, bids or other evidence regarding the damage and problems to the interior. The Tax Commission has previously considered the issue of whether a property owner could argue about the interior condition or grade after having denied the County access to inspect the interior of the residence. In *Utah State Tax Commission, Appeal Nos. 04-1218* (11/3/2006) and *06-0973* (4/26/2007) the Tax Commission issued two Orders Granting Rule 34(b)(1) Requests in which the Commission concluded that the interior grade and condition was directly relevant to the fair market value and, therefore, discoverable in a property tax appeal. The Tax Commission ordered the property owner involved in those appeals to allow the County appraisers inside the residence, but concluded if she refused, the Tax Commission would not allow her to present any argument or evidence regarding the grade and condition of the interior of her residence. The same principles should be applied in this matter, although the County had not filed a Motion to enter the property prior to this hearing. In this case, the Property Owner is arguing the County should adjust for grade and condition, but has refused to allow the County access to see the grade and condition. The Property Owner's argument is not persuasive.

The value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property as of January 1, 2017, is \$\$\$\$\$. 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

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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.