

18-2289

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2018

DATE SIGNED: 2/3/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 18-2289 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2018 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, Taxpayer

Respondent: RESPONDENT-1, for the County
 RESPONDENT-2, for the County

STATEMENT OF THE CASE

The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of Davis County (the "County"). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on November 20, 2019. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2018. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization sustained the value.

At the hearing, the Taxpayer requested that the value be reduced to \$\$\$\$\$. The County requested that the value set by the board of equalization be sustained.

APPLICABLE LAW

All 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. Utah Code Ann. §59-2-103 (1).

“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. Utah Code Ann. §59-2-102(13).

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

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 is parcel no. #####, located at SUBJECT ADDRESS in CITY-1, Utah. It consists of a #####-acre lot improved with a 2-story style residence. The residence was ##### years old as of the lien date and built of average plus quality of construction. It has #####-square feet above grade and an unfinished basement of #####-square feet. In addition to the #####-square feet of basement, the basement also has an area of #####-square feet with a roll-up door that could be categorized as a third garage stall or as additional unfinished basement space. The basement for the subject property is a walk

out basement that is on grade at the back of the house. Thus, while access to the #####-square feet of basement area is not as accessible as the two-car garage on the front of the house, it is accessible from the back yard. The Taxpayer indicated that he uses the space for garden tools and supplies. In addition to the #####-square feet with a garage door on the back of the house, there is an attached 2-car garage with #####-square feet. The County considered the residence to be in average condition.

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Taxpayer provided a discussion of an increase in assessed value from \$\$\$\$ in 2017 to \$\$\$\$ in 2018. He calculated that this was a 27% increase in value that showed error in the 2018 value.

The Taxpayer argued that County records indicated a total of four bathrooms when the subject property only had 2.75 baths. The County did not have County records available to it at the Initial Hearing, but indicated that it had completed its appraisal of the subject property based on 3.5 baths. For purposes of the Initial Hearing, the County agreed not to dispute the Taxpayer's indication of 2.75 baths. Based on this, the County's representatives recalculated its appraisal as described later in this decision.

The Taxpayer argued that the County incorrectly categorized the #####-square feet with the garage door in the basement of the subject property as garage space. The Taxpayer argues that the correct categorization for this space is unfinished basement. The County agreed that it could deduct this space from its calculation of garage space, but would then have to add #####-square feet back as basement square footage.

The Taxpayer presented a comparative market analysis based on the sales of 15 comparable two-story properties with sale dates from September 2017 to April 2018 and sale prices from \$\$\$\$ to \$\$\$\$. The Taxpayer calculated an average for the total square footage of the 15 comparable properties, including above grade and below grade areas, as 3,864 square feet. The Taxpayer calculated an average selling price of the 15 comparable properties of \$\$\$\$. The Taxpayer used these figures to calculate an average selling

price per total square foot (rounded) of \$\$\$\$\$. Of the Taxpayer's 15 comparable sales, the lowest value per total square foot was \$81; the highest was \$\$\$\$\$ per total square foot.

The Taxpayer presented an additional sale of a two-story property two blocks away from the subject property with a .38-acre lot that sold in April 2018 for \$\$\$\$\$. The home on this property had a total of 4,090 square feet including basement area. Using these figures, the Taxpayer calculated a selling price of \$\$\$\$\$ per square foot. The Taxpayer explained that he did not include the April 2018 sale in his comparative market analysis because it was not listed on the multiple listing service. The Taxpayer provided a closing statement for the April 2018 sale, listing NAME-1 as the seller. The closing statement indicated no costs for title work. It likewise did not indicate any mortgage involvement in the sale. The Taxpayer also provided a printout for the same property from UtahRealEstate.com. That printout listed the buyer as NAME-1.

The Taxpayer indicated that the comparable sale with the selling price of \$\$\$\$\$ per square foot showed that, if anything, the Taxpayer's requested value of \$\$\$\$\$ was higher than the sale price per total square foot of a comparable property.

The County provided an appraisal, prepared by RESPONDENT-2. At the time he prepared the appraisal, the appraiser concluded that the value of the subject property as of the lien date at issue was \$\$\$\$\$. After making an adjustment for a County error in bathroom count, the appraiser revised his opinion of value to \$\$\$\$\$. Although both of these figures were more than the \$\$\$\$\$ board of equalization value, the County did not request an increase in value from the board of equalization value.

The appraiser relied on the sales of four two-story comparable properties with sale dates from May 2017 to September 2017 and sale prices from \$\$\$\$\$ to \$\$\$\$\$. The appraiser made adjustments to account for differences between the subject property and the comparable properties for factors such as lot size, construction quality, condition, home size, number of bathrooms, garage size, and basement finish. The appraiser explained that his adjustment amounts were made on the basis of studies of sales such as paired

sales analysis. After these adjustments, the comparable properties indicated values for the subject property from \$\$\$\$\$ to \$\$\$\$\$. The appraiser reconciled these indications of value to a final \$\$\$\$\$ opinion of value as of the date he prepared his report.

At the Initial Hearing, the appraiser indicated that he adjusted for bathroom differences at a rate of \$\$\$\$\$ per full bath. Because the County accepted the Taxpayer's representation that the subject property had 2.75 baths rather than the 3.5 baths indicated in the County's appraisal report, the appraiser multiplied the .75-bath difference by \$\$\$\$\$ to arrive at a \$\$\$\$\$ correction. Deducting that \$\$\$\$\$ correction from the \$\$\$\$\$ amount of the original appraisal, the appraiser arrived at a revised \$\$\$\$\$ opinion of value.

The appraiser indicated that he adjusted for differences in unfinished basement area at \$\$\$\$\$ per square foot and differences of garage area at \$\$\$\$\$ per square foot. He used these figures to explain that treating #####-square feet of space as basement or garage would, under his analysis, indicate a value difference of \$\$\$\$\$ per square foot. For the #####-square foot area that the Taxpayer disputed, this difference of \$\$\$\$\$ per square foot would amount to a difference of \$\$\$\$\$. The appraiser did not consider this a significant enough difference to alter an appraisal. He argued that, if anything, a feature such as an outside accessible storage area in a basement could add value.

The appraiser indicated that he did not include the Taxpayer's April 2018 sale for \$\$\$\$\$ for several reasons, including its sale date more than four months after the lien date, concerns about adequate market exposure without being listed on the multiple listing service, and his inability to confirm the sale as a sale with normal market motivation on the part of buyer and seller.

The appraiser indicated that his methodology of adjustment for separate factors influencing value was both more accurate and more widely used in real estate appraising than the Taxpayer's methodology of using a straight line basis using the single factor of sale price per total square foot. He indicated that the Taxpayer's straight line calculation methodology had the effect of treating unfinished basement the same as above-grade living area when, in fact, these areas have substantially different values in the market.

The Taxpayer responded to the County's presentation by stating that realtors commonly use sale price per total square foot as a method to compare properties. Under questioning from the County's representative, however, he admitted that appraisers typically use the methodology used by the County's appraiser. The Taxpayer argued that his April 2018 sale was fully valid and a good indicator of market value.

The Commission reviews the information presented in light of the burden of proof on the Taxpayer, as the person requesting a change from the board of equalization value, to: 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). The Commission first considers the Taxpayer's argument regarding a 27% increase in assessed value from 2017 to 2018. The Taxpayer argued that the 27% increase shows error in the 2018 value. A 27% increase in assessed value from one year to the next, however, may result from at least three distinct possibilities: First, that value did increase by 27% for a given type of property in the market; second, that the second year's assessed value was too high; and third, that the first year's assessed value was too low. Without more, the evidence does not give the Commission a basis to determine the reason for the value increase without speculation. The Commission will not base a determination on speculation. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354, 1356 (Utah 1997) (sound evidentiary basis required for value other than that determined by board of equalization).

The Taxpayer raised a valid point about an error in the County's bathroom count. However, the County demonstrated that even after making a deduction to correct this error, the County's appraisal is still

higher than the board of equalization value. Similarly, the County provided persuasive information to show that characterizing #####-square feet as basement or garage makes little, if any, difference in value.

The Taxpayer's April 2018 sale at \$\$\$\$\$, for which the Taxpayer calculated a sale price of \$\$\$\$\$ per square foot, is not persuasive. The Taxpayer's own documentation lists the same person as buyer and seller. There is no indication of title work or a mortgage associated with this sale. The transaction was never listed on multiple listing services. The sale price of \$\$\$\$\$ per square foot is substantially lower than even the lowest sale price per total square foot that the Taxpayer presented as a broader market. This sale is, at best, an outlier rather than a sale supported by the broader market.

By the Taxpayer's own methodology, an average sale price of \$\$\$\$\$ per total square foot would indicate a value for the subject property of \$\$\$\$\$ for #####-total square feet (#####-square feet above grade plus #####-square feet of basement area and considering #####-additional feet as garage). It would indicate a value for the subject property of \$\$\$\$\$¹ for #####-total square feet (#####-square feet above grade plus #####-square feet of basement including #####-square feet as basement area rather than as garage). Both of these are higher than the \$\$\$\$\$ board of equalization value.

The County's appraisal is credible and shows that, if anything, the board of equalization value could be higher than its 2018 value of \$\$\$\$\$. However, for purposes of the Initial Hearing, the County did not request an increase in value. The information presented, taken as a whole, supports a conclusion that the Taxpayer has not met the burden of proof to show error in the \$\$\$\$\$ board of equalization value for the 2018 tax year.

Clinton Jensen
Administrative Law Judge

¹ That characterization of #####-square feet as basement or garage would cause a value swing of over \$\$\$\$\$ tends to show the flaw in the Taxpayer's adjustment methodology. However, because even the Taxpayer's own methodology indicates a value in excess of the board of equalization value, the Commission need not further address differences in the parties' adjustment methodologies.

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2018 is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner