

19-133
TAX TYPE: PROPERTY TAX
TAX YEAR: 2018
DATE SIGNED: 07/12/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 19-133 Parcel No. SUBJECT PARCEL Tax Type: Property Tax / Locally Assessed Tax Year: 2018 Judge: Chapman
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Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, Taxpayer
NAME-1, Taxpayer's Wife
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

PETITIONER ("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 April 24, 2019.

At issue is the fair market value of the subject property as of January 1, 2018.¹ The subject is a single-family residence located at SUBJECT ADDRESS in COUNTY, Utah. The home was under construction as of

¹ The subject property received the residential exemption from property taxation (as set forth in Utah Code Ann. §59-2-103(2)) for the 2018 tax year, which was not contested. The only issue raised at the Initial Hearing is the subject's fair market value for the 2018 tax year.

the lien date. The County BOE sustained the \$\$\$\$ value at which the subject was assessed for the 2018 tax year. The taxpayer asks the Commission to reduce the subject's current 2018 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 §59-2-1006 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.

....

4. Utah Admin. Rule R884-24P-20 (“Rule 20”) provides guidance on valuing real property that is under construction as of the lien date, as follows in pertinent part:

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.
2. Project means any undertaking involving construction, expansion or modernization.
.....
6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. . . .
.....
9. Residential means single-family residences and duplex apartments.
10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. . . .

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates.

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

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E. Appraisal of Properties not Valued under the Unit Method.

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2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- a) The full cash value of the project expected upon completion.
- b) The expected date of functional completion of the project currently under construction.
 - (1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.
- c) The percent of the project completed as of the lien date.
 - (1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:
 - (a) 10 - Excavation-foundation
 - (b) 30 - Rough lumber, rough labor
 - (c) 50 - Roofing, rough plumbing, rough electrical, heating
 - (d) 65 - Insulation, drywall, exterior finish
 - (e) 75 - Finish lumber, finish labor, painting
 - (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical
 - (g) 100 - Floor covering, appliances, exterior concrete, misc.

.....

3. Upon determination of the . . . full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion;

....

c) adjust the resulting product of E.3.a) . . . for the expected time of completion using the discount rate determined under C.

....

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 consists of a #####-acre lot and a home that was under construction as of January 1, 2018, the lien date at issue. Construction on the subject's home began in 2014 or 2015 and still continues as of the hearing date.² The home has ##### square feet of "above-grade space," a basement that is ##### square feet in size, and a two-car garage. The County assessed the subject property a 2018 fair market value of \$\$\$\$\$, which is the sum of a \$\$\$\$\$ land value and a \$\$\$\$\$ improvements value.

At the Initial Hearing, the County did not know how it derived the \$\$\$\$\$ assessed value or the \$\$\$\$\$ improvements value, with the exception of stating that these values were based on the County's determination that the subject's improvements were 50% complete as of the January 1, 2018 lien date. For example, the County was asked what value of the subject property upon completion was used to derive the subject's 2018

² The taxpayer explained that he has had at least two different contractors work on the home and that some of the work that has been completed has not passed inspection and must be redone. The taxpayer did not estimate when he expects the subject home to be completed, nor did the County provide an expected date of

assessed value, and the County indicated that it did not know. As a result, it appears that after the County estimated that the subject's improvements were 50% complete as of the 2018 lien date, the County may have entered this percentage into a computer program that derived the subject property's current value of \$\$\$\$\$. The County did not show otherwise. Regardless, the County asks the Commission to find that the subject's home was 50% complete as of the 2018 lien date and to sustain the \$\$\$\$\$ value at which the subject property was assessed and which the County BOE sustained.

While the taxpayer did not contest the \$\$\$\$\$ land value that is a component of the subject's total 2018 value of \$\$\$\$\$, the taxpayer did contest the total value of \$\$\$\$\$, the improvements value of \$\$\$\$\$, and the County's estimate that the home was 50% complete as of the 2018 lien date. The taxpayer explained that as of the 2018 lien date, he has only spent \$\$\$\$\$ on the subject's home, which is less than half of the subject's 2018 improvements value of \$\$\$\$\$. In addition, the taxpayer explained that the subject's home was determined to be 30% complete as of the 2017 lien date (one year prior to the lien date at issue in the instant appeal), which resulted in a total 2017 assessed value of \$\$\$\$\$. While the taxpayer admits that he spent approximately \$\$\$\$\$ on the construction of the subject's home between the 2017 and 2018 lien dates, he contends that the subject's home is not 50% complete and that its total 2018 value should be no more than its total 2017 value. For these reasons, the taxpayer asks the Commission to reduce the subject's total 2018 value to \$\$\$\$\$ (which would result in a 2018 improvements value of \$\$\$\$\$, once the land value of \$\$\$\$\$ is subtracted from the proposed total value of \$\$\$\$\$).

Guidance for determining the improvements value of a residential property that is under construction as of the lien date is provided in Rule 20. To determine the value of the improvements, Rule 20(E)(3)(a) provides that the "percent of the residential project completed" is to be multiplied by the "total full cash value of the residential project under completion." As a result, from the evidence the parties proffered at the Initial completion for the project.

Hearing, the Commission must determine not only the percentage of completion of the subject's improvements as of the 2018 lien date, but also the full cash value of the subject's improvements upon completion.³

Percentage of Completion. The County contends that the subject's home was 50% complete as of the 2018 lien date, while the taxpayer contends that the completion percentage as of this date was less than 50%. Rule 20(E)(2)(c) provides that "[d]etermination of percent of completion for residential properties shall be based on the following percentage of completion:"

- (a) 10 - Excavation-foundation
- (b) 30 - Rough lumber, rough labor
- (c) 50 - Roofing, rough plumbing, rough electrical, heating
- (d) 65 - Insulation, drywall, exterior finish
- (e) 75 - Finish lumber, finish labor, painting
- (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical
- (g) 100 - Floor covering, appliances, exterior concrete, misc.

To show what was and was not complete in the subject's home as of the 2018 lien date, the taxpayer proffered photographs, and he and his wife proffered testimony. From this information, it appears that prior to January 1, 2018, the following items were either completed in full or in part (as described):

- 1) the excavation and foundation work were fully completed;
- 2) the rough lumber and rough labor were fully completed;
- 3) the interior stud walls were fully completed;
- 4) the brick and stucco exterior walls were partially completed (while the brick portion of the exterior walls was complete, the stucco portion of the exterior walls was not complete);
- 5) plywood had been installed on the floors of the above-grade areas, while concrete had been poured for the basement's floors;
- 6) the roof and solar panels on the roof had been installed (however, it was known on the 2018 lien date that parts of the roof would need to be replaced because of improper installation);
- 7) the rough plumbing was complete (with the exception of the rough plumbing to one bathroom, to a sink in the garage, and to that portion of the kitchen where the refrigerator will be located);

³ When using Rule 20 to determine the value of homes under construction, the Commission, historically, has considered a property's "full cash value" to be equivalent to its "fair market value." See, e.g., *USTC Appeal No. 13-2326* (Initial Hearing Order Mar. 2, 2015); *USTC Appeal No. 09-1757* (Initial Hearing Order Dec. 23, 2009); and *USTC Appeal No. 10-1397* (Initial Hearing Order Dec. 30, 2010). Copies of these and other selected decisions can be viewed in a redacted format on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

- 8) the radiant heating tubes had been installed in the basement's concrete floors (but were not yet connected to a water source), while the warmboard radiant heating had not yet been installed in the above-grade area;
- 9) electrical panels had been installed inside the home (but wires from the panels and through the walls to the different rooms had not been installed);
- 10) windows had been installed (but not exterior doors or garage doors); and
- 11) insulation and sheetrock had only been installed on one wall of one room (specifically on one wall of the furnace room in the basement so that pipes associated with the property's sprinkler system would not freeze).

Rule 20(E)(2)(c)(1)(b) provides that a residential property is considered to be 30% complete if the "rough lumber" and "rough labor" are finished. As of the January 1, 2018 lien date, the "rough lumber" and "rough labor" were finished, as were portions of items listed in Rule 20(E)(2)(c)(1)(c) (50% complete) and (d) (65% complete). As a result, it is clear that the home's percentage of completion, as of the 2018 lien date, was greater than 30%. On the other hand, none of the items listed in Rule 20(E)(2)(c)(1)(e) (75% complete), (f) (90% complete), and (g) (100% complete) were finished, and a majority of the items listed in Rule 20(E)(2)(c)(1)(d) (65% complete) had not been completed as of January 1, 2018. Of the items listed in Rule 20(E)(2)(c)(1)(d), only a de minimis portion of the "insulation" and "drywall" had been installed, and only about half of the "exterior finish" had been completed. As a result, it is also clear that the home's percentage of completion, as of the 2018 lien date, was less than 65%.

The 50% percentage of completion that the County used to assess the subject property for 2018 is higher than 30% and lower than 65%. However, all of the items listed in Rule 20(E)(2)(c)(1)(c) (50% complete) were not finished as of the 2018 lien date. Specifically, as of the 2018 lien date, it was known that more work was needed for the roof, very little of the rough electrical had been installed, and only about half of the heating had been installed. As a result, if none of the items listed in Rule 20(E)(2)(c)(1)(d) (65% complete) had been installed, it would appear that the subject's home would have been about 40% complete as of the 2018 lien date (i.e., that about half of all items listed in Rule 20(E)(2)(c)(1)(c) had been completed and that about half of these items had not been completed).

However, about half of the home's "exterior finish," which is one of three items listed in Rule 20(E)(2)(c)(1)(d) (65% complete), had been installed as of January 1, 2018 (specifically the brick portion of the exterior and the windows had been installed). The Commission does not consider the completion of half of one of the three items listed in Rule 20(E)(2)(c)(1)(d) (65% complete) to completely offset the half of all items listed in Rule 20(E)(2)(c)(1)(c) (50% complete) that had not been completed. For these reasons, the Commission concludes that the subject's home was 45% complete as of the 2018 lien date.⁴

Value of Subject's Home upon Completion. As mentioned earlier, the County did not know what value of the subject's home upon completion was used to derive either the subject's 2018 improvements value of \$\$\$\$\$ or the subject's total assessed value of \$\$\$\$\$.⁵ At the hearing, the taxpayer suggested that the total value of the subject property upon completion would be somewhere in between \$\$\$\$\$ and \$\$\$\$\$. In addition, at the hearing, the County stated that the total value of the subject property upon completion would be in excess of \$\$\$\$\$. To support this conclusion, the County provided a number of comparable sales. It appears that the subject property upon completion will have more square footage than three comparables that sold for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. However, the County also provided some comparables that sold for prices of \$\$\$\$\$ or more and stated in a document that it proffered that "[t]he sale of [the home that sold for \$\$\$\$\$] may be better than the subject at complete." Based on this evidence, the Commission finds that a reasonable estimate of the total value of the subject property upon completion is \$\$\$\$\$.

4 The Commission has historically found that it is not limited to deriving a percentage of completion that is specifically listed in Rule 20(E)(2)(c)(1). *See, e.g., Appeal No. 09-1757* (in which the Commission derived an 80% percentage of completion).

5 These assessed values, however, would suggest a total value upon completion of \$\$\$\$\$. Valuing the improvements that the County determined to be 50% complete at \$\$\$\$\$ would suggest that the value of improvements upon completion would be \$\$\$\$\$ (\$\$\$\$\$ divided by 50%). Adding this \$\$\$\$\$ value of the improvements upon completion to the subject's \$\$\$\$\$ land value would result in a total value upon completion of \$\$\$\$\$.

If the total value of the subject property upon completion is \$\$\$\$\$, the value of the subject's improvements upon completion would be \$\$\$\$\$ (\$\$\$\$\$ minus the subject's \$\$\$\$\$ land value). Applying a 45% percentage of completion to this \$\$\$\$\$ improvements value upon completion would result in a \$\$\$\$\$ value for the subject's improvements as of the 2018 lien date. When this \$\$\$\$\$ improvements value is added to the subject's land value of \$\$\$\$\$, it results in a total value of \$\$\$\$\$ for the subject property as of the 2018 lien date. As a result, pursuant to Rule 20(E)(3)(a), the 2018 value of the uncompleted subject property is \$\$\$\$\$.⁶

Other Arguments. Regardless of what value is derived with Rule 20, the taxpayer contends that the subject's total 2018 value should be no higher than \$\$\$\$\$ because this is the value at which the subject property was assessed for the 2017 tax year and because he had not spent more than \$\$\$\$\$ on the subject's improvements as of January 1, 2018. In prior decisions, the Commission has determined that evidence may be considered to show a value that is different from the value derived under Rule 20.⁷ However, the taxpayer has not shown that the subject's 2018 value should be \$\$\$\$\$. If the subject's land value of \$\$\$\$\$ were to be subtracted from the taxpayer's proposed value of \$\$\$\$\$, the resulting improvements value would be \$\$\$\$\$. This \$\$\$\$\$ improvements value would be less than the \$\$\$\$\$ in costs that the taxpayer stated that he had expended on the subject's home as of the 2018 lien date. In addition, the taxpayer stated that he had spent approximately \$\$\$\$\$ on the subject's home between the 2017 and 2018 lien dates, which suggests that the

6 The Commission notes that pursuant to Rule 20(E)(3)(c), the value derived in accordance with Rule 20(E)(3)(a) is to be adjusted by a discount rate for the expected time of completion. At the hearing, neither party estimated when the subject property would be completed. In addition, neither party suggested that a value derived under Rule 20 would need to be adjusted for time of completion or suggested a discount rate with which such an adjustment should be made. As a result, the Commission finds that the 2018 value of the uncompleted subject property is \$\$\$\$\$, as derived in accordance with Rule 20(E)(3)(a).

7 See, e.g., *USTC Appeal No. 11-881* (Findings of Fact, Conclusions of Law, and Final Decision May 9, 2013), in which the Commission found that "fair market value is controlling if there is evidence that [fair market value] is something different from what would be derived from the formula in [Rule 20]."

subject's 2018 value would be higher than its 2017 value. For these reasons, the taxpayer has not shown that the subject's 2018 value should be reduced to \$\$\$\$\$.

Furthermore, the Commission is not inclined to find that the subject's 2018 value should be \$\$\$\$\$, which is the sum of the \$\$\$\$\$ value of the subject's land and the \$\$\$\$\$ of costs that the taxpayer claims to have spent on the subject's improvements as of the 2018 lien date. First, the taxpayer has provided no documentary evidence to show that he has only spent \$\$\$\$\$ on the subject's improvements as of the 2018 lien date. Second, it appears that the taxpayer has coordinated a significant portion of the work that has been performed on the subject's home. As a result, it would not appear that the actual costs that the taxpayer has expended would include entrepreneurial and/or builder's profits that would typically be reflected in a property's value.⁸ Third, in this case, construction on the subject's home began in 2014 or 2015, several years prior to the 2018 lien date. The taxpayer has not shown that the construction costs expended several years prior to the 2018 lien date would be the same as of the 2018 lien date. For these reasons, the taxpayer has not shown that the subject's fair market value, as of January 1, 2018, would be less than the \$\$\$\$\$ value derived above with Rule 20.

Because the County does not know how the subject's current value of \$\$\$\$\$ was derived, the Commission has no information that would show that this \$\$\$\$\$ value would better reflect the subject's fair market value, as of January 1, 2018, than the \$\$\$\$\$ value derived with Rule 20. For these reasons, the Commission should reduce the fair market value of the subject property from \$\$\$\$\$ to \$\$\$\$\$ for the 2018 tax year.

Kerry R. Chapman
Administrative Law Judge

⁸ When determining the value of a home under construction, the Commission has found actual costs that do not include entrepreneurial and/or builder's profits to be suspect. *See, e.g., USTC Appeal No. 08-2347* (Initial Hearing Order Jun. 29, 2009); *USTC Appeal No. 08-0795* (Initial Hearing Order Jul. 29, 2009); and *USTC Appeal No. 08-2408* (Initial Hearing Order Aug. 19, 2009).

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2018 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner