

09-1957, 09-1958
LOCALLY ASSESSED PROPERTY - COMMERCIAL
TAX YEAR: 2008
SIGNED: 08-18-2011
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal Nos. 09-1957, 09-1958
vs.	Parcel No. Multi
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2008
	Judge: Phan

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 Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 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 order, specifying the commercial information that the taxpayer wants protected .

Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Representative
For Respondent: RESPONDENT REP. 1, Deputy Salt Lake County District Attorney
RESPONDENT REP. 2, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on May 3, 2011. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “Property Owner”) filed an appeal of the Salt Lake County Board of Equalization’s decision regarding the assessed value of the subject parcels for the lien date January 1, 2008.

The matter proceeded to a Formal Hearing before the State Tax Commission.

2. At the Formal Hearing the Property Owner contested the values of (#) parcels located in the PETITIONER Subdivision. This subdivision is located at approximately ADDRESS 1 in CITY 1, Utah. Each of the parcels at issue are improved residential lots that were vacant as of the lien date. The improvements consisted of paved roadway, curb, gutter and utilities to the lots. The lots varied in size from 0.23 of an acre to 0.37, with the average size being 0.26 of an acre. The subdivision was not gated and had no additional amenities.

3. The values set by the County Assessor for each parcel as of the January 1, 2008 lien date, are listed below. The County Board of Equalization reduced the values for each parcel. At the hearing the representatives for the County Board of Equalization (the “County”) requested that the value remain as set by the County Board for each parcel. The Property Owner requests that the value be lowered to either \$\$\$\$ per lot, or to an alternative value listed below that took into consideration the actual lot size. Each parcel at issue at the Formal Hearing, the value set by the Assessor, the Board of Equalization’s adjusted value and the alternative value requested by the Property Owner are listed below.

<u>Parcel No.</u>	<u>Assessed Value</u>	<u>BOE Value</u>	<u>Taxpayer’s Alternative Value</u>
#####-1	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-2	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-3	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-4	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-5	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-6	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-7	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-8	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-9	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-10	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-11	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-12	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-13	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-14	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-15	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-16	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-17	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-18	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-19	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-20	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-21	\$\$\$\$	\$\$\$\$	\$\$\$\$

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#####-22	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-23	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-24	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-25	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-26	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-27	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-28	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-29	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-30	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-31	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-32	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-33	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-34	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-35	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-36	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-37	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-38	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-39	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-40	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-41	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-42	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-43	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-44	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-45	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-46	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-47	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-48	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-49	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-50	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-51	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-52	\$\$\$\$	\$\$\$\$	\$\$\$\$
#####-53	\$\$\$\$	\$\$\$\$	\$\$\$\$

4. At the hearing the representative for the Property Owner argued for the reduced values based on equalization. He submitted a list of 33 residential lots, the size and configuration of the lot and the County's assessed value for each of these lots. Thirty-two of these equalization comparables were located within 2 miles of the subject property. One lot was located further, within 4 miles of the subject properties. These lots average 0.25 of an acre in size and have been valued by the County for the 2008 assessment at prices ranging from \$\$\$\$ to \$\$\$\$\$, or an average of \$\$\$\$\$. It was his position that the values for all the subject lots should be

lowered to the assessed values of these equalization comparables, at either \$\$\$\$ per lot based on the average or to the alternative price that was listed above which was adjusted for the size of the subject lots.

5. The Property Owner had listed on his exhibit¹ that each of his equalization comparables had paved streets in the subdivision and both curb and sidewalk. Therefore, it was his conclusion that each of these lots were improved lots, like the subject parcels. However, at the hearing the Property Owner's representative acknowledged that he had obtained the information about these equalization comparables from the County's tax records which he had researched in 2010. The records did show the assessed value for each of the lots in 2008 and 2009, but would have shown the current condition and finished status of the lots at the time he researched the files.

6. The County provided evidence that one of the Property Owner's equalization comparables, at ADDRESS 2 was actually located in CITY 2, rather than CITY 1. This was the lot that was further in distance from the subject than any of the other lots. The County's witness, RESPONDENT REP. 2, Certified General Appraiser, testified that this lot was in an older area of CITY 2, and not part of a new subdivision. The subject lots were located in a new subdivision.

7. The County also provided evidence and testimony that the remaining 32 equalization parcels were located in one of two subdivisions. All parcels beginning with a parcel number of 260, listed on Petitioner's Exhibit 3, were located in the SUBDIVISION 1. It was the County's position that the value of these lots had been lowered because they were unfinished. The County provided evidence in the form of the Salt Lake County Board of Equalization Hearing Record² that supported the Counties position that the value of some of the lots in the SUBDIVISION 1 had been reduced because they were not finished lots as of January 1, 2008.

8. RESPONDENT REP. 2 also testified that all parcels that began with the number 203 were from the SUBDIVISION 2. The County submitted portions of the Board of Equalization³ hearing record for lots in this subdivision that support the County's position that the value of these lots had been lowered because they were unfinished lots.

9. It was the County's position that the equalization comparables offered by the Property Owner were not actually comparable to the subject. It was the County's contention that there was a difference between

1 Petitioner's Exhibit 3.

2 Respondent's Exhibit 22.

finished and improved residential lots and unfinished lots. The subject lots were all finished lots, while the Property Owner's equalization comparables were unfinished lots.

10. The County asserted that the subject lots were located in Neighborhood Code ##### for the 2008 tax year. The County provided a listing of every residential lot in that neighborhood code.⁴ Although there were lots in this neighborhood code valued around the \$\$\$\$ per lot, these were lots in either the SUBDIVISION 2 or SUBDIVISION 1 that were unfinished. The rest of the lots, which were the overwhelming majority of the lots, had been valued comparable to the subject lots for the lien date at issue.

11. The County's evidence showed that only a small percentage of the residential lots in the neighborhood of the subject lots were valued lower than the subject. Further, the evidence indicated that the lower valued lots were not comparable to the subject lots because they were unfinished, while the subject lots were finished.

12. There is insufficient evidence to make a reduction in value based on equalization because there was no showing that comparable lots were valued less than the subject lots.

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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

"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 a 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. (Utah Code Ann. 59-2-102(12).)

(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

3 Respondent's Exhibit 23.

4 Respondent's Exhibit 25.

appeal with the county auditor within 30 days after the final action of the county board. . . (4) 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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

“Intentional and systematic undervaluation or property may violate the equal protection and due process rights of property owners not granted preferential treatment . . .” (Citations Omitted) “The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.” *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004).

CONCLUSIONS OF LAW

1. Property tax is generally based on the fair market value of the property pursuant to Utah Code Sec. 59-2-102. “Fair market value” is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. However, there is a statutory departure from “fair market value” based on equalization pursuant to Utah Code Sec. 59-2-1006(4). Under those provisions the Tax Commission shall adjust valuation 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.” (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

2. When a property owner is arguing for a reduction based on equalization of property values it is insufficient to show that there are some other parcels in the County that are valued lower. A property owner must show that comparable properties are valued lower and that there are multiple unfairly advantaged properties. See *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004). In this case the Property Owner has not shown the properties that were valued lower than the subject lots were actually comparable. Further, the County has supported its value by providing the values for all the residential

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lots in the neighborhood code and those lots that were comparable finished lots were valued similar to the subject lots.

Considering the applicable law and the evidence submitted at the hearing, the values for all subject lots should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the values set by the County Board of Equalization for the lien date January 1, 2008, for each parcel subject to this appeal. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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