

11-1812  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2010  
SIGNED: 10-19-2012  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 11-1812 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010</p> <p>Judge: Phan</p>
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**Presiding:**

Marc Johnson, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER  
For Respondent: RESPONDENT, Appeals Manager, 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 seq., on August 13, 2012. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER ("Taxpayer") is appealing the assessed value of the subject properties for the lien date January 1, 2010.
2. For the lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization ("County") sustained the value. At the hearing the Taxpayer requests that the value be lowered to \$\$\$\$\$. The County's representative recommended a reduction in value to \$\$\$\$\$.
3. The property at issue is Parcel No. #####, located at ADDRESS 1, Utah. PORTION REMOVED.

4. The property consists of #####-acres of land that is zoned R-C, regional commercial. The subject parcel has only ##### feet of frontage on PROPERTY 1, with a narrow and long configuration. It is an interior parcel. This property currently has ##### buildings working back from PROPERTY 1, with only the first building fronting PROPERTY 1. The building at the front of the property is a residence that is being leased and used by a tenant as a primary residence. The second building is an uninhabitable residence and is used for storage. The County attributed \$\$\$\$ in value to the front residence and \$\$\$\$ to the second residence. The County gave the primary residential exemption to the value it attributed to these two improvements and ##### acres of the land. Behind the residences are two commercial buildings which are used for storage.

5. The Taxpayer owns the parcel adjacent to the subject; parcel #####. This parcel is a ##### acre vacant land parcel. Combined, these two parcels would have ##### feet of frontage on ADDRESS 1. Parcel ##### is not under appeal.

6. It was the Taxpayer's position that the value of the subject property is in the land and the improvements did not contribute to the value.

7. The Taxpayer submitted as a comparable a property located very near the subject, COMPARABLE PROPERTY 1. This property was ##### acres in size and has sold for \$\$\$\$ or \$\$\$\$ per square foot, on MONTH, 2010. The Taxpayer pointed out that this parcel was long and narrow in shape. It has ##### square feet of frontage on (ONE COORDINATE OF ADDRESS 2). The County argued that the subject's location on ADDRESS 1 is superior to the comparable on ADDRESS 2.

8. The Taxpayer also provided other comparable sales. A property at COMPARABLE PROPERTY, ADDRESS 3, had sold for \$\$\$\$ per square foot on MONTH, 2008. This was ##### acres in size. A COMPARABLE PROPERTY, ADDRESS 4, which was ##### acres in size had sold for \$\$\$\$ per square foot on MONTH, 2008. A property at a COMPARABLE PROPERTY, ADDRESS 5, had sold for \$\$\$\$ per square foot in MONTH, 2009. This property had been ##### acres in size and was zoned commercial/industrial. The County argued that this property was next to a contaminated property that was now a superfund site. A COMPARABLE PROPERTY, ADDRESS 6, sold for \$\$\$\$ per square foot. This property was ##### acres in size and was zoned commercial. It had sold on MONTH, 2008. The representative for the County argued that all of these comparables were in very different locations from the subject.

9. The County submitted an appraisal which had been prepared by COUNTY APPRAISER, Certified General Appraiser, Salt Lake County. COUNTY APPRAISER did not attend the hearing. In his appraisal, COUNTY APPRAISER, concluded that as of January 1, 2010, the value of the subject property was \$\$\$\$\$. On page 3 of the appraisal, COUNTY APPRAISER, noted that there were improvements on the property, but described the improvements as, "House in front and other buildings which contribute no value to the property." COUNTY APPRAISER, appraisal was for the land value of the subject property and he added no value for the improvements.

10. In the appraisal, at page 4, COUNTY APPRAISER, explains, "This is one of two contiguous parcels located at ADDRESS 1. This (Subject) parcel is ##### acres. The parcel to the north is ##### acres, for a total of ##### acre or ##### sq. ft. I have appraised this based on the size of the 2 parcels together to come up with a price per square foot. Smaller parcels sell for more per square foot than larger parcels, and since he (Taxpayer) owns both of these, the price/sq. ft. will be lower than if I only use ##### acres to come up with a price/sq. ft." COUNTY APPRAISER, valued this property as if it was ##### acres in size, used that conclusion to determine a value per square foot, and applied that value per square foot to the subject property.

11. In the appraisal COUNTY APPRAISER, identified three comparable sales. One of his sales was located reasonably near the subject at COMPARABLE PROPERTY 1, Utah. This property was ##### acres in size and had sold for \$\$\$\$\$ or \$\$\$\$\$ per square foot, on MONTH, 2009. COUNTY APPRAISER, made no adjustments and concluded that this indicated a value for the subject of \$\$\$\$\$ per square foot, which would be \$\$\$\$\$. This comparable, however, was a corner parcel fronting, PART OF COMPARABLE PROPERTY 1. This would provide superior visibility and access compared with the subject parcel. From the aerial photographs provided in the appraisal, it appears that PART OF PARCEL NUMBER 1 was also divided at this location. This parcel was mostly square in shape with some irregularity at the back of the parcel.

12. COUNTY APPRAISER, comparable no. 2 was a property located at COMPARABLE PROPERTY 2. This is considerably further from the subject. This property also was on a corner and somewhat irregular in shape. It had narrow frontage on PART OF COMPARABLE PROPERTY 2, but a large frontage on a side street. This property is ##### acres in size and had sold for \$\$\$\$\$ per square foot. No adjustment was made for the location, but a %%% adjustment was made for size as this property was so much larger than the ##### acres for which COUNTY APPRAISER, was determining a value.

13. COUNTY APPRAISER, comparable no. 3 was located at COMPARABLE PROPERTY 3, and sold for \$\$\$\$ per square feet on MONTH, 2009. This property was ##### acres in size. COUNTY APPRAISER, indicated that this was in a better location than the subject, and made a %%% adjustment for location as well as size. It was his conclusion that this sale indicated a value for the subject of \$\$\$\$ per square foot. The Taxpayer pointed out that this parcel is near the NAME OF CITY Offices where there is a lot of new development including a REMOVED STORE NAME, and ##### new hotels.

14. The County was represented by RESPONDENT had presented COUNTY APPRAISER appraisal. It was RESPONDENT'S conclusion that a value for the improvements would need to be added to the appraisal value so that the primary residential exemption could be applied to the front residence, the second residence used for storage and ##### acres of the land. It was his recommendation that the total value for this property be set at \$\$\$\$.

15. After reviewing the evidence submitted in this matter, the County is valuing this property as if it has adequate frontage on ADDRESS 1, for development. Even taken into consideration with the neighboring parcel, there is only ##### feet of frontage in total and this is still an interior parcel which the County failed to take into account. The County used as comparables two properties that were located on corners and made no adjustments for the better access and viability that results from this location. Generally a corner parcel is considered superior to interior parcels. The Taxpayer provided an interior comparable near in location to the subject, also with narrow frontage at COMPARABLE PROPERTY 1. This property sold for \$\$\$\$ per square foot. If adjustments were made for the larger size and inferior location, this would indicate a value somewhat lower than the \$\$\$\$ requested by the Taxpayer. However, this was a post lien date sale which occurred in July 2010. The Taxpayer provided other comparables in lesser or different areas which did sell for less, but they are unadjusted and had sold further from the lien date than the County's comparables. Taking into consideration both location and lien date, the best comparable offered is the County's property at COMPARABLE PROPERTY 1, which had sold for \$\$\$\$ per square foot in August 2009. However, the County erred by failing to adjust for a corner location. Instead it had made an adjustment of %%% for superior location of one of the comparables. It appears a corner on COMPARABLE PROPERTY 1, versus an interior parcel with limited frontage might warrant the same adjustment. This would indicate a price per square foot of \$\$\$\$\$, which applied to the subject results in a value of \$\$\$\$.

16. The appraisal submitted by the County and opinion of the Taxpayer both support the position

that the buildings on the subject property do not contribute to the value. COUNTY APPRAISER, valued this property as a land only parcel and stated in the appraisal that the buildings added no value. Therefore, the value for this property should be based only on the land value of \$\$\$\$\$ and there should not be added an additional value for the improvements as suggested by the County's representative. Because the front structure is being used as a primary residence for a tenant, the Taxpayer is entitled to a primary residential exemption on the portion of the value attributed to the residence. With the structures adding no value, this is to be based on the value of the land. There was no dispute that the portion of the land used for the primary residence was ##### acres in size, or %%% of the total. From the total value of \$\$\$\$\$, the County should attribute \$\$\$\$\$ to the primary residence portion. The Taxpayer should receive a primary residential exemption on the \$\$\$\$\$, attributed to the residential portion and not on the remainder, which is \$\$\$\$\$.

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 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 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).

CONCLUSIONS OF LAW

1. Property tax is based on its “fair market value” pursuant to Utah Code Sec. 59-2-103. “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.

2. Both parties have a burden of proof to show error in the value set by the County Board of Equalization and to provide a sound evidentiary basis to support a different value. In this case both parties were in agreement that the County Board of Equalization value was too high. After considering and weighing the evidence presented by the parties a lower value is established.

Considering the evidence and the applicable law in this matter, the value should be reduced to a total value of \$\$\$\$\$ for the 2010 tax year. %%% percent, or \$\$\$\$\$ of this total value, should be attributed to the primary residence. The Taxpayer receives the exemption on this portion only. The remainder of the total, \$\$\$\$\$, is to be attributed to the non-primary property.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2010, is \$\$\$\$\$. The portion of this value attributed to the primary residence is to be determined as listed above. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D’Arcy Dixon Pignanelli

Michael J. Cragun

Appeal No. 11-1812

Commissioner

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 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.