

12-2614
TAX TYPE: PROPERTY TAX-LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 3-2-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 12-2614</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax-Locally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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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 regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Robert Pero, Commissioner
Jane Phan, Administrative Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative for Petitioner
For Respondent: RESPONDENT-1, Deputy County Attorney
RESPONDENT-2, RURAL COUNTY Assessor
RESPONDENT-3, RURAL COUNTY Deputy, County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 10, 2014, 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”) filed an appeal of the decision of the RURAL COUNTY Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The lien date at issue in this appeal is January 1, 2012.

3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) sustained the value. At the hearing the representative for the Property Owner (hereinafter the representative will be referred to as the Property Owner) requests a reduction to \$\$\$\$\$. The representatives for the County requested the value remain at \$\$\$\$\$.

4. The property that is the subject of this hearing is parcel no. ##### and is located at SUBJECT ADDRESS, CITY-1, Utah.

5. The subject property is ##### acres of land improved with a commercial lodging facility which is being operated as the INN-1. The lodging facility is two stories with ##### guest rooms, office and lobby. The office and lobby area are approximately 874 square feet and the total of the lodging facility including the office and lobby is 7,486 square feet. This building was constructed in the early 1900’s. There is also attached covered parking with a covered access drive. The parking is in two different buildings with a combined 7,182 square feet of garage area.¹

6. The Property Owner testified that although the property had the covered garage space, there was no foundation under the garage space.

7. The subject property is operated as the INN-1. However, the Property Owner testifies that they operate the inn only from MONTH-1 through MONTH-2, because during the other months the rates that they could charge would be too low to be cost effective.

8. The Property Owner did not submit an appraisal, comparable sales, or income approach to support a fair market value for the subject property as of January 1, 2012. He provided instead several listings over the years for motel properties in the area and the County’s assessments for the properties for various years.² The list prices were generally higher, and in some cases significantly higher than the County’s Assessed Values. These properties were the following:

Property Name	Location	List Price	List Date	Assessed Value
MOTEL-1	ADDRESS-1, CITY-1	\$\$\$\$	10/06	\$\$\$\$ (2007 & 2008)
INN-2	ADDRESS-2, CITY-1	\$\$\$\$ \$\$\$\$	10/06 11/08	\$\$\$\$ (2008 & 2009)

¹ This information is from Respondent’s Exhibit 1, appraisal by APPRAISER, pgs. vi, & 15.

² Petitioner’s Exhibit 1, Attachments #1 through #6.

MOTEL-2	ADDRESS-3, CITY-1	\$\$\$\$	2006	\$\$\$\$ (2011)
MOTEL-3	ADDRESS-4, CITY-2	\$\$\$\$	08/10	\$\$\$\$ (2011)
MOTEL-4	ADDRESS-5, CITY-1	\$\$\$\$	11/08	\$\$\$\$ (2008 & 2009)
MOTEL-5	ADDRESS-6, CITY-1	\$\$\$\$		\$\$\$\$ (2013&(2014)

9. The Property Owner also provided information he had obtained from the County on what other motel properties had been assessed at on a per unit basis in 2001³ which are as follows:

Motel	Year Built	Size	Units	Grade	Market Value	2001 Unit Value
MOTEL-5	1947	0.35	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-5	1960	0.61	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-4	1965	0.88	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-4	1962	0.57	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-6	1954	0.77	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-2	1947	0.39	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-7	1947	0.97	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-8	1947	0.65	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-9	1962	0.91	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-1	1957	0.42	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-1	1940	0.21	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-10	1940	0.88	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-11	1967	2.31	####	Good	\$\$\$\$	\$\$\$\$
MOTEL-12	1946	0.81	####	Fair	\$\$\$\$	\$\$\$\$
INN-4	1947	1.90	####	Good	\$\$\$\$	\$\$\$\$
INN-1	1901	0.49	####	Good	\$\$\$\$	\$\$\$\$
INN-3		561.8	####	Good	\$\$\$\$	\$\$\$\$

10. The County’s assessed value, as of January 1, 2012, for the subject property at \$\$\$\$ is \$\$\$\$ per guest room.

11. The Property Owner provided information on transient room tax revenue for CITY-1,⁴ which had decreased from 2009 to 2011. The information the Property Owner provided showed transient room tax revenue totaling \$\$\$\$ in 2009 and \$\$\$\$ in 2010. He provided the amount for each of the first two quarters in 2011 but not for the total year. The first two quarters of 2011 were down a little from the first two quarters of 2010. The transient room tax revenue for the first two quarters of 2009 had been \$\$\$\$\$, for 2010 had been \$\$\$\$\$ and for the first two quarters of 2011 had been \$\$\$\$\$. He did not provide the amounts for the second half of 2011. Although interesting, the fact alone that the transient room revenues have been decreasing is not sufficient to establish a lower value for the subject property and it is unknown whether or not revenue picked up in the second half of 2012.

12. RESPONDENT-2, RURAL COUNTY Assessor, is a certified residential appraiser. RESPONDENT-2 is not a general appraiser, so could not appraise commercial property. RESPONDENT-2 has been the RURAL COUNTY Assessor for about YEARS. The position of County

³ Petitioner’s Exhibit 1, Attachments 8 & 15.

⁴ Petitioner’s Exhibit 1, Attachment 18.

Assessor is an elected position. RESPONDENT-2 did not perform an appraisal of the subject property. The County had hired a Certified General Appraiser to perform an appraisal of the subject property for the effective date of January 1, 2007. The appraiser, APPRAISER, had concluded that the value of the subject property for that date was \$\$\$\$\$.

13. The County Assessor testified that the basis of the 2012 assessment for the subject property was this 2007 appraisal value plus a State Tax Commission factor order on the land which had increased the value from the \$\$\$\$\$ appraisal value for 2007 to \$\$\$\$\$ in 2009. The County had increased the value in 2009 based on a factor order from the Utah State Tax Commission as the result of a sales ratio study conducted by the Property Tax Division of the Utah State Tax Commission.⁵ The Property Tax Division’s study indicated commercial land values in the area had increased.⁶ The assessed value of the subject property has remained at \$\$\$\$\$ since 2009.

14. APPRAISER testified that when the property was appraised in 2007, he had thought the appraisal value was low, but he had set the assessment at the appraisal value because that had been the opinion of an independent appraiser. He also testified that his assessed value for the subject was a lower value per unit than other motel properties in the County.

15. The County submitted a copy of APPRAISER’S appraisal⁷, which determined a reconciled value of \$\$\$\$\$, as of January 1, 2007, using both a sales comparison and income approach. The sales approach used in the County’s appraisal indicated a value of \$\$\$\$\$ based on the following comparable sales:

Motel	Size	Age	Units	Sales Date	Sales Price	Adjusted Price
MOTEL-5, CITY-1	1.0	40	####	7/06	\$\$\$\$	\$\$\$\$
MOTEL-11, CITY-1	2.2	35	####	6/04	\$\$\$\$	\$\$\$\$
MOTEL-13, CITY-3	0.9	5	####	3/06	\$\$\$\$	-\$\$\$\$\$
MOTEL-14, CITY-3	2.0	30	####	8/03	\$\$\$\$	\$\$\$\$

16. The income approach used in the County’s appraisal indicated a value of \$\$\$\$\$. The appraiser used a gross income multiplier of 2.8, derived from the comparable sales. He determined a projected 2007 income of \$\$\$\$\$ based on the Taxpayer’s gross revenues from the prior three years and the average yearly increase.

⁵ The functions of the Property Tax Division are overseen by the Executive Director of the Commission and are separate from the Appeals in the Office of the Commission.

⁶ A “Factor Order” is an order issued by the Commission for a county to adjust its assessment roll by a specific factor if that county’s assessment/sales ratio is more than 10% above or below the legal assessment level, or the 95 percent confidence interval of the measure of central tendency does not contain the legal level of assessment under Administrative Rule R884-24P-27(B). *See* Real Property Valuation Standards of Practice, Utah State Tax Commission, Property Tax Division, Rev. August 2002.

⁷ Respondent’s Exhibit 1.

17. After reviewing the parties' evidence, the best evidence of market value presented at the hearing is the appraisal, although it significantly pre-dates the lien date and the weight of the evidence supports the County Board's value at \$\$\$\$\$. The Property Owner has not submitted an appraisal of his own, sales comparables, an income approach or even a cost approach. He has not supported a market value lower than that set by the County Board and has not provided sufficient market evidence to support the value being set at \$\$\$\$\$ for the subject property.

18. The Property Owner has not met the burden to show a reduction based on equalization as he has not shown a number of comparable properties in CITY-1 or even RURAL COUNTY that are valued more than 5% less than the subject.

APPLICABLE LAW

(1) 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 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 Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary basis 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).

The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor. (a) There are no specific licensure, certification, or education requirements related to this function. (b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations. (Utah Admin. Rule R884-24P-19(17)).

If appropriate Tax Commission designations are not held by assessor’s office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor’s office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office (Utah Admin. Rule R884-24P-19(16).)

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. Under Utah Code Sec. 59-2-301 et. al, the County Assessor is to assess property located within the County. If a property owner disagrees with the assessment, he or she may file an appeal to the County Board of Equalization under Utah Code Sec. 59-2-1004. If the property owner is dissatisfied with the decision of the County Board of Equalization they may appeal that decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006.

2. It is under Utah Code Sec. 59-2-1006 that the State Tax Commission has jurisdiction to hear this appeal. That section provides a property owner may appeal the assessment, which is based on market value, or may make an appeal based on equalization.

3. The value set by the County Board of Equalization has the presumption of being correct and to either raise or lower the value either party must demonstrate that the County Board’s assessment contained error and provide a sound evidentiary basis for the new value. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this case the County presented the basis for its value at \$\$\$\$\$. Although this was based on an appraisal that predated the lien date by many years, plus a factor order, the appraisal was the best market value evidence submitted at this hearing. The Property Owner

did not provide better market value evidence and the information he provided did not support a reduction based on fair market value for this property.

4. The Property Owner also did not support a case for reduction in value based on equalization. Utah Code Sec. 59-2-1006(4) provides “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.” The factual evidence in this case shows values assessed for other motel properties in 2001, not the year at issue in this appeal in 2012. In 2012 the assessed value per unit was \$\$\$\$\$, lower than the 2001 assessed values of these other properties. The Property Owner has not shown a number of properties that were actually comparable to the subject and were valued lower than the subject. The County did not ask for the value to be raised based on equalization. Regarding equalization, the Court has held, “Intentional and systematic undervaluation of 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).

5. Although not making a technical argument for equalization, the Property Owner argues that he has been treated unfairly by the County in its assessments. He also points out that many other motel properties have been assessed at less than list prices. Regardless, he has not supported a lower market value based on market value evidence or even that many of the other properties were assessed lower than the subject. The subject property appears to have a lower assessment per unit than other properties so the information does not support an unfair assessment. The Property Owner also argued during the hearing that he just wanted to know what the basis was for the County setting his assessment at the \$\$\$\$\$ and that he was entitled to that information. The County clearly explained at this hearing the basis for this assessment being the independent appraisal plus the Tax Commission’s factor order.

6. The Property Owner also argues that the County Assessor is unqualified for his position. He points out that the County Assessor is not a state licensed or certified general appraiser. The County Assessor is an elected position. The County Assessor currently holds a designation as a state certified residential appraiser, which means he may appraise residential properties. Under Admin. Rule R884-24P-19(17) there are no specific licensure, certification or education requirements related to a County Assessor’s duty to complete the assessment roll, as long as appraisals included in the assessments were

completed by persons having the required designations. In RURAL COUNTY, if the Assessor or others employed by the County do not hold the designation of state certified general appraiser, the Assessor will have to contract out commercial appraisal work, which the County has done in this case.

Considering the evidence and the applicable law in this matter, the value 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 finds that the market value of the subject property as of January 1, 2012, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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 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.