

13-23

TAX TYPE: PROPERTY TAX

TAX YEAR: 2012

DATE SIGNED: 12-4-2014

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE  
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 13-23

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2012

Judge: Phan

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**Presiding:**

Robert Pero, Commissioner

Jane Phan, Administrative Judge

**Appearances:**

For Petitioner: TAXPAYER

For Respondent: RESPONDENT, Certified Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 18, 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") has filed an appeal of the decision of the Salt Lake 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 Property Owner requests a reduction to \$\$\$\$\$. The representative for the County offered an appraisal supporting a value of \$\$\$\$\$.

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

5. The subject property is a ##### acre residential lot improved with a split entry style residence. The residence has 1,786 square feet above grade. There is a basement of 1092 square feet of which 900 are finished. The residence was constructed in 1965 with average grade and the County considered it to be in average condition as of the lien date. There are two detached garages on the property. Although these garages appear to both be two-car garages, the County considers these to provide parking for only three-cars, because of the size.

6. The subject lot is irregular, somewhat triangular in shape. The long length of the lot backs to a canal area that is owned by Salt Lake County. The Property Owner testified that the County did not maintain this area. He provided photographs showing weeds, including thistle, growing as high as he was tall. He also provided photographs of rats that came out of the canal.<sup>1</sup> Additionally, he testified that when the subdivision in which the subject was located was developed in the 1960's, an underground system drained the subdivision water into a holding area on the southeast corner of the subject lot. Salt Lake County had installed a pump to divert the water into a ditch. After several years the pump had burned out and the County refused to replace it. The Property Owner states "Due to the high water table caused when the water was no longer pumped (which the County refused to fix), I have damage to my property." He provided some photographs showing cracks around the foundation.<sup>2</sup>

7. The Property Owner also provided evidence that there was a telephone and power line easement across this property that limits his backyard space.<sup>3</sup>

8. The Property Owner requested a reduction to \$\$\$\$\$ or lower. The basis for this was a request that the Commission equalize the value of his residence with neighboring properties and then apply a 90% reduction. The Property Owner argues that he had an agreement with Salt Lake County to reduce the value of the subject property by this 90% adjustment and that this adjustment should be applied for every year.

9. In support of his argument that there was a 90% adjustment, he provided a portion of the 2007 County Board of Equalization record<sup>4</sup> that discusses this adjustment as follows:

As to the situation with the water pump and easement for Utah Power, telephone, and cable companies; these issues were addressed in the 2006 tax year during the Board of Equalization. A permanent valuation adjustment of 90% was given last year for the water pump problem. A second land record was created to account for the easement situation. Both of these adjustments were calculated in the value assessed by the County Assessor's Office for the 2007 tax year.

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<sup>1</sup> Petitioner's Exhibit A.

<sup>2</sup> Petitioner's Exhibit A, pg. 1.

<sup>3</sup> Petitioner's Exhibit B.

<sup>4</sup> Petitioner's Exhibit D, Hearing Record Dated September 28, 2007.

10. The Property Owner had provided the County Records that showed the total value and the value attributed to the land and the building for each year from 2007 through 2012. This showed that with this 90% adjustment indicated from the County Board record, the total value for 2007 had been \$\$\$\$\$. Of this \$\$\$\$\$ was shown for the land and \$\$\$\$\$ for the building. It is clear from the County Board record for 2007 that these values already included the 90% adjustment.<sup>5</sup>

11. The Property Owner also provided a copy of the 2008 Salt Lake County Board of Equalization recommendation as well as the official Notice of Proposed Decision on the 2008 Appeal.<sup>6</sup> These documents show that the original assessed value for the 2008 year had been \$\$\$\$\$. The County Board of Equalization reduced the value for that year to \$\$\$\$\$. The conclusions from the County's record for the 2008 year<sup>7</sup> explain the adjustment as follows:

For 2008 tax year, the permanent valuation adjustment of 90% for the water pump problem situation was removed since it is reflected in the deduction of the value of the home due to the majority of the value being in the land. The second land record for the easement situation will remain on the record.

Appellant's opinion of fair market values as of January 1<sup>st</sup> is \$\$\$\$\$ which is lower than the land value of \$\$\$\$\$.

The County's comparable report shows that several comparables have the same exterior wall type, kitchen quality, and grade as subject. After all adjustment for the difference between the subject and comparable sales, it is clear that the County's comparables clearly support the value of \$\$\$\$\$.

12. It appears from this information that the County had removed the permanent 90% adjustment factor applied previously in 2006 and 2007 and accounted for the canal and flooding issues in a different manner from the prior years.

13. The County's Notice of Proposed Decision, issued on October 29, 2008, shows the break out of how the total value was allocated between land and buildings. This provided that for both the original valuation and the value adjusted by the County Board, \$\$\$\$\$ of the total was attributed to the land. The reduction was allocated to the buildings. The original value listed for the buildings had been \$\$\$\$\$. The County Board had reduced the building value to \$\$\$\$\$ for the 2008 tax year.

14. The Property Owner provided a copy of the County's computerized data record which contained comments about various adjustments. Regarding the 2008 adjustment this record states, "2008

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<sup>5</sup> Petitioner apparently understood this 90% factor to mean a 90% discount. However, a 90% factor would generally mean 90% applied to the market value, so a 10% discount.

<sup>6</sup> Petitioner's Exhibit D.

<sup>7</sup> Petitioner's Exhibit D. The exhibit does not have page numbers. This is the County's Board of Equalization Hearing Record, dated October 17, 2008.

B of E Appeal, majority of the value is in the land, “S” Flag for external obso[sic] due to power line and water table issues 10/08, #776.”

15. The Property Owner provided records from Salt Lake County that showed the changes made to the values, including how it was allocated to the building and land for each year from 2007 through 2012. For each year after 2008, the total value was lower than the 2008 County Board of Equalization decision value, but a higher portion of the value was allocated to the building.<sup>8</sup>

16. Petitioner provided County Property Tax Information on sixteen of his closest neighbors to compare the building values for the 2012 tax year. While the building value on the subject, which would include both the residence and garages, had been at \$\$\$\$\$ for the 2012 tax year, the neighboring properties ranged from \$\$\$\$\$ to \$\$\$\$\$.<sup>9</sup> This information also showed that the subject residence was larger than the residences on most of these other properties. Additionally, the subject had more garage area than many of these comparables.

17. The County’s representative testified that the County had previously made a 90% good adjustment on the land value. He testified that when the county applied a “90% adjustment” it would have been a 90% good factor, or a 10% deduction. It was not a 90% deduction as the Property Owner had stated.

18. The County offered an appraisal at the hearing that indicated the value for the subject as of January 1, 2012, was \$\$\$\$\$.<sup>10</sup> The Appraisal had been prepared by RESPONDENT, Certified Residential Appraiser, for Salt Lake County. RESPONDENT considered five comparable sales all within a reasonable proximity to the subject residence. He made appraisal adjustments for the different factors including size, condition and garage space. He also made a \$\$\$\$\$ negative adjustment for the canal, drainage and flooding damage issues on the subject property.

19. RESPONDENT’S comparables were the following:

Address	Sale Price	Sale Date	GLA	Lot Size	Year Built	Garage	Adjusted Price
Subject			1,768	###	1965	3-Car	
ADDRESS-1	\$\$\$\$\$	12/11	1,169	.38	1964	2-Car	\$\$\$\$\$
ADDRESS-2	\$\$\$\$\$	11/11	1,284	.19	1968	2-Car	\$\$\$\$\$
ADDRESS-3	\$\$\$\$\$	2/12	1,441	.27	1973	2-Car	\$\$\$\$\$
ADDRESS-4	\$\$\$\$\$	6/11	1,190	.19	1961	Carport	\$\$\$\$\$
ADDRESS-5	\$\$\$\$\$	1/12	1,487	.18	1962	2-Car	\$\$\$\$\$

<sup>8</sup> Petitioner’s Exhibit C, Page marked #1.

<sup>9</sup> Petitioner’s Exhibit C, Pages Marked #2 -#17.

<sup>10</sup> Respondent’s Exhibit 1.

20. The Property Owner had not submitted comparable sales or an appraisal. Further, he had not submitted evidence that would refute the County's \$\$\$\$ adjustment for the problems with the water table, drainage and canal. He had argued instead that the County should continue to apply the 90% factor and that it should be applied to an equalized value compared to his neighboring properties. Based on the evidence presented at the hearing, RESPONDENT'S appraisal conclusion was reasonable and the best evidence of the fair market value of the subject property as of the January 1, 2012 lien date. The evidence supports a reduction to the appraisal value of \$\$\$\$.

21. Although the Property Owner provided information to show that portion of the total value attributed by the County to the buildings on the subject was higher than the value attributed to buildings on 16 neighboring parcels, he has not shown that any of those buildings were comparable. The subject residence was larger in size compared to most of these other residences and had two, detached garages, with at least three parking spaces. Some of the other residences had only carports. These factors would support a higher market value for the subject buildings. However the Commission's primary concern is the total value set by the County. The total value of most of these neighboring properties was higher than the \$\$\$\$ total value recommended by the County for the subject. The Property Owner has not established that his property was valued higher than properties that were actually comparable.

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).

#### 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. In this matter, fair market value was not the Property Owner’s primary argument as he argued that the County had agreed to apply a 90% factor against his property and that the Commission should require the County to implement this factor for the 2012 year. The County did provide market value evidence in the form of an appraisal that supported the fair market value of this property at \$\$\$\$ for the 2012 tax year. The weight of the market value evidence submitted at the hearing supports the \$\$\$\$.

2. The Property Owner argues for a reduction in this case based a 90% adjustment which he argues the County had agreed to apply permanently, and further that this 90% adjustment be applied to an equalized value. Considering the issue of 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 Property Owner has shown that the building value attributed to neighboring properties was lower, but not that the other properties were actually comparable to the subject residence. Furthermore, the value proposed by the County in total was actually lower than

the total value of many of these comparables. The Property Owner has failed to show that comparable properties were systematically valued less than the subject.

3. The Property Owner has not established any enforceable right that he might have against the County that would require the County to reduce his value by 90% every year. The evidence provided from the 2007 and 2008 County Board hearings indicates a 90% good factor was applied in 2006 and 2007, but removed in 2008. In fact, even if there was some agreement, which does not appear to be the case, it is the Tax Commission's statutory obligation to determine the "fair market value" of the property as of the lien date under Utah Code Sec. 59-2-103. This statutory requirement takes precedence over any agreement between the parties. Therefore, if the Property Owner were to show that an agreement existed between himself and the County, it would be outside of the jurisdiction of the Tax Commission to enforce. The market value evidence supports the \$\$\$\$ recommended by the County.

Considering the evidence and the applicable law in this matter, the value should remain at \$\$\$\$.

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 \_\_\_\_\_, 2014.

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.