

13-870  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2012  
DATE SIGNED: 3-31-2014  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-870</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative, By Telephone  
For Respondent: RESPONDENT, Appeals Supervisor, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on January 6, 2014, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2012 lien date. The County Board of Equalization ("the County") sustained the value. At the hearing

the Property Owner requests a reduction to \$\$\$\$\$. The County requests that the value remain as set by the County Board of Equalization.

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 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).

DISCUSSION

The subject property is located at ADDRESS, CITY, Utah. It is the (X-1) retail strip center that includes in line stores and a (Y) restaurant. This property was constructed in YEAR. It has ##### square feet of rentable area and ##### acres of land. This property fronts right onto ##### South and is just east of ##### East, but does not front onto ##### East. The Property is irregular in shape with the longest portion of the property the frontage along ##### South. The back of this property fronts onto a second street, NAME OF STREET, but there is currently no access into the parking lot for the subject from NAME OF STREET and that appears to be a residential area.

The Property Owner is not appealing the value for this property based on fair market value and does not provide evidence that the fair market value is lower than the assessed value. Instead the Property Owner’s argument is based on equalization under Utah Code Sec. 59-2-1006(4). In order to support a reduction based on equalization under the statute the Property Owner must show that the subject property deviates in value more than 5% from the assessed value of comparable properties. The representative for the Property Owner had presented similar arguments and evidence in prior hearings and at the time of the hearing the parties were waiting for a Formal Hearing Decision from the Tax Commission that addressed these arguments.<sup>1</sup>

The Property Owner had considered the land value separately from the building value. It was his argument that based on a set of three comparables the subject land was overvalued and based on a second set of comparables the buildings were overvalued. The values that he attributed to the land or the building from the comparables were based on the break out provided by the County Assessor for these properties. Tax is assessed based on the total fair market value, but the Assessor will allocate a portion of the total to land and a portion to buildings on its records.

The representative for the Property Owners had calculated that the County had valued the subject land at \$\$\$\$ per square foot. He looked at value attributed to the land for three neighboring comparables. He did provide an aerial photo with parcels mapped out showing the outline of the subject and the three comparables. All three had frontage onto ##### South and two appeared also to have some small portion of frontage on ##### East. However, because of the configurations of these parcels it appeared that all three had less frontage compared to the

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<sup>1</sup> A Formal Hearing Order was issued by the Utah Tax Commission in *Appeal No. 12-1397* on February 25, 2014.

total parcel than the subject. The County had land values for these three parcels at \$\$\$\$\$ to \$\$\$\$\$ per square foot or an average of \$\$\$\$\$. The representative for the Property Owner requested that the land value for the subject be lowered to \$\$\$\$\$ per square foot or \$\$\$\$\$.

He also argued that the buildings were overvalued. He provided three improvement comparables. Although the addresses for these buildings were not included, he did provide considerable information from the County records, as well as photographs of the subject and each of these centers, which were listed as CENTER-1, CENTER-2 and CENTER-3. None of these centers were near the subject as far as location. These three centers were all built within a few years of the subject property. The representative made appraisal adjustments based on the difference between the subject and the information listed in the County records for the equalization comparables. It was his conclusion that these three properties indicated a value of \$\$\$\$\$ to \$\$\$\$\$ per square foot and he requested the value for the subject be based on \$\$\$\$\$ per square foot, not based on an average, but putting the most weight on the two lower comparables.

The County argued that to show a reduction in value based on equalization a property owner should submit a property that was actually comparable in total, meaning both land and building were comparable to the subject. It was the County's contention that for many commercial or industrial properties the County's values are based on an income approach which derives a fair market value for the total property, and then some portion of that total value is allocated to the land and some to the building. The County also indicated in some cases an improvement does not even add to the value and the County would then have to attribute some portion of the land value to the building.

Regardless, to refute the Property Owner's argument, the County did provide land comparables. These were other properties located very near in location on ##### South, the same street as the subject. It was the County's contention that the proportion of frontage on a parcel did significantly impact the value. The value the County had attributed to the land of the subject was \$\$\$\$\$. The value attributed to the land for these eight neighboring parcels ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The County's value for the subject is in the lower end of the range and these clearly show no adjustment should be made to the land value based on equalization. It is insufficient for a property owner to find a few lower valued comparables and ignore other comparables around the subject that support the subject's value or higher.

The County also noted that it had valued the subject and generally other retail strip centers based on an income approach, thereby determining a value for the total, land and buildings. The County argued that based on the total value, which for the subject was at \$\$\$\$\$ per square foot, the subject was in line with other nearby retail comparables. In this matter, the

County had four retail comparables much nearer in location than the Property Owner's building comparables. They had total values ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. This range does encompass the subject and does not support the Property Owner's contention that the subject is overvalued based on equalization.

The County cited to the Commission's decision in *Utah State Tax Commission Initial Hearing Order, Appeal No. 12-1408, pg. 6* (March 21, 2013). In that case the Commission held, "In the present case, the subject economic unit's total value was first valued with the income approach. As a result, its land and improvements were not valued separately with individual valuation methodologies. . . . The subject economic unit's improvements value was simply the difference between the economic unit's total value and its land value." In *Appeal No. 12-1408* the Commission rejected the equalization arguments presented by the Petitioner and sustained the County's value, noting, "Furthermore, the subject economic unit's total value is clearly not inequitable when compared to the comparable's total values." *Id.* at pg. 7.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the county, but also provide a sound evidentiary basis to support a new value. This burden is on the Property Owner to show that properties that are actually comparable to the subject are valued more than 5% less than the subject. The Property Owner submitted a few properties where the value attributed by the County to the land or the value attributed to the building was less than the values attributed to these components of the subject. The County has provided other comparables, near in location to the subject, that support the County's total value as well as the value attributed to the land. Many of the parties' arguments regarding equalization have been addressed by the Utah Tax Commission in *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 12-1397*, issued on February 25, 2014, as well as *Initial Hearing Decision, Appeal No. 12-1408* noted above.

To show an adjustment is appropriate under the equalization provision of Utah Code Sec. 59-2-1006(4) the Property Owner would need to establish an intentional and systematic undervaluation of other properties. The Utah Supreme 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). The values should remain as set by the County Board of Equalization.

After the Initial Hearing was held in this case, the parties submitted on March 17, 2014, a Joint Motion to Stay this appeal and other appeals. However, for this case procedurally, the hearing had already been held and this decision pending when the motion was filed. Because of the point in the procedural process for this appeal, once this decision is issued this appeal will be closed unless a party requests a Formal Hearing pursuant to the instructions below. The requesting party may renew the Motion to Stay with the request for Formal Hearing.

Jane Phan  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2012 lien date. 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 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner