10-1033
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2009
SIGNED: 11-04-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 10-1033 Parcel No. 13 Parcels (See Attachment A) Tax Type: Property Tax / Locally Assessed Tax Year: 2009 Judge: Chapman

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. 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 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:
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER REP. 1, Attorney
	PETITIONER REP. 2, from PETITIONER
	PETITIONER REP. 3, from PETITIONER
For Respondent:	RESPONDENT REP. 1, Deputy Salt Lake County District Attorney
	RESPONDENT REP. 2, from Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 13, 2010.

At issue is whether the assessed values of 13 residential lots in the PETITIONER community in CITY 1, Utah should be adjusted for purposes of equalization. The Salt Lake County Board of Equalization

("County BOE") sustained the value at which each of the subject lots was originally assessed for 2009. The taxpayer asks the Commission to reduce the 2009 value for each subject lot by approximately 50%. The County asks the Commission to reduce the 2009 value of each subject lot by 17%. The chart below shows the lot size, the County BOE's value, the taxpayer's proposed value and the County's proposed value (rounded to the nearest hundred dollars) for each lot at issue.

Parcel No.	Lot Size (in acres)	County BOE 2009 Value	Taxpayer's Proposed Value	County's Proposed Value
#####-1	0.09	$$$$$	$$$$$	$$$$$
#####-2	0.07	$$$$$	$$$$$	$$$$$
#####-3	0.11	$$$$$	$$$$$	$$$$$
#####-4	0.06	$$$$$	$$$$$	$$$$$
#####-5	0.09	$$$$$	$$$$$	$$$$$
#####-6	0.21	$$$$$	$$$$$	$$$$$
#####-7	0.23	$$$$$	$$$$$	$$$$$
#####-8	0.20	$$$$$	$$$$$	$$$$$
#####-9	0.20	$$$$$	$$$$$	$$$$$
#####-10	0.20	$$$$$	$$$$$	$$$$$
#####-11	0.11	$$$$$	$$$$$	$$$$$
#####-12	0.09	$$$$$	$$$$$	$$$$$
#####-13	0.10	$$$$$	$$$$$	$$$$$

APPLICABLE LAW

Article XIII, Section 2(1)(a) of the Utah Constitution provides that properties not exempt from taxation shall be "assessed at a uniform and equal rate in proportion to its fair market value. . . ."

Utah Code Ann. §59-2-103(1) provides that "[a]ll 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."

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

> (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. . . .
> . . . .
> (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.
>
> . . . .

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000). The burden to show inequality of assessment is on the taxpayer. *First Nat'l Bank of Nephi v. Christensen*, 39 Utah 568 (1911).

DISCUSSION

The 13 subject lots are in the PETITIONER community and, as of the January 1, 2009 lien date, were vacant, but "developed" with curb, gutter, sidewalks and utilities. The 2009 assessment of the 13 subject lots was correctly based on each of them being a vacant, but developed lot. This appeal does not concern the fair market values of the 13 subject lots. Instead, the taxpayer asks the Commission to reduce the assessed values of the 13 lots by approximately 50% based on equalization.

In *Rio Algom Corp. v. San Juan County,* 681 P.2d 184 (Utah 1984), the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed

value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed. Section 59-2-1006(4)(b) provides that a property's assessed value shall be adjusted for purposes of equalization if "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 taxpayer proffers 25 comparable lots (i.e., vacant, but developed) in PETITIONER that were erroneously assessed at 50% of fair market value. The County admits that the assessor's records mistakenly "flagged" the 25 lots as undeveloped (i.e., no curb, gutter, sidewalks and utilities). The County's policy is to assess undeveloped lots at 50% of the value of vacant, but developed lots. In addition, the County BOE, in a decision that the County now argues to be erroneous, reduced the value of 17 additional vacant, but developed lots by 50% to equalize their values to the 25 comparables described above. As a result, there are now 42 vacant, but developed lots in PETITIONER with 2009 assessed values that are only at 50% of fair market value. As a result, the assessed values of the 13 subject lots deviates more than 5% from the values of these 42 comparables. Given these circumstances, the taxpayer asks the Commission to reduce the 2009 assessed values of the 13 subject lots by approximately 50%. The Commission must determine whether the values of the 13 subject lots should be equalized due to the existence of these 42 similar, but disparately valued comparables.

The County BOE equalized and reduced the assessed values of 17 lots that the taxpayer appealed at the County level by 50%, but did not equalize and reduce the values of the 13 lots now before the Commission. The County reduced the 17 lots because the 25 comparables submitted to the County BOE included at least 2 lots identical in size to one of the 17 lots. For example, there were at least two comparables of disparately valued lots that were 0.19 acres in size. The County BOE reduced the values of all appealed lots that were 0.19 acres in size by 50%. However, it did not reduce the values of a similar lot under appeal that was 0.20 acres in size. In the County BOE's decision, it relied on *Mt. Ranch Estates v. State Tax Comm'n*,

100 P.3d 1206 (Utah 2004), stating that "[t]he conclusion of [*Mt. Ranch Estates*] found that to prevail with an equity issue the comparables must be exact in comparable data and the appellant must provide evidence of more than one comparable property outside the 5% tolerance range."

The County BOE's decision appears to be incorrect. First, the County BOE found that a comparable must be exactly the same size as the property whose value is being contested in order for an equalization argument to prevail. At the Initial Hearing, both parties agreed that this portion of the County BOE decision is incorrect, as it is possible that a 0.19-acre lot is a "comparable" that can be used to show whether a 0.20-acre lot in the same subdivision has been inequitably assessed.

Second, the County BOE found that the assessed value of a property under appeal must be equalized if there is evidence of two comparable properties that have been valued disparately (more than 5%) from the property under appeal. The taxpayer asks the Commission to sustain this portion of the ruling and to "extend it" to the 13 lots now before the Commission, as the 13 subject lots are similar to the 25 comparables originally submitted to the County BOE. Furthermore, the taxpayer asserts that a property under appeal must be equalized if there exist at least two comparables that are similar but disparately valued, based on the following statements from *Mt. Ranch Estates*: "The Commission read the terms "comparable properties," as used in section 59-2-1006(4) to require a party seeking an adjustment to present more than one similar but disparately valued property in order to be eligible for a valuation adjustment. *Id.* We agree."

The County indicates that it believes that this portion of the County BOE decision is also incorrect and that it does not believe that the existence of two comparables is necessarily sufficient to require the equalization of a similar but disparately valued property. First, it asserts that the 25 comparables should not be considered "comparables for purposes of equalization" because their assessments were based on "factual errors" (i.e., the 25 comparables were incorrectly "flagged" as undeveloped lots in the County's assessment records). Second, the County provided hundreds of comparables in PETITIONER that it claimed to be

correctly flagged and assessed. The County provided evidence that 307 vacant, but developed lots were flagged and assessed as such and, like the 13 subject lots at issue in this appeal, were assessed at fair market value. For these reasons, the County does not believe that the values of the 13 subject lots should be equalized to values at which the 25 comparables were assessed. Nevertheless, the County proposed to reduce the values of the 13 subject lots by 17% because the 2009 County BOE heard appeals on 166 lots in PETITIONER and reduced the assessed values of the 166 lots by an average of 17%.[1]

The taxpayer contends that *Mt. Ranch Estates* requires a property assessed at its fair market value to be equalized if there is evidence of two comparables that are similar but disparately valued, even if all other members in a class with hundreds of properties are assessed at fair market value. The taxpayer's argument is based on a portion of one paragraph in the decision, as described earlier. When the decision is read as a whole, the taxpayer's conclusion is not convincing. In *Mt. Ranch Estates*, the Utah Supreme Court indicates that "[o]ur interpretation is based not only on the plain language of section 59-2-1006(4), but by the constitutional and statutory provisions from which this valuation adjustment formula derives." The Court explained:

> Intentional and systematic undervaluations of property may violate the equal protection and due process rights of property owners not granted preferential treatment. . . . 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.

The Court found that "[i]t is, of course, impossible to extract evidence of a systematic practice of undervaluation from the valuations of property within a class limited to two comparable properties." The Court further explained that "[a]s the size of the class increases, so does the ability to, in statistical nomenclature, establish a satisfactory "confidence level" in plotting the location of class members in

1 Of the 166 lots under appeal at the County BOE, the County BOE sustained the original assessed values of 33 lots. The County BOE reduced the values of remaining lots under appeal by 15%, 30% or 50%.

relationship to a norm or mean."

In this case, the taxpayer showed that 25 comparable properties were erroneously assessed at 50% of fair market value and that the County BOE reduced 17 additional properties to 50% of fair market value. As a result, there are now 42 comparables that are similar to the 13 subject lots, but disparately valued. On the other hand, the County has proffered over three hundred additional lots in the same subdivision as the 13 subject lots that are similar, but not disparately valued. As a result, the "class" of comparables at issue numbers more than 300 members and would likely be even more if evidence of comparable lots (i.e., vacant, but developed) from other subdivisions were also considered.

It is not unanticipated that in any assessment system, there will be mistakes, including ones due to properties being assessed on incorrect property characteristics. However, evidence of 25 mistakes in a single year does not mean that all properties properly assessed must be reduced for purposes of equalization. The United States Supreme Court has addressed inequality of local property tax assessments in *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989). In that case, the Court specifically indicated that inequality of assessments does not exist if the assessments are disparate over a short period of time or due to occasional errors. Specifically, the Court stated:

> As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, *see Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 353, 38 S.Ct. 495, 495-496, 62 L.Ed. 1154 (1918); *Coulter v. Louisville & Nashville R. Co.*, 196 U.S. 599, 25 S.Ct. 342, 49 L.Ed. 615 (1905), it does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-527, 79 S.Ct. 437, 440-441, 3 L.Ed.2d 480 (1959), and cases there cited[.]

In this case, the taxpayer has provided evidence that 25 properties were originally assessed at 50% of fair market value due to an error in the County's assessment files and that an additional 17 were reduced due to the County BOE misinterpreting a Utah Supreme Court case. There is no evidence to suggest that these errors have been compounded over a number of years. In addition, evidence was proffered to show that more than 300 similar lots in the same subdivision were accurately assessed. The 13 subject lots at issue in this appeal are part of class that numbers at least 300 members (when lots in the same subdivision only are considered) and probably thousands (were all vacant, developed lots in the County considered). That a mistake was made concerning the assessment of 42 lots for a single year does not necessarily mean that an inequality of assessment, as anticipated under Section 59-2-1006(4), has occurred. Such a mistake does not appear to be the type of "intentional and systematic undervaluations" that the Utah Supreme Court described in *Mt. Ranch Estates*. For these reasons, the values of the 13 subject lots need not be reduced for purposes of equalization.

The taxpayer, however, proposes to reduce the assessed values of the 13 subject lots by 17% because this is the "average" reduction in value that the County BOE applied to the 166 lots in the same subdivision that were appealed at the County level. Approximately 20% of the 166 lots received no adjustment. Furthermore, it is plausible that many of the reductions were based on evidence showing that the lots' fair market values were lower than their assessed values, not evidence concerning equalization. As a result, it is not clear that a 17% adjustment is required to equalize the assessed values of the 13 subject lots. Nevertheless, as both parties have requested that the values of the subject lots be reduced at least 17% for purposes of equalization, a reduction of 17% should be granted. As a result, the values of the 13 subject lots should be reduced by 17%, as proposed by the County.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the current values of the 13 subject lots should be reduced by 17% to the values shown on the following chart:

Parcel No.	Commission's Value
#####-1	$$$$$
#####-2	$$$$$
#####-3	$$$$$
#####-4	$$$$$
#####-5	$$$$$
#####-6	$$$$$
#####-7	$$$$$
#####-8	$$$$$
#####-9	$$$$$
#####-10	$$$$$
#####-11	$$$$$
#####-12	$$$$$
#####-13	$$$$$

The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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 taxpayer'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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

KRC/10-1033.int

ATTACHMENT A

13 Parcels Under Appeal

Parcel No.

#####-1
#####-2
#####-3
#####-4
#####-5
#####-6
#####-7
#####-8
#####-9
#####-10
#####-11
#####-12
#####-13