

11-427
TAX TYPE: PROPERTY TAX—LOCALLY ASSESSED
TAX YEAR: 2010
DATE SIGNED: 8-23-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION, WEBER COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 11-427 Parcel No. ##### Tax Type: Property Tax Tax Year: 2010 Judge: Phan
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Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Appeals Division
Director, Weber County
RESPONDENT, Appraiser, Weber County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 13, 2013, in accordance with Utah Code §59-1-501 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 under Utah Code Sec. 59-2-1006 of the decision of the Weber County Board of Equalization regarding the assessed value of the subject property for tax year 2010. 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, 2010 and the 2010 tax year is the only year that is properly before the Commission in this appeal.

3. The property that is the subject of this appeal is parcel no. #####, located at ADDRESS, CITY-1, Utah.

4. The County Assessor had originally valued the subject property for the 2010 tax year at \$\$\$\$\$. The County Board of Equalization (“County”) reduced the value to \$\$\$\$\$. At the Formal Hearing the Property Owner requested a reduction to \$\$\$\$\$. The County requested that the Commission sustain the value previously set by the County Board of Equalization.

5. The subject property is ##### acres of land and is improved with a brick office/retail building for which construction had begun in 2007. Although the exterior of this property was completed as of the lien date at issue, some of the interior space was incomplete. The building was constructed with nine separate rental units suitable for professional office or retail space.

6. Using exterior measurements, the County had measured the property and concluded that the total rentable square footage of the property was #####. It was County’s position that of this square footage, ##### was on the main floor. Three of the units had a second floor area with a total of ##### square feet. In addition there was an unfinished basement of ##### square feet that was not included by the County in rentable square footage. Although the Property Owner argued that the size of the building was smaller, he did not provide a measurement or sketch from an appraisal or building plans to support his contention and his conclusion appears to be based on interior measurements. In addition the County provided a copy of the Multiple Listing Report which was offering the subject for sale as well as units for rent. This indicated the total square feet of ##### including the basement. The MLS listing indicated that the above grade total square footage was #####. These are very similar to the County’s measurements. The units were designed so that each had its own independent entrance and bathroom space. There were not any common interior hallways, so that all of the square footage appeared to be rentable square footage.

7. Some of the units were built out and had tenants as of the lien date. Some of the units were only shell space on the interior. For the 2010 tax year, units 3, 4, and 9 were shell spaces with no tenants. In addition to the unfinished units, the second story area of Unit 1 was near completion, but still missing IMPROVEMENTS. The main floor area of Unit 1 was completed and LEASED. It was the County’s calculation that of the above grade rentable square feet, ##### square feet were finished, ##### square feet were in the shell only state and

%%%% finished, and the second story area of Unit 1 was %%%% complete. From this the County calculated that the entire structure was %%%% complete.¹

8. The Property Owner did not submit an appraisal, comparable sales or comparable leases or even evidence of the actual cost of construction for the subject property. The Property Owner stated that he had purchased the lot for \$\$\$\$\$\$ in 2006. He indicated that in 2006, APPRAISAL COMPANY appraised the cost to build and complete the building at \$\$\$\$ per square foot. It was his position that the square footage of the building was ##### times the \$\$\$\$ and that equaled \$\$\$\$\$, to which he added the \$\$\$\$\$ in site improvements for a total of \$\$\$\$\$. Then he multiplied the estimated building cost value by a factor of %%%% because only 6 of the 9 units were complete. This resulted in a value of \$\$\$\$\$.²

9. The Property Owner's cost method is flawed because no value is given for the 3 incomplete units. These were finished on the exterior and shell space on the interior and would add value. The County's method of considering these shell units at %%%% complete is appropriate. Furthermore, the Property Owner did not submit the full APPRAISAL COMPANY appraisal which purported to appraise the cost to build at \$\$\$\$ per square foot. It does not appear that this estimate included the cost of the land and is unclear as to what level of finish the \$\$\$\$ per square foot would have been. Further, this was an old estimate from 2006. The Property Owner did not provided the actual costs of construction for this building.

10. The Property Owner also argued that the County had lowered values for ##### other properties all over the County. He provided copies of the 2009 tax assessments and the 2010 tax assessments for properties in CITY-2 or CITY-3. None of these properties were located in the same city as the subject and there was not information provided on the size, age, style or grade of the building compared to the subject building.

11. Having a few properties that decreased in value scattered around the County is not sufficient to show that the fair market value of the subject should also have decreased in value. Furthermore, based on the Property Owner's own statement, in 2009 only 5 of the 9 units were complete. For 2010 an additional unit was completed, which may increase the value even in a stagnant market.

¹ Respondent's Exhibit 1.

² Petitioner's Exhibit 2.

12. The Property Owner provided as a comparable a listing for a ##### year old former BUILDING. This building was offered for \$\$\$\$\$ or \$\$\$\$\$ per rentable square feet.³ This is an old building, while the subject is a new construction.

13. The County requested that the value remain as set by the County Board. The County prepared an income approach using typical appraisal techniques in which the County looked at actual lease rates, market lease comparables and market vacancy. It was the County's conclusion that the subject would rent for a market rate of \$\$\$\$\$ per rentable square foot. This included the main floor and above grade area. Each unit would have an unfinished basement suitable for storage not included in the rentable square foot. The County's vacancy rate was %%%% based on a report for the 2009 year end from Commerce Real Estate Solutions, a copy of which was provided. The County applied a %%%% capitalization rate and the resulting value was \$\$\$\$\$. The County then subtracted out the cost to finish the tenant improvements of the unfinished units at \$\$\$\$\$ per square foot. This cost for tenant improvements was \$\$\$\$\$. From this the County's income estimate was \$\$\$\$\$.⁴

14. The County's income estimate may have needed some additional rent loss adjustment due to the excess vacancy; however, it was still considerably higher than the value the County was requesting at \$\$\$\$\$.

15. The Property Owner did provide some income calculations based on actual net income and potential gross income. In his income calculation, rather than a market vacancy, he used the actual vacancy of %%%%, which in affect gives no value to the 3 vacant units, capitalized into perpetuity. Then he subtracted the tenant improvement costs, which was improper since the income from these units was being excluded in their entirety. It would be assumed that at some point more of the units would be leased. It was the Property Owner's conclusion from this income calculation that the value would be \$\$\$\$\$,⁵ which was the value he requested for the property at the hearing.

16. The Property Owner has failed to show error in the value placed on the subject property by the County Board of Equalization. His cost estimate fails to provide any value for the partially finished units and may not take into account land value. His income estimate also is flawed in that it both excludes any income potential from the unfinished units into perpetuity and it also subtracts an additional amount to complete the space which was excluded. Additionally,

³ Petitioner's Exhibit 2.

⁴ Respondent's Exhibit 1.

⁵ Petitioner's Exhibit 3.

both approaches are based on a square footage of the building that was not shown to be correct. The value should remain as set by the County Board of Equalization.

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 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).)

“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 the fair market value of the property as of January 1 of the tax year at issue 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. To prevail in a real property tax dispute, a party 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). In this case the Property Owner has not submitted evidence to show error in the value set by the County Board. The Property Owner’s cost estimate and income calculation add no value for the three units which were unfinished and are based on a square footage size of the building that was unsupported.

2. The Property Owner argued that the subject was overvalued in prior years and appeared to request some consideration for those prior years. However, under Utah Code Sec. 59-2-1004, if the Property Owner was dissatisfied with the assessed value he had until September 15 of each tax year to appeal the value to the County Board of Equalization. If dissatisfied with the decision from the County Board for each tax year, the Property Owner then would have had thirty-days to appeal the County Board’s decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006. Based on these provisions the only year that the Tax Commission may consider in this appeal is 2010.

3. A property owner may appeal an assessment to the Utah State Tax Commission based on “equalization” rather than “fair market value” under Utah Code Sec. 59-2-1006(4). Under these provisions the Tax Commission shall adjust valuation 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(4).) In this appeal the Property provided what appeared to random properties scattered around the County to show that the values of these properties had actually gone down from 2009 to 2010, while the subject had increased. However, this is not sufficient to establish an adjustment based on equalization. When a property owner is arguing for a reduction based on equalization of property values it is insufficient to show that there are some other parcels in the County that are valued lower. A property owner must show that comparable properties are valued lower and that there are multiple unfairly advantaged properties. See *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004).

Considering the applicable law and the evidence submitted at the hearing, the value for the subject parcel should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the value of the subject property as of January 1, 2010, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
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.