

12-222 & 13-136
TAX TYPE: PROPERTY TAX
TAX YEARS: 2011 & 2012
DATE SIGNED: 1-10-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH. Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal Nos. 12-222 & 13-136</p> <p>Parcel No. ##### Tax Type: Property Tax Tax Years: 2011 & 2012</p> <p>Judge: Phan</p>
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Presiding:

D'Arcy Dixon, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *pro se*
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor, by phone
RESPONDENT-2, by phone
RESPONDENT-3, by phone

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 31, 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 is appealing the assessed value of parcel no. ##### for tax years 2011 and 2012. The lien dates at issue in this hearing are January 1, 2011 and January 1, 2012.
2. The County Assessor had originally set the value of the subject parcel as of the January 1, 2011 and the January 1, 2012 lien dates at \$\$\$\$\$. The County representative at the hearing testified that for both years the County Board of Equalization had reduced the value to

\$\$\$\$\$.¹ At the hearing the Property Owner requests a reduction to \$\$\$\$ for both tax years at issue and the County requested the value of \$\$\$\$ be upheld for both years.

3. For both 2011 and 2012, the County had allowed the primary residential exemption for the buildings and the first ##### acre of land, as the exemption applies only to the first acre of residential land. The remaining ##### acres of land did not receive this exemption, but had been valued at \$\$\$\$ for both tax years.

4. The subject property is located at ADDRESS in CITY, Utah. The property is ##### acres of land improved with a main residence, a secondary residence or mother-in-law apartment attached to the original garage and a detached pool house. The main residence was constructed in YEAR and has ##### square feet. The mother-in-law unit has ##### square feet and was constructed in YEAR or YEAR. There is a minimal kitchen in this residence. In addition there is a pool house of ##### square feet that has ##### additional bedrooms and ##### bathrooms and no kitchen. This had also been constructed in YEAR or YEAR. There are two garages on the subject property. The original garage is near the main house and has ##### square feet plus a carport. The mother-in-law unit is attached to the back of this original garage. There is a second garage built in YEAR that has ##### square feet and is a little further from the house. The County has graded the buildings on the subject as being in average condition. The Property Owner testified that although there is a pool it is not operable as it has cracks and would need substantial repairs. She indicated that the pool is covered. The County, however, has taken the swimming pool off the assessment.

5. The Property Owner had purchased the subject property on DATE, YEAR. At the time of the purchase the property was being used as a bed and breakfast and in addition to the real property, the Property Owner purchased personal property and intangibles used as part of an ongoing business. She provided a copy of the Buyer's Closing Statement² which showed a contract sales price of \$\$\$\$\$. The Closing Statement is a real property closing statement and does not indicate that any portion of the \$\$\$\$\$ was for personal property or intangibles related to the business. The Property Owner provided copies of a Deed of Trust and Promissory Note on the subject parcel in the amount of \$\$\$\$\$ recorded on DATE, YEAR.³ In addition, there were Deeds of Trust and promissory notes on two additional parcels of the property⁴ which were not

¹ There was some indication that the County had not lowered the value in Petitioner's Hearing Exhibit 4, pgs. 53-77, but it was the County's representative at this Formal Hearing who said that the County had lowered the value to \$\$\$\$\$.

² Petitioner's Exhibit 2.

³ Petitioner's Exhibit 2, pgs. 13-14.

⁴ Petitioner's Exhibit 2, pgs. 15-18.

part of the subject or the purchase contract, also recorded on DATE, YEAR, that combined with the note on the subject totaled \$\$\$\$\$.

6. It was clear from the information provided by the Property Owner that she had acquired with the real property personal property, furnishings and intangibles of the business. It was the Property Owner's contention that of the \$\$\$\$\$ paid, only \$\$\$\$\$ had been for the real property (land and buildings) and the rest was for the furnishings and intangibles of the business. The contracts provided by the Property Owner show what she had acquired with the business, but not the price allocated to those items. She had acquired the furniture, appliances, dishware, bedding and other items that had furnished the residences and had been used in the bed and breakfast operation.⁵ There was an Assignment of the Business Name, Assignment of Licenses, Permits and Web Page, Assignment of Trade name, Trademark and Logo as well as collected deposits for future reservations, guest list and reservation records since 2001.⁶

7. The Property Owner had purchased the property to operate as a bed and breakfast and had operated it in that manner for several years, but had ceased operating the business in 2009. The Property Owner testified that she uses the subject property as her primary residence.

8. The subject is located in an R-3 residential zoning area in CITY. It is located in the historical area of CITY, near the middle of town, a few blocks from STREET. It was the Property Owner's argument that this was not a good location for a residential property as there were issues with crime and vandals. She indicated that it was near the walking trail into the center of town which was frequented by people coming back from bars late at night. She also indicated it was near a trailer court. The Property Owner acknowledged that people wanted to purchase the old adobe homes around CITY, but she argued there was not a demand for homes of the age of the subject residence. It was the County's argument that this was a well established and desirable neighborhood.

9. The Property Owner testified that there had been two State Tax Commission mandated increases in land value, a \$\$\$\$\$ increase in 2007 and then a \$\$\$\$\$ increase in 2009. At the hearing the Property Owner requested the value be reduced to \$\$\$\$\$ based on her assertion of \$\$\$\$\$ as the purchase price in YEAR, plus these two mandated land increases.

10. The Property Owner did not provide comparable sales. Neither party presented an appraisal of the subject property.

⁵ Petitioner's Exhibit 2, pgs. 19-29.

⁶ Petitioner's Exhibit 2, pgs. 29-32.

11. The County testified that it had valued the subject based on a cost method. The County did not submit as evidence at the hearing its cost approach calculations.

12. The County submitted sales from the Utah State Tax Commission Property Tax Division's sales ratio study for the 2011 tax year.⁷ The County did not provide the Multiple Listing reports for any of these sales. They were listed by parcel number and addresses were not provided. Location was noted only in general terms, like "Less Than 1 Mile" or "Less than 3 Blocks." There were no photographs or indications of grade or condition of these properties. The County did not make appraisal adjustments for differences between the subject and these comparables.

13. Given that the subject has some unique characteristics compared to these sales an appraisal would have been helpful. The subject lot, at ##### acres, was a significantly larger lot than any of the sales that were located less than one mile from the subject property. The County's list⁸ contained four sales that occurred during 2009 that were located "Less Than 3 Blocks" from the subject. These properties ranged in size from ##### to ##### acres of land. These properties all had a residence that was much smaller than the subject as well. They had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. There were twelve sales that occurred in 2010 that were listed as "Less Than 1 Mile" from the subject. These also had small lots with 10 of the 12 having lots sizes ranging from ##### to ##### acres. Two of these properties had lots a bit larger with ##### or ##### acres. These properties had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The property selling for \$\$\$\$\$ had the largest sized residence with ##### square feet; it was a newer residence, constructed in 2000. This property had only ##### acres of land.

14. For the 2011 tax year the County indicated that the best comparables were two properties that had sold in 2009. Neither was near the subject, being listed in the category "Less Than 5 Miles" and in an area the County referred to as "(X)." The County did argue that the subject's location near STREET was a better location. One property had sold for \$\$\$\$\$ in April 2009. This was a ##### acre parcel of land with a ##### square foot residence that had been constructed in 1994. The second property had sold for \$\$\$\$\$ in July 2009. This property had ##### acres of land, a ##### square foot residence and a ##### square foot garage.

15. Of the County's comparables that had sold in 2010, which would be nearer to the lien date for the 2011 tax year, only two had sold for more than \$\$\$\$\$. One sold for \$\$\$\$\$ in August 2010. This property had a ##### square foot residence constructed in 2000 and only

⁷ Respondent's Exhibit 1.

⁸ Respondent's Exhibit 1.

acres of land. The second sold for \$\$\$\$\$, with a ##### square foot residence constructed in 2003 and a ##### square foot shop and agricultural building. This property had ##### acres. There were no sales over \$\$\$\$\$ that occurred in 2011.

16. For the 2012 tax year the County provided sales that had occurred in 2011 from Property Tax Division's study.⁹ There were five sales in 2011 of properties "Less Than 1 Mile" from the subject. These all had small lots, ranging in size from ##### to ##### acres. These properties had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. There were three sales that had lots that were ##### acre or larger in size, but these were located further from the subject, in the category labeled "Less Than 5 Miles" These properties ranged in lot size from ##### to ##### acres and had sold in 2011 for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. The County indicated that the two best comparables for the subject for the 2012 year were two of these properties. The property that sold for \$\$\$\$\$ had ##### acre of land and a residence constructed in 1998, which was considerably newer than the subject. It had ##### square feet above grade, a basement of the same size, a garage and a ##### square foot detached building. The second of the County's best comparables was a property that had sold for \$\$\$\$\$ in March 2011. This property has ##### acres of land, a residence of ##### square feet constructed in 1995, and a ##### square foot garage.

17. The Property Owner's purchase price of the business in YEAR has little relevance to the fair market value of the subject real property as of January 1, 2011 and January 1, 2012. The Property Owner did not in YEAR purchase for \$\$\$\$\$ a residential property, she purchased an operating business. She is allocating a portion of the total purchase price of the business to the real property based on the amount of the promissory note relating to the real property, but that does not necessarily establish what portion of the \$\$\$\$\$ purchase price was for the land and buildings. Additionally, market values in general have changed substantially since YEAR. The Property Owner has not provided evidence of fair market value in the form of sales comparables or an appraisal for the years 2011 and 2012.

18. There are sales that occurred in 2009, that had some similarities to the subject based on the very limited information provided. These were properties with just over ##### acre, with residences similar in size to the main residence on the subject. The main residences on these properties were much newer than the subject residence, but the subject did have the additional ##### square feet in the mother-in-law unit and pool house unit. These two properties had sold for \$\$\$\$\$ and \$\$\$\$\$ and provide support for the County's 2010 value at \$\$\$\$\$. In 2010 there

⁹ Respondent's Exhibit 2.

were only two sales over \$\$\$\$ on the list provided by the County, one selling for \$\$\$\$ and one for \$\$. Both of these properties were significantly dissimilar to the subject, but from the limited information presented the Commission is not able to conclude that they were either inferior or superior properties. Without additional market evidence or an appraisal, the value of \$\$\$\$ is roughly supported for 2011. The Property Owner has not submitted market evidence to support some other value for this year.

19. For the 2012 tax year, there were no sales during 2010 or 2011 of property as high as the value set by the County Board for the subject at \$\$. The two highest sales in 2011 had been for \$\$\$\$ and \$\$. These were both ##### acre or larger residential parcels of land. The subject residence had more living space if the mother-in-law unit and pool house unit are included, but the main residence of the subject property was significantly older than the residences on these two comparables. Furthermore, it is not clear whether the mother-in-law unit and pool house unit of the subject property was an over improvement and, therefore, had some functional obsolescence, or whether a subsequent purchaser might find these contribute to market value. An appraiser could have taken differences into consideration including location, condition, age and quality of construction, and whether the subject had functional obsolescence to reach a conclusion of fair market value. Without appraisal adjustments, the sales by themselves indicate error in the value set by the County for the 2012 year. Without appraisal adjustments to these sales, there is nothing in the record that supports a value for the subject higher than \$\$\$\$ for the 2012 tax year. The Property Owner did not provide better market value evidence.

20. Based on the limited market value evidence submitted by the parties in this hearing, the value for the 2012 tax year should be reduced to \$\$\$\$.

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).)

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 YEAR).

CONCLUSIONS OF LAW

1. Property tax is based on the fair market value of the property pursuant to Utah Code Sec. 59-2-103 as of January 1 of the tax year at issue. Although, the Property Owner went into considerable detail in her exhibits to provide a history of Tax Commission appeals for prior years, this hearing is not a review of what has occurred in prior appeals, but instead for the Commission to determine what is the fair market value of the subject property as of January 1, 2011 and January 1, 2012.

2. “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. Fair market value must be estimated based on the information available. The Property Owner argues that the

fair market value should be based on a portion of her YEAR purchase price of an operating bed-and breakfast business. The Property Owner had purchased the bed and breakfast business for \$\$\$\$\$ and argues that of this amount, \$\$\$\$\$ was for the real property land and buildings. Little weight can be given this allocation of the YEAR sale to establish a value for the subject as of January 1, 2011 or January 1, 2012, as market values have changed significantly since that time. Further, the contracts on the purchase did not establish that \$\$\$\$\$ out of the \$\$\$\$\$ total purchase price was for the land and buildings.

3. The only evidence of fair market value submitted at the hearing was a list of residential property sales that the County had obtained from the Utah Property Tax Division, which used the sales as part of its sales ratio study. The County did not provide MLS reports, addresses or maps for where these properties were located, photographs, or information on grade and condition. However, the Property Owner did not present MLS reports or sales information on comparable properties either. Neither side presented an appraisal of the subject property. The subject property is unique, having a large ##### acre lot right near the historic downtown of CITY. In addition to a main house constructed in YEAR, there was ##### square feet in a mother-in-law apartment and separate pool house structure. An appraisal would have been helpful to establish market value.

4. To prevail in a real property tax dispute, the Property Owner 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 limited sales information submitted does not support the County's value for the 2012 tax year. There were no sales provided relevant to the 2012 year that sold for as high as \$\$\$\$\$. The highest selling property had sold for \$\$\$\$\$. If, in fact, with proper appraisal adjustments for the differences the sales would have supported the County's value, the County chose not to provide those. The County should be prepared to support its value at a hearing with evidence of fair market value.¹⁰ Based on the limited information presented, the County's 2012 value is in error. The Commission must determine a value based on the limited sales information and does not have sufficient information to make appraisal adjustments. Additionally, a value should have been supported by the Property Owner with market evidence and she did not provide better market evidence. Therefore, the Commission will go with the higher of the two most comparable sales for the 2012 year and set the value at \$\$\$\$\$. For the 2011 tax year the limited information sufficiently

¹⁰ *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

supports the County’s value so that it retains its presumption of correctness. The Property Owner did not submit better evidence of fair market value to establish error or in the County’s value.

5. There is a statutory departure from “fair market value” based on equalization pursuant to Utah Code Sec. 59-2-1006(4). Under those 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(1)&(4).)

6. 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). In this case the Property Owner has not shown the properties that were valued lower than the subject lots were actually comparable to the subject.

Considering the applicable law and the evidence submitted at the hearing, the value of \$\$\$\$\$ should be upheld for the 2011 tax year and the value should be lowered to \$\$\$\$\$ for the 2012 tax year.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the value for the subject property as of the lien date January 1, 2011 is \$\$\$\$\$, and for January 1, 2012 is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2014.

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.