

12-615
TAX TYPE: PROPERTY TAX-LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 12-11-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: B. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 and TAXPAYER-2 Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-615 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, *Pro Se*
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on August 28, 2012 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2011 lien date, which the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization value. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *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, 335 (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).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS-1 in CITY. It is a #####-acre parcel improved with a fifteen year old two-story home. The home has 2,986 square feet above grade, and a 1,576 square foot basement, with 1,500 square feet finished. It has four bedrooms, four and one-half bathrooms, and a three-car garage.

The Taxpayer stated that he is concerned with how the County selects its comparable properties. He stated that the subject property is located in one of the first subdivisions built above STREET and it is starting to show its age. The Taxpayer is concerned that he is not being taxed fairly, and believes the County has been comparing the subject property to properties located in superior neighborhoods. The Taxpayer believes he has been victimized by the County both for the tax year at issue and the 2009 tax year. The Taxpayer submitted a number of photographs of comparables that were used by the County in 2009 and of the comparable properties that were used by the County at the Board of Equalization level. The photographs show the comparables, the street views, backyards, and neighboring properties of the comparables.

The Taxpayer argued that the value of the subject property increased nearly 20% from 2010 through 2011, which was a more significant increase than neighboring properties. The Taxpayer submitted the following table:

	2010 Value	2011 Value	Change
ADDRESS-1 (Subject)	\$\$\$\$	\$\$\$\$	+19.7%
ADDRESS-2	\$\$\$\$	\$\$\$\$	+0.009%
ADDRESS-3	\$\$\$\$	\$\$\$\$	+0.007%
ADDRESS-4	\$\$\$\$	\$\$\$\$	+0.007%
ADDRESS-5	\$\$\$\$	\$\$\$\$	+0.007%
ADDRESS-6	\$\$\$\$	\$\$\$\$	-16.1%

In addition, the Taxpayer submitted a handwritten spreadsheet that compares the sales price with the assessed value of the comparables that have been used throughout his appeal for the 2011 tax year, as follows:

	Total Sq. Ft.	Sales Date	Sales Price	2011 Assessed
ADDRESS-1 (Subject)	4,562			\$\$\$\$
ADDRESS-7	4,290	6/24/11	\$\$\$\$	\$\$\$\$
ADDRESS-8	3,303	5/24/12	\$\$\$\$	\$\$\$\$
ADDRESS-9	3,386	1/17/12	\$\$\$\$	\$\$\$\$
ADDRESS-10	4,977	6/2/11	\$\$\$\$	\$\$\$\$
ADDRESS-11	4,383	2/29/12	\$\$\$\$	\$\$\$\$
ADDRESS-12	4,331	6/2/11	\$\$\$\$	\$\$\$\$
ADDRESS-13	3,676	4/22/11	\$\$\$\$	\$\$\$\$
ADDRESS-14	3,493		\$\$\$\$	\$\$\$\$
ADDRESS-15	3,536	11/16/10	\$\$\$\$	\$\$\$\$
ADDRESS-16	4,779	5/7/12	\$\$\$\$	\$\$\$\$
ADDRESS-17	4,138	5/10/11	\$\$\$\$	\$\$\$\$
ADDRESS-18	5,012	8/22/11	\$\$\$\$	\$\$\$\$
ADDRESS-19	4,511	4/28/10	\$\$\$\$	\$\$\$\$
ADDRESS-20	4,515	8/24/10	\$\$\$\$	\$\$\$\$
ADDRESS-21	5,604	7/28/10	\$\$\$\$	\$\$\$\$
ADDRESS-22	4,932		\$\$\$\$	\$\$\$\$

Taxpayer stated that the median value of the above properties comes in around \$\$\$\$\$. He stated that the market was worse in 2011 than it was at the time of the hearing. He believes he may have been able to get \$\$\$\$\$ for the subject if he listed the property now, but he would not have been able to get that in 2011. The Taxpayer stated that while he believes the subject should have a lower value, he would be willing to accept a \$\$\$\$\$ value for the subject.

The Taxpayer submitted the MLS report showing his purchase of the subject property for \$\$\$\$\$ in February 2002. In support of his requested value the Taxpayer submitted MLS reports for the following comparables:

	Address	Lot Size	Year Built	Square Feet	BSMT	Sales Date	Sales Price
Subject	ADDRESS-1	###	1996	2,986	1,576		
Sale #1	ADDRESS-7	0.24	1996	2,714	1,546	Listing	\$\$\$\$
Sale #2	ADDRESS-10	0.28	1999	2,977	2,000	6/10/11	\$\$\$\$
Sale #3	ADDRESS-12	0.26	1996	2,221	2,110	8/19/11	\$\$\$\$
Sale #4	ADDRESS-17	0.25	1996	2,116	2,022	5/10/11	\$\$\$\$
Sale #5	ADDRESS-13	0.41	1996	1,854	1,822	4/22/11	\$\$\$\$
Sale #6	ADDRESS-18	0.23	2005	3,045	1,967	8/22/11	\$\$\$\$
Sale #7	ADDRESS-9	0.22	1996	2,254	1,132	1/17/12	\$\$\$\$
Sale #8	ADDRESS-11	0.23	1999	3,050	1,333	5/1/12	\$\$\$\$
Sale #9	ADDRESS-16	0.27	1997	3,027	1,752	5/7/12	\$\$\$\$
Sale #10	ADDRESS-8	0.21	1996	2,200	1,100	5/24/12	\$\$\$\$

In support of the Board of Equalization value, the County's representative submitted a CMA report that determined a value of \$\$\$\$\$ for the subject property. Following are the comparables used in the CMA report:

	Address	Lot Size	Year Built	Square Feet	BSMT	Sales Date	Sales Price	Adjusted Price
Subject	ADDRESS-1	###	1996	2,986	1,576			
Sale #1	ADDRESS-14	0.24	1996	2,258	1,235	8/16/10	\$\$\$\$	\$\$\$\$
Sale #2	ADDRESS-15	0.23	1998	2,315	1,220	11/16/10	\$\$\$\$	\$\$\$\$
Sale #3	ADDRESS-19	0.22	1996	3,043	1,468	04/28/10	\$\$\$\$	\$\$\$\$
Sale #4	ADDRESS-20	0.23	1997	2,782	1,302	8/24/10	\$\$\$\$	\$\$\$\$
Sale #5	ADDRESS-21	0.27	1999	2,830	2,774	11/30/10	\$\$\$\$	\$\$\$\$
Sale #6	ADDRESS-22	0.41	1996	3,196	1,736	7/28/10	\$\$\$\$	\$\$\$\$

The County’s representative stated that he tried to bracket the features of the subject property. He also noted that he placed the most weight on the comparables that were located in the same neighborhood code as the subject.

The County’s representative also submitted a second CMA report using three comparables that the Taxpayer believes are most relevant. Following are those comparables:

	Address	Lot Size	Year Built	Square Feet	BSMT	Sales Date	Sales Price	Adjusted Price
Subject	ADDRESS-1	###	1996	2,986	1,576			
Sale #1	ADDRESS-11	0.23	1999	3,050	1,333	5/1/2012	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS-16	0.27	1997	3,027	1,752	5/7/12	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS-18	0.23	2005	3,045	1,967	8/22/11	\$\$\$\$\$	\$\$\$\$\$

The County’s representative provided a copy of the trend-line analysis he used to determine the time adjustment for sales in that area. He noted that the sales support a value of around \$\$\$\$\$; but noted that comparable one was a bank-owned sale, and that all of the properties sold significantly post lien date.

With regard to the Taxpayer’s equalization argument, the County’s representative stated that most of those homes are smaller than the subject. He also indicated that it is possible that values have not been updated to correspond with sales prices. The County’s representative agreed that the assessed values are kind of all over the place. He explained that in 2009 there were issues in the regression modeling for the east bench, and that many properties in that area were under-assessed for the 2009 tax year. He stated that was the last time the County used regression modeling for that area, and they then started using a cost approach to value properties along the east bench. The County’s representative pointed out many of the Taxpayer’s comparables have less above-grade square footage than the subject property, and some have unfinished basements. He also noted that most of the neighboring homes have lower grades and conditions than the subject.

The Taxpayer believes the County is using “fuzzy math”. He stated that the values of other homes in his neighborhood have increased maybe \$\$\$\$\$, but the value of the subject was increased by \$\$\$\$\$. He feels that because his neighbors’ values are not being raised at the same rate as the subject, the County has made a mistake. He stated that he does not understand how the County arrived at the adjustment amounts in their CMA report, and is further concerned that they are using 2010 sales for the 2011 tax year. The Taxpayer stated that using common sense the value just does not add up. He stated that there were some properties that sold for more than they should have, and some foreclosure properties sold for less, but that he is just asking for the median value. He believes he would be lucky to get \$\$\$\$\$, or maybe a little less, for the subject property. Finally, he argued that square footage mattered very little after 2007 because of the downturn in the market.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which

property would exchange hands between a willing buyer and seller. The Taxpayer submitted ten comparable sales that sold between April 22, 2011 and May 24, 2012, with prices ranging from \$\$\$\$\$ to \$\$\$\$\$. All of the comparables sold after the lien date, and most have less square footage than the subject property. Comparables two, six, eight, and nine are most similar to the subject. Comparables two and eight were bank-owned, and had significantly lower sales prices than comparables six and nine. Comparables six and nine sold for \$\$\$\$\$ and \$\$\$\$\$, respectively, and would require some adjustment for market conditions and other features. The County submitted a CMA report that determined a value of \$\$\$\$\$, based on six comparables that sold between April 28, 2010 and November 30, 2010. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$, with adjusted prices ranging from \$\$\$\$\$ to \$\$\$\$\$. Most of the comparables had less square footage than the subject, but the County's representative did make adjustments for that and other differences. The comparables submitted tend to support the Board of Equalization value of \$\$\$\$\$, and it should be sustained.

The Taxpayer has raised an equalization argument, and to prevail must show that the County's appraised value for the subject property deviates more than 5% from the assessed value of comparable properties. Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm'n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner "singled out" for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

The \$\$\$\$\$ value determined by the Board of Equalization has been determined to be the fair market value of the subject property for the 2011 tax year. The Taxpayer showed that the value of the subject property was increased by a larger percentage than five nearby properties, and that the assessed values vary greatly from the sales prices in the subject area. Most of the comparables submitted were smaller than the subject. In addition, the MLS report for the subject property, submitted by the Taxpayer, indicates that the subject is a "custom home" with "every upgrade imaginable". It is reasonable that the subject would be valued higher than smaller homes that may not have the same quality of finishes. The Taxpayer has not shown that the subject property is being singled out and is assessed at 5% more than comparable properties in the area, thus the value should not be reduced on an equalization basis.

Jan Marshall
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, 2011 lien date and sustains the Board of Equalization value. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner