

12-997
TAX TYPE: PROPERTY TAX
TAX YEAR: 2011
DATE SIGNED: 2-26-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 12-997</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2011</p> <p>Judge: Marshall</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 10, 2013, in accordance with Utah Code Ann. §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. The above named Petitioner ("Taxpayer") is appealing the assessed value of the subject property as set by the Salt Lake County Board of Equalization ("County") for the January 1, 2011 lien date.
2. The County Assessor determined a value of \$\$\$\$\$ as of the January 1, 2011 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. The County is asking the Commission to sustain the Board of Equalization value. The Taxpayer is requesting that the value be further reduced to \$\$\$\$\$.
3. The subject property is parcel no. #####, located at SUBJECT PROPERTY in CITY-1. It is a #####-acre parcel improved with a home that was built in YEAR. The home has #####-square

feet above grade, and a #####-square foot basement, of which #####-square feet is finished. It has three bedrooms, two bathrooms, two fireplaces, a putting green, and two detached garages. The putting green is Astroturf over concrete, and most of the trees and flowers in the yard are fake, which the Taxpayer covers or brings in during the winter.

4. The Taxpayer argued that the County, as well as the Commission in its prior decisions, improperly valued the land of the subject property. The Taxpayer maintains that in 2008, he reached an agreement with the County that reduced the improvement value of the subject property by 90%. He testified that the improvement value for that year was reduced from \$\$\$\$\$ to \$\$\$\$\$. (Exhibit D).
5. Page one of Exhibit D appears to be for the 2007 tax year and states that “a permanent valuation adjustment of 90% was given last year for the water pump problem.” The Board of Equalization hearing officer recommended that the overall value be reduced from \$\$\$\$\$ to \$\$\$\$\$. Page three of Exhibit D is for the 2008 tax year. It shows an original valuation of \$353,300, which the Board of Equalization reduced to \$\$\$\$\$. It indicates that the improvement value was reduced from \$\$\$\$\$ to \$\$\$\$\$. The land value remained at \$\$\$\$\$.
6. The Taxpayer provided a plat map of the subject subdivision, on which he drew the water drainage and location of the sump pump located behind the subject property. He stated that the subject is the smallest lot in the subdivision, and that it is irregularly shaped. He further noted that there are flooding issues on the subject property, which he maintains were caused by Salt Lake County. (Exhibit A).
7. The Taxpayer explained that for a number of years there was a working sump pump in place to handle the water that would drain off of other properties in the subdivision. The pump burned out, and was never replaced by Salt Lake County. The Taxpayer argued that he has a “quasi-contract” with the County, and contends that the 90% reduction he believes was granted in 2008 is to remain in place until the County corrects the problem.
8. In support of his requested value, the Taxpayer argued that the amount the County originally allocated to the improvements, \$\$\$\$\$, should be reduced by 90% to \$\$\$\$\$. That should then be added to the land value of \$\$\$\$\$. However, the Board of Equalization reduced the land value to \$\$\$\$\$ and the improvement value to \$\$\$\$\$. (*See* Board of Equalization record). Using the Taxpayer’s proposed calculation, this would result in an improvement value of \$\$\$\$\$ and an overall value of \$\$\$\$\$.

9. The Taxpayer provided photographs of concrete settlement/cracking, tall weeds, the sump pump, and muskrats. He contends that these issues are a result of the flooding and lack of a working sump pump. (Exhibit A).
10. The Taxpayer testified that the weeded area behind the subject property is owned by Salt Lake County. He stated that the property owner on the other side of the canal actually owns up to the center of the canal and has the ability to landscape the area. He stated that he has tried killing the weeds, but nothing has worked. He stated that once a year the county cuts down the weeds on the path, but not those on the embankment.
11. The Taxpayer argued that the value of the subject property is further diminished by a power line that runs across the backyard. He argued that it deprives him of the use of his backyard for a swimming pool and a hot tub. He provided a copy of a pole line easement by Utah Power and Light. In addition, he provided what appears to be a report from a title company that shows an easement for public utilities as well as the pole line easement, and photographs of the power lines. (Exhibit B).
12. The Taxpayer stated that in 2011, the value of the subject property increased, while the other homes in the subject subdivision had a reduction in value. He believes the County increased the value of the subject because someone drove by the subject and noticed cabinets and plumbing fixtures in the garage and assumed he had remodeled the interior. He testified that he was only storing the materials for a friend. The County's representative did an interior inspection of the subject, and confirmed that the kitchen has not been updated.
13. The Taxpayer provided a map of the subject subdivision and print-outs from the County's website for each of the homes. (Exhibit C). The print-outs show the 2010 value, the 2011 value, and the lot size for each of the properties, as follows:

Parcel No.	Address	Lot Size	2010 Value	2011 Value
Subject	SUBJECT PROPERTY	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-1	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-2	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-3	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-4	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-5	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-6	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-7	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-8	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-9	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-10	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-11	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-12	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-13	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-14	#####	\$\$\$\$	\$\$\$\$

#####	ADDRESS-15	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-16	#####	\$\$\$\$	\$\$\$\$
#####	ADDRESS-17	#####	\$\$\$\$	\$\$\$\$

14. The Taxpayer noted that parcel no. ##### and ##### have the same floorplan as the subject property, and that parcel no. ##### is nearly identical. He stated that parcel no. ##### has a bigger lot.
15. The County’s representative believes there is a misunderstanding as to the downward adjustment for the water drainage issues on the subject property. He stated that the 90% is not the reduction amount, but rather the “percent good”, thus the actual adjustment is 10% downward. He stated that drainage issues are related to “land”, and not to “improvements”, and the adjustment would be made to the land value, rather than the improvement value. Further, he stated that the subject property is the only property in the subdivision that receives such an adjustment.
16. In support of the Board of Equalization value, the County’s representative submitted a retrospective appraisal that determined a value of \$\$\$\$ for the subject property as of the January 1, 2011 lien date. (Exhibit R-1). Following are the comparables used in the County’s appraisal:

	Address	Lot Size	Year Built	GLA	BSMT	Sales Date	Sales Price	Adjusted Price
Subject	SUBJECT PROPERTY	###	###	###	###			
Sale #1	ADDRESS-18	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$
Sale #2	ADDRESS-19	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$
Sale #3	ADDRESS-20	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$
Sale #4	ADDRESS-21	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$
Sale #5	ADDRESS-22	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$
Sale #6	ADDRESS-23	###	###	###	###	DATE	\$\$\$\$	\$\$\$\$

17. The County’s representative testified that he tried to find split-entry or bi-level homes for the comparables. He explained that the subject is larger than other homes in the area because the carport has been converted into living area. He also noted that the front entrance to the subject property has an enclosed porch, and stated that he did not treat that as living area because it has fairly minimal value. The County’s representative noted that he made a \$\$\$\$ adjustment to account for the drainage issues.
18. The County’s representative stated that he did not make an adjustment for the power-line easement, as most lots in the County have utility easements. He stated there is no adjustment made unless the easement cuts across or infringes upon the building envelope.

APPLICABLE LAW

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

- (1) All tangible personal 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 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.
- (5) 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.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. 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 (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).

CONCLUSIONS OF LAW

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must 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.

In support of his requested value, the Taxpayer argued that a “permanent valuation adjustment of 90%” was previously made by the County and that it should continue to be deducted from the improvement value until the County corrects issues with a sump pump located behind the subject property. The Commission finds the County’s argument that any adjustment should be given to the land value rather than the improvement value, and also that the 90% refers to the “percent good” and not the amount of the reduction, to be more persuasive. The problems described deal with the land, not the structural improvements, and thus more appropriately would affect the land value.¹

The County submitted a retrospective appraisal report that determined a value of \$\$\$\$\$ as of the January 1, 2011 lien date. The properties are similar in age and location, and comparables one, two, and five have a similar building style. The appraisal accounts for the age, condition, and the flooding issues of the subject property. The appraisal more than supports the Board of Equalization value, which 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 Board of Equalization value of \$\$\$\$\$ has been determined to be the fair market value of the subject property. The Taxpayer argued that all of the properties in the subject subdivision received a reduction from the 2010 to 2011 tax year, while the subject value was increased. The information submitted by the

¹ The Taxpayer argued that he had a “quasi-contract” with the County. The Commission does not find his contentions to be persuasive as to the value of the subject property for the year at issue. The Taxpayer may be able to address this issue through the County legislative body in accordance with Utah Code Ann. §59-2-1321, which provides for a reduction of taxes “upon sufficient evidence being produced that property has been either erroneously or illegally assessed”.

Taxpayer shows that the 2010 values ranged from \$\$\$\$\$ to \$\$\$\$\$, while the 2011 values ranged from \$\$\$\$\$ to \$\$\$\$\$. The subject property value of \$\$\$\$\$ is the fifth lowest in the subdivision, and is not unreasonable considering the adjustment for the flooding issues and that it is one of the largest homes, and has more garage space than most of the properties in the subdivision. The County's original assessment did erroneously increase the value of the subject because of a mistaken belief that the kitchen had been remodeled. However, the Board of Equalization corrected this in its reduction. The Taxpayer has failed to show that any further reduction should be made to the value of the subject property on the basis of his equalization argument.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2011 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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.