

12-1091

TAX TYPE: PROPERTY TAX

TAX YEAR: 2011

DATE SIGNED: 5-29-2014

COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

GUIDING DECISION

<p>PETITIONER-1 and PETITIONER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 12-1091</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2011</p> <p>Judge: Phan</p>
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Presiding:

Bruce Johnson, Commission Chair

Jane Phan, Administrative Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy Salt Lake County
Attorney

RESPONDENT, Certified Residential Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 27, 2014, in accordance with Utah Code §59-2-1006 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. Petitioners ("Property Owners") have filed an appeal of the decision of the Salt Lake County Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. 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, 2011.
3. The County Assessor had originally valued the subject property at \$\$\$\$\$\$ as of the lien date and the County Board of Equalization ("County") reduced the value to \$\$\$\$\$\$. At the hearing the

Property Owner requests a reduction to \$\$\$\$\$. The representative for the County asked that the value of \$\$\$\$\$ be upheld.

4. The property that is the subject of this appeal is parcel no. ##### and is located at ADDRESS-1, CITY-1, Utah. The subject property is a condominium located on the ##### floor in the west building of the NAME OF CONDOMINIUM-1. The subject condominium unit has ##### square feet of interior space plus a ##### square foot balcony. The subject has two-bedrooms and a den. It is finished in a very good grade and in excellent condition.

5. This development was constructed in YEAR. NAME OF CONDOMINIUM-1 has two buildings that are 10 stories high separated by a courtyard. The two buildings are angled at the front side of the street side, opening away from the court yard. They are directly across the street from COMPLEX. The end units on STREET would have the most direct views of COMPLEX. The subject unit is an interior unit facing directly across the courtyard, however, there is an angled view of COMPLEX from areas inside the subject unit and from the balcony of the subject unit. The higher units on the back or north side of the project would have views into the NAME OF CENTER and South. However, units on the lower floors of the buildings would have varying levels of view obstruction from other buildings to the south, east and west.

6. NAME OF CONDOMINIUM-1 was the first of three new condominium developments that were constructed near the NAME OF CENTER development. The Property Owner testified that NAME OF CONDOMINIUM-1 had started to sell units in May of 2010 and sold out 30% of the units in the development. But in 2011, two new high-rise condominium developments were starting to sell units and after these came on line no new buyers purchased in NAME OF CONDOMINIUM-1. These other developments were NAME OF CONDOMINIUM-2 and NAME OF CONDOMINIUM-3. It was the Property Owner's contention that the units in these two developments had much better, unobstructed views and had taken potential buyers from NAME OF CONDOMINIUM-1. He stated that NAME OF CONDOMINIUM-2 and NAME OF CONDOMINIUM-3 had sold out 60% and 50% out respectively and it was his opinion that they would not see buyers in NAME OF CONDOMINIUM-1 again until NAME OF CONDOMINIUM-2 and NAME OF CONDOMINIUM-3 had sold out. He asserted that it would be 10 years before NAME OF CONDOMINIUM-1 sold out.

7. The Property Owners purchased the subject unit in YEAR for \$\$\$\$\$. They had negotiated the terms of the purchase while the building was still under construction. Originally the plan for the space that the subject encompasses was that it would be two separate units each roughly half the size of the subject. The original design for the ninth floor west building was four units, unit 901 across the front, unit 904 across the back and units ##### & ##### along the interior side of the building. The interior side faces across the courtyard to the east building. At the time of purchase the Property Owners

negotiated to purchase both interior units ##### and #####. Because this was prior to the units being finished out, they had these two constructed into one unit, which is now the subject unit, unit #####. However, even at that stage of development, the Property Owners indicated that they had to pay some \$\$\$\$ in costs to have the units combined, including the costs to have the declaration of condominium units amended.

8. The plan for the tenth floor or pent house level in the west building also combines the space of the two interior units into one single unit. So unit 1002W, directly above the subject, is very similar as far as size and view. It is also an interior facing unit and the view would be about the same as the subject. Unit 1002W has less interior square footage than the subject at 1906 square feet while the subject has #####, but this is due to the fact that Unit 1002 has more outdoor balcony space, while the subject has more interior space. These two units have the same footprint. The Property Owner stated that unit 1002 had higher ceilings than the subject unit. He testified the subject had 9 foot ceilings in the living areas and 8 foot ceilings in the bedrooms. He stated that he thought unit 1002 had ceilings that were 10 feet high throughout because it was the penthouse level.

9. The Property Owner provided a letter dated October 11, 2013, from NAME-1, Certified General Appraiser, regarding the view of the subject unit and the other two ninth floor units in the west building.¹ NAME-1 took photographs of the views from units 901W and 903W and compared them to the view in the subject. In his letter, NAME-1 states:

In my opinion, the view amenity from the end units are far superior to the interior units. The north end units have a view of COMPLEX and the NAME OF BUILDING as well as some mountains to the east and the sky. The south end units have a view of some mountains to the south and west, the sky and the NAME OF CENTER below. The interior units only have a view of the units across the way and the sky and ground area only when going up to the window area, but not from sitting in the living room area or bedroom areas. It is my opinion that in appraising the interior units vs. the end units, that a view amenity would need to be taken into account and adjusted for based on the paired sales analysis. Based on the view amenity, the subject unit, #####, is more comparable to interior units than the end units.

NAME-1 does not give a dollar amount for a view adjustment. The Property Owner also provided additional photographs of the view from the subject unit² and units 901W and 903W.³ These photographs support the Property Owners' position that the view from the subject is inferior to 901W and 903 W.

10. The Property Owner provided a spread sheet with a discounted cash flow estimate⁴ of the unsold units in NAME OF CONDOMINIUM-1. This spread sheet provided a conclusion based on the unsold units and a 10 year absorption period of a value for the developer for the project based on \$\$\$\$

¹ Petitioner's Exhibit 7.

² Petitioner's Exhibit 5.

³ Petitioner's Exhibit 6.

⁴ Petitioner's Exhibit 10.

per unit. This is an average unit value based on the number of units unsold and does not take into account factors like size and view. The Property Owner argues that the Tax Commission should allow for an absorption discount because of the time it will take to sell out the units in NAME OF CONDOMINIUM-1. The Property Owner asserts that appraisers would discount values in projects with unsold units by as much as 30%. It was his contention that based on a present value calculation the subject would be only \$\$\$\$\$.

11. However, the value that the Property Owner requested at the hearing for the subject was \$\$\$\$\$ based on equalization. He compared the County's assessed values for the two interior units on floors 2 through 8 in the west building. For floors 3 through 8, the combined square footage and foot print of the two interior units on each floor is exactly the same size as the subject unit. The second floor units had some additional square footage and balcony space. To support his equalization argument he provided the assessments for the interior units in the west building as follows:

Unit	Area	Assessed Value	Assd Value Per Sq Ft	Combined Value Per Sq Ft
202W	1,354	\$\$\$\$\$	\$\$\$\$\$	
203W	865	\$\$\$\$\$	\$\$\$\$\$	
Total	2,219	\$\$\$\$\$		\$\$\$\$\$
302W	1,187	\$\$\$\$\$	\$\$\$\$\$	
303W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,091	\$\$\$\$\$		\$\$\$\$\$
402W	1,190	\$\$\$\$\$	\$\$\$\$\$	
403W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,094			\$\$\$\$\$
502W	1,190	\$\$\$\$\$	\$\$\$\$\$	
502W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,094			\$\$\$\$\$
602W	1,190	\$\$\$\$\$	\$\$\$\$\$	
603W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,094	\$\$\$\$\$		\$\$\$\$\$
702W	1,190	\$\$\$\$\$	\$\$\$\$\$	
703W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,094	\$\$\$\$\$		\$\$\$\$\$
802W	1,190	\$\$\$\$\$	\$\$\$\$\$	
803W	904	\$\$\$\$\$	\$\$\$\$\$	
Total	2,094	\$\$\$\$\$		\$\$\$\$\$
902W (Subject)	2,094	\$\$\$\$\$	\$\$\$\$\$	
1002 W (Penthouse)	1906/2094	\$\$\$\$\$	\$\$\$\$\$	

12. The County did not provide an appraisal of the subject property. The County submitted a copy of the Settlement Statement⁵ of the Property Owners' purchase of the subject property to establish the purchase price of \$\$\$\$\$. This is a price per square foot of \$\$\$\$\$. The date listed for the purchase was April 27, 2011. The County also submitted a flyer advertising units for sale in NAME OF CONDOMINIUM-1 with very general prices and size ranges.⁶ This indicated two bedroom plus den units ranged from 1,833 to 2,415 square feet and in price from \$\$\$\$\$ to \$\$\$\$\$.

13. The County submitted photographs of the interior of the subject which show that there is an angled view of COMPLEX and the NAME OF BUILDING-2 from the interior and from the small balcony of the subject.

14. The County did not have sales reported over the Multiple Listing Service of Units in this development. However, the County did have sale price information from the Salt Lake County-Taxpayer Statements of Primary Residence, which the County had received from purchasers in NAME OF CONDOMINIUM-1. These statements are to establish whether or not the property would qualify for the primary residential exemption. These statements do ask for the year the property was purchased and the purchase price. The County also provided its data for each of these units.⁷ The sales are as follows:

Unit	Price	Year Sold	GLA
Subject #####	\$\$\$\$\$	YEAR	#####
606E	\$\$\$\$\$	2010	1,693
801W	\$\$\$\$\$	2010	2,027
601W	\$\$\$\$\$	2009	2,027
506W	\$\$\$\$\$	2010	2,415
705E	\$\$\$\$\$	2010	1,442

15. The sales in the development, including the price paid by the Property Owner, support a fair market value of at least the set \$\$\$\$\$ by the County Board of Equalization for the subject property.

16. The County also submitted evidence⁸ of the assessed values of other larger units in the development to refute the Property Owner's equalization argument. The County established that it was assessing the larger units at rates similar to the original assessment on the subject unit and some of the County's comparables also had obstructed views like the subject. The County's equalization comparables are as follows:

⁵ Respondent's Exhibit 3.

⁶ Respondent's exhibit 7.

⁷ Respondent's Exhibit 8.

⁸ Respondent's Exhibit 9.

Unit	Assessed Value	GLA	Value Per Sqr. Ft.	View
Subject #####	\$\$\$\$\$ ⁹	#####	\$\$\$\$\$	DIRECTION
404W	\$\$\$\$\$	1,830	\$\$\$\$\$	South
504W	\$\$\$\$\$	1,830	\$\$\$\$\$	South
604W	\$\$\$\$\$	1,830	\$\$\$\$\$	South
704W	\$\$\$\$\$	1,830	\$\$\$\$\$	South
804W	\$\$\$\$\$	1,830	\$\$\$\$\$	South
1002W	\$\$\$\$\$	1,906	\$\$\$\$\$	Northeast
1003W	\$\$\$\$\$	1,836	\$\$\$\$\$	South
202E	\$\$\$\$\$	1,833	\$\$\$\$\$	West
302E	\$\$\$\$\$	2,001	\$\$\$\$\$	South
402E	\$\$\$\$\$	1,811	\$\$\$\$\$	South
902E	\$\$\$\$\$	1,811	\$\$\$\$\$	South
1001E	\$\$\$\$\$	2,568	\$\$\$\$\$	Southeast
1002E	\$\$\$\$\$	1,956	\$\$\$\$\$	West

17. The County did not include in this list the units that had direct views over COMPLEX. The Property Owner pointed out that the 04 units in the west building did have windows on both the South and West sides of the property. The units 302E, 402E and 902E have one window on the east, windows across the length of the unit on the south and a balcony on the west. However, from the aerial photograph provided by the County¹⁰ there are other buildings to the east, south and west, which would obstruct some of the views, especially on the lower floors.

18. The County had provided the floor plans for each of the units above.¹¹ Unit 1002E was very similar to the subject unit, and to the penthouse at 1002W. It appears to be the mirror image to the penthouse at 1002W as it is an interior unit in the east building, facing the west Building, but with some views to the north and west. This unit has 1,956 square feet and was assessed at \$\$\$\$\$. Unit 202E, like the subject, is an interior unit and is also a much lower floor than the subject so the view would be inferior to that of the subject. This unit is a bit smaller than the subject, having 1,833 square feet and had been assessed at \$\$\$\$\$.

19. Reviewing the parties' evidence on equalization, the Property Owner argues that the subject unit with 2,094 square feet should be compared to two small units' combined value. The County argues that the subject unit should be compared for equalization purposes to units of similar size to the subject. The evidence supports the County's contention that units of similar size and also having some obstructed views were assessed as high, or higher than the subject. In fact the reduced value set by the

⁹ Current assessed value as reduced by the County BOE. The original assessment on the subject had been higher at \$\$\$\$\$.

¹⁰ Respondent's Exhibit 6.

¹¹ Respondent's Exhibit 9.

County Board of Equalization results in a lower value per square foot for the subject than all but one of the County's equalization comparables. Additionally, although some of the County's comparables may have better views than the subject, some of them did not.

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 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).

"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 its “fair market value” 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. In this matter, fair market value was not the Property Owners’ primary argument. The County did provide evidence of the Property Owners’ purchase price as well as other sales in the development which support a fair market value at least as high, or even higher, than the County’s assessed value for this property. The Property Owner had included a discounted cash flow estimate based on a 10 year absorption period, which incorporates an absorption discount. There were sales in this subject development just prior to the lien date which establish the fair market value for individual units. In this case the Commission finds the appropriate way to establish values for each unit is based on the individual sales and not the discounted cash flow based on the 10 year absorption period. Certain applications in property tax matters of the absorption discount have been determined to be in violation of the Utah Constitution by the Utah Supreme Court and this is not an appropriate method of valuation given the circumstances in this case. See *Board of Equalization of Salt Lake County v. Benchmark, Inc.*, 864 P.2d 882, 887 (Utah 1993).

2. The Property Owner argues for a reduction in this case based on equalization. Utah Code Sec. 59-2-1006(4) provides “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.” The factual evidence in this case shows that the comparable condominium units are for the most part valued even higher than the subject’s Board of Equalization value. The only evidence that the Property Owner has to support his equalization argument is to take the values from two units roughly half the size of the subject and add them together. The Property Owners have failed to show that the comparable units are valued less than the subject. There are other large units in the development with varying degrees of view obstruction. When considering these units which are comparable to the subject, only one unit out of 13 was valued lower and it was 4% lower. The rest were valued higher than the subject. The County did not ask for the value to be raised based on equalization. Regarding equalization, the Court has held, “Intentional and systematic undervaluation of 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).

Considering the evidence and the applicable law in this matter, the value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2011, 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.