

12-1396  
TAX TYPE: PROPERTY TAX—LOCALLY ASSESSED  
TAX YEAR: 2011  
DATE SIGNED: 6-17-2013  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-1396  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011  Judge: Phan
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**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative, By Telephone  
For Respondent: RESPONDENT, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on March 18, 2013, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2011 lien date. The County Board of Equalization ("the County") sustained the value. At the hearing, the Property Owner requested a value reduction to \$\$\$\$ for the 2011 lien date. The County requested that the value remain as set by the County Board of Equalization.

APPLICABLE LAW

The Constitution of Utah, Article XIII, Section 2 (1) provides, “So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate.”

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 Sec. 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 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 2004).

#### DISCUSSION

The subject property is located at ADDRESS, CITY, Utah. The property is ##### acres in size and is improved with a ##### square foot building with WORDS REMOVED. ONE PORTION of the building has ##### square feet above grade plus a basement storage area of ##### square feet. The SECOND PORTION of the building has ##### square feet above grade plus a basement storage area of ##### square feet.

The representative for the Property Owner did not present evidence that this property had been assessed above its fair market value and made no representations as to what he felt the fair market value might be. Instead he argued for a reduction based on equalization. Property tax is based on the fair market value of the property pursuant to the Utah Constitution, Article XIII, Section 2 and Utah Code Sec. 59-2-102. “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. However, there is a statutory departure from “fair market value” based on equalization pursuant to Utah Code Sec. 59-2-1006(4). Under that provision 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).) 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).

Rather than comparing the total land and improvement value of the subject property to other properties that were comparable as to both land and improvement, the representative for the

Property Owner developed a land value from the assessed values of three nearby properties and a building value from other comparable properties that were not in the same area as the subject.

The three land comparables were located near the subject, with the comparable no. 1 adjacent to the subject and comparable no. 2 adjacent to comparable no. 1. The Property Owner's land equalization comparable no. 3 was located near the subject and it did have an improvement on it. These three properties ranged in size from ##### acres to ##### acres while the subject was ##### acres. The land portion of the assessment for these comparables had been \$\$\$\$ or \$\$\$\$ while the subject land value was assessed at \$\$\$\$ per square foot.

However, the County stated that the Property Owner's equalization comparables nos. 1 & 2, were undeveloped and there would be a cost associated with the development of these properties because of slope. It was the County's contention that there was a 15 to 20 foot drop front to back on these properties and there would be costs in bringing in fill and grading. The County also noted that the shape and configuration of all three comparables had less frontage proportionately than the subject. Additionally the County pointed out that properties directly across the street from the subject were valued higher than the subject, although they were located nearer to (X).

The representative for the Property Owner then looked at the County's assessments on three additional improved properties to determine an equalization value for the building. These properties were far in location from the subject. He considered the portion of the assessment that the County had attributed to the improvements. The representative did make some appraisal adjustments for differences as indicated on the County records between the subject and these comparables and concluded from these properties values of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$ per square foot. It was his contention that these equalization comparables indicated a value for the subject building of \$\$\$\$\$ per square foot or \$\$\$\$\$.

It was the County's contention that the properties used as building comparables by the Property Owner's representative had all been valued based on an income approach. This results in a total value for land and building, and then the County is required to allocate a portion of the total value to the land and whatever is left over is shown as for improvements. The County points out that if you look at the total assessed value of these same comparables compared to the total assessed value for the subject, there is equity. The total assessed value divided by the total square feet of the subject was \$\$\$\$\$ and for each of the equalization comparables provided by the Taxpayer the total assessed values were \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$ per square foot. Noting that a portion of the total square footage of the subject was in the basement, while the comparables had

no basement, if this calculation was made for the subject without including the basement square footage in the total it would be \$\$\$\$ per square foot, still in line with these comparables.

The Property Owner has the burden of proof to show error in the value set by the County and provide a sound evidentiary basis to support a lower value. The Property Owner has not provided a basis for reduction based on market value but instead argued equalization. Utah Code Sec. 59-2-1006(4) provides for equalization of values if certain conditions are shown. In this case the County has refuted the Property Owner's representations regarding the Property Owner's land equalization comparables with reasons for why the land would be valued higher. The County has also shown that the subject property is valued in line with the total value from the comparables provided by the Property Owner. There is no basis for adjustment and the value should remain as set by the County Board.

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Jane Phan  
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. 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

