

12-1408  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2011  
DATE SIGNED: 11-22-2016  
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL  
EXCUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No.    12-1408  Parcel No.    PARCEL 009 and PARCEL 026 Tax Type:    Property Tax Tax Year:    2011  Judge:        Marshall
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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 send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to the address listed near the end of this decision.**

**Presiding:**

Rebecca L Rockwell, Commissioner  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner:    REPRESENTATIVE FOR TAXPAYER, Representative (by telephone)  
For Respondent:    RESPONDENT-1, Commercial Property Manager, COUNTY  
                    RESPONDENT-2, Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 18, 2016, in accordance with Utah Code Ann. §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. The tax at issue is property tax.
2. The lien date at issue is January 1, 2011.
3. The subject properties at issue are PARCEL 009 (“Parcel 009”) and PARCEL 026 (“Parcel 026”). These two properties comprise an economic unit that is a mobile home park located at SUBJECT ADDRESS in CITY-1, Utah.
4. The COUNTY Assessor’s Office valued Parcel 026 at \$\$\$\$\$ and Parcel 009 at \$\$\$\$\$. The COUNTY Board of Equalization (“County”) sustained these values. At the hearing, the County requested that the County BOE values be upheld. Petitioner (“Taxpayer”) asked the Commission to reduce the values based on an equalization argument. The Taxpayer requests that Parcel 026 be lowered to \$\$\$\$\$ and Parcel 009 be lowered to \$\$\$\$\$.
5. At the formal hearing, the Taxpayer’s representative indicated that he was relying solely on the information that had been presented at the Initial Hearing, and did not have any new evidence to present.
6. The Taxpayer’s representative argued that the land value should be separate from value of the improvements. The Taxpayer’s representative does not contest the assessed value of the improvements; but argued the assessed value of the land should be reduced to \$\$\$\$\$ per square foot based on the following comparables (Exhibit P-1):

	Parcel	Owner	Equalized Value	Lot Size	Price / Acre	Price / Sq.Ft
Subject 026	PARCEL NO.-026	TAXPAYER	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Subject 009	PARCEL NO.-900	TAXPAYER	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 1	#####	NAME-1	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 1	#####	NAME-2	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 2	#####	COMPANY-1	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 3	#####	COMPANY-2	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 3	#####	COMPANY-2	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$
Comparable 4	#####	COMPANY-3	\$\$\$\$\$	#####	\$\$\$\$\$	\$\$\$\$\$

7. The County’s representative argued that because the subject property was valued on an income approach, if the land value was decreased, the improvement value would need to be increased.
8. The County’s representative indicated that they also intended to rely upon the information presented at the initial hearing.
9. The Initial Hearing Decision indicates the County’s representative at that hearing argued that the subject was assessed equitably with the Taxpayer’s comparables, when looked at on a value per

pad basis. The Subject is assessed at \$\$\$\$ per pad, while the assessed values of the Taxpayer's comparables range from \$\$\$\$ to \$\$\$\$ per pad.<sup>1</sup>

10. The County provided a spreadsheet showing that the subject and the comparables are all zoned RHH. However, the subject has a multi-housing property type, while the Taxpayer's comparables have a residential property type. Further, the subject properties are located in different neighborhood codes than the comparables. (Exhibit R-1).
11. The County provided information citing to prior Commission decisions in support of its position that the Taxpayer's equalization argument should not prevail. (Exhibit R-2).

#### 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 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...
- (3) In reviewing the county board's decision, the commission may:
  - (a) admit additional evidence;
  - (b) issue orders that it considers to be just and proper; and
  - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
  - (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;

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<sup>1</sup> There was no evidentiary document to this effect in the case file, the information was taken from the Initial Hearing Decision, as both parties indicated they intended to rely upon the information presented at the Initial Hearing.

- (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
  - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
  - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (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.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. *See 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*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

#### CONCLUSIONS OF LAW

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 at 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).

In *Appeal No. 09-3842*, the Commission found that "we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently." However, in that appeal, the property at issue may have been assessed using the cost approach, where the values for the land and the improvements were determined separately with individual valuation

methodologies. The Commission discussed *Appeal No. 09-3842* in another decision, *Appeal No. 09-3838*, wherein the Commission addressed separate equalization arguments for land and improvements. The Commission stated that it “is unaware of any appraisal principle that would allow for an improvement to be compared with other improvements, and then allow for comparisons of land based on different improved properties.” The Commission also recognized that “[i]f a party cannot find comparable properties for land and improvements, it may be extremely difficult to make an equalization argument.” Furthermore, the Commission noted that in that appeal, the Taxpayer only had three equalization comparables and stated that “[i]t is difficult to establish that properties are not equalized based on a limited number of comparables.”

The Commission has previously determined that the Taxpayer’s equalization approach is questionable, because it looks at only the value of the land, without addressing the improvement values of the subject and the comparables. If the Commission were to agree with the Taxpayer’s proposed values, the assessed value would be much lower than the comparables when looked at on a per pad basis. The Taxpayer’s argument is insufficient to warrant a reduction in value based on an equalization argument. The total value of the subject properties is not inequitable when comparing the value per pad of the subject and the comparables. The Board of Equalization values should be sustained.

Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that as of January 1, 2011, the value of parcel no. PARCEL 009 was \$\$\$\$\$ and the value of PARCEL 026 was \$\$\$\$\$, and sustains the COUNTY Board of Equalization. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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

Appeal no. 12-1408

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.