

13-606  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2012  
DATE SIGNED: 1-17-2014  
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO  
EXCUSED: B. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-606</p> <p>Parcel No. #####-1 and #####-2</p> <p>Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Phan</p>
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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
REPRESENTATIVE FOR PETITIONER, Representative  
For Respondent: RESPONDENT-1, Appeals Manager, Salt Lake County  
RESPONDENT-2, 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 pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on November 14, 2013, in accordance with Utah Code §59-1-502.5. There were two parcels appealed. As of the January 1, 2012 lien date at issue in this appeal, the Salt Lake County Assessor’s Office had valued parcel no. ##### (“PARCEL-2”) at \$\$\$\$ and the County Board of Equalization (“the County”) sustained the value. At the hearing the parties reported they had reached an agreement as to the value for PARCEL-2 and stipulated that the value for this parcel should be reduced to \$\$\$\$ for the lien date at issue. For parcel ##### (“PARCEL-1”) the Salt Lake County Assessor’s Office had valued the property at \$\$\$\$ and the County had sustained the value. This parcel remained in issue at this hearing. The Property Owner argued

that this parcel should be lowered to \$\$\$\$\$ or \$\$\$\$\$. The County recommended a reduction to \$\$\$\$\$ based on an appraisal prepared for the hearing.

APPLICABLE LAW

Utah Code §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 §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 §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).

DISCUSSION

PARCEL-1 is a recreational cabin property located ADDRESS, CITY, Utah. It has ##### acres of land and is improved with a ##### square foot cabin. The Cabin is ##### years old with an effective age of #####. It was a low cost grade of construction and is in average condition. The representative for the Property Owner stated that the residence does not have a proper foundation. The residence is built on boulders and logs, two to three feet off the ground. The subject has an indoor sink and shower, but no indoor toilet. There is an outhouse on the property. There is a woodstove in the cabin for heat. Electricity is at the property. There is winter access to the property as there are year-round residences nearby that pay to plow the road to the property. The representative stated that the subject property is not insulated for winter use and the water line to the property is above ground so that there is no water to the property in the winter.

The subject property is located in CITY near the ski resort, but it is not on the ski-slopes or within walking distance to the ski resort. It is located in the NAME-1 recreation area. Additionally, the current zoning for the area of the subject property requires ##### acres for a cabin. The subject lot is below this minimum acreage, although it had been constructed in that manner more than 100 years ago so the use as a cabin would be “grandfather” in according to the County and was not a nonconforming use.

The representative for the Property Owner argued that although there was water to the property at the present time, the real property should be valued as having no water. It was his position that while his mother owned the subject property, he owned the water share that currently provided water to the property. This was a share in NAME-1 Water Company. He argued that he could take the water share from the subject and leave the subject dry, then sell the water share to someone else or move the share to a different property. Without water, it was his contention that the value for the subject would be only as a dry lot and the cabin would not add to the value.

The representative for the Property Owner submitted an appraisal as if the property was a “dry lot” with no cabin. The Appraisal had been prepared by NAME-2 who concluded as of September 6, 2013, if the subject lot was just a lot with no cabin and no water the value would be \$\$\$\$\$. He used as comparables one lot that had no water and no electricity that had sold in August 2013 for \$\$\$\$\$. His second comparable had sold for \$\$\$\$\$ in June 2012. It was ##### acres and water was available but not to the property. There was a third comparable that had sold

for \$\$\$\$\$ in September 2012 and had water. He made a \$\$\$\$\$ adjustment for the water on this comparable. He also considered a listing for \$\$\$\$\$ of a property with ##### acres, which had no water.

The representative for the Property Owner also argued in the alternative if the value was based on a cabin with water, it should be lowered to \$\$\$\$\$. He provided the MLS listing report for four comparable sales of properties improved with cabins which are as follows:

Address	Sale Price	Sale Date	Cabin Size	Lot Size	Year Built	Comments
Subject: ADDRESS-1			###	###	YEAR	
ADDRESS-2	\$\$\$\$\$	4/13	###	###	YEAR	Has water share, cabin needs TLC
ADDRESS-3	\$\$\$\$\$	6/13	###	###	YEAR	Water share included, Somewhat primitive Cabin
ADDRESS-4	\$\$\$\$\$	2/13	###	###	YEAR	Culinary Water, ski-in Ski-out-summer rd only
ADDRESS-5	\$\$\$\$\$	11/11	####	###	YEAR	County stated this one sold without water

The County argued that once a water share was attached to a building it was valued as part of the real property. The County cited to a prior Tax Commission on this point.<sup>1</sup> The Tax Commission has, in fact, issued prior decisions on this issue and found that “a share of water that is freely transferable separately from the property and from which no water is being used for any property, cabin, or other improvement, is an intangible, and its value should not be included in the value of real property.” *Utah State Tax Commission, Initial hearing Order, Appeal No. 10-0292*. See also *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 10-1401*. In this case the water is currently being used with a cabin. Also, in this case the Property Owner has asserted that he could take the share for the subject property and leave it dry, but has not provided a letter or statement from the water company that it would allow the detachment of a water share that would leave an improved property dry. Different water companies, cities and counties may have differing restrictions, but in a prior hearing regarding water shares the testimony was that a share could be sold or transferred “If available and not

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<sup>1</sup> The County had referred at the hearing to the Tax Commission’s Order in Appeal No. 03-1174. This and other prior Tax Commission decisions are available in a redacted format in a searchable data base for research and review by the parties at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

previously attached to an improvement.” See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision*, 08-0711.

The County offered an appraisal based on the Property having water and a cabin. The appraisal had been prepared by RESPONDENT-2, Certified Residential Appraiser, Salt Lake County. RESPONDENT-2 did conclude that the value of the subject should be lowered and his appraisal conclusion was \$\$\$\$\$. It was his position that the location was an important factor and although the subject residence was not on the ski slopes it was near the resort. He considered four comparable sales and noted that his first comparable had the most similar functional utility and the fourth was the nearest in location. The County’s comparables were as follows:

Address	Sale Price	Sale Date	Cabin Size	Lot Size	Age	Value Indicated for Subject
Subject: ADDRESS-1			###	###	###	
ADDRESS-6	\$\$\$\$\$	1/13	###	###	###	\$\$\$\$\$
ADDRESS-7	\$\$\$\$\$	7/12	###	###	###	\$\$\$\$\$
ADDRESS-8	\$\$\$\$\$	9/11	###	###	###	\$\$\$\$\$
ADDRESS-9	\$\$\$\$\$	2/11	###	###	###	\$\$\$\$\$

After reviewing the value set and the evidence submitted in this matter, the value should be lowered to the County’s Appraisal value of \$\$\$\$\$. This property is currently a cabin property with water and should be valued as such. If the water share is actually detached from this property and the Property Owner were able to provide evidence that the property was a dry lot with no water, an adjustment would be considered at that time. Additionally, the appraisal that the Property Owner offered from NAME-2 does not value the subject property as it stands on the lien date. The subject property was a lot with an existing, if basic, cabin that has water. NAME-2’S appraisal was of a dry lot that did not have a cabin. The County’s appraisal better takes into account the location of the subject property than the comparables of cabin properties offered by the Property Owner. The value of PARCEL-1 should be lowered to \$\$\$\$\$ and for PARCEL-2 to the value stipulated by the parties.

Jane Phan  
 Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value as of the January 1, 2012, lien date for parcel #####-1 was \$\$\$\$ and for parcel no. #####-2 was \$\$\$\$\$. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner