

13-298
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 9-23-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 13-298</p> <p>Parcel Nos. #####-0001 and #####-0002 Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Phan</p>
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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:

Bruce Johnson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: RESPONDENT, Commercial Manager, Utah County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 16, 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. Petitioner (“Property Owner”) has filed an appeal of the decision of the Utah County Board of Equalization (“County”) regarding the fair market value of the subject parcels 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, 2012.

3. At the hearing the representative for the County requested that the value remain as set by the County Board of Equalization. The County Assessor’s original values for each parcel, the values set by the County Board of Equalization and the values requested by the Property Owner for each parcel are as follows:

Parcel No.	Original Value	BOE Value	Property Owner’s Request
##### (Parcel 0001)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Parcel 0002)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. The parcels at issue in this appeal are adjacent properties located at ADDRESS, CITY, Utah. Both parcels are zoned GC-1 Commercial.¹

5. Parcel 0001 is ##### acres in size and is improved with an industrial warehouse building. The building has ##### square feet. Of the \$\$\$\$\$ total value assessed for this property for the 2012 tax year the County had attributed \$\$\$\$\$ to the improvements and \$\$\$\$\$ to the land.²

6. Parcel 0002 is ##### acres in size and is vacant land. The ground on this parcel is several feet in elevation below the roadway and below a neighboring parcel.³ It was the Property Owner’s position that to develop this parcel it would cost at least \$\$\$\$\$ to bring in fill dirt, plus the additional cost of grading the parcel. It was the County representative’s testimony that it would not be necessary to fill and grade the entire parcel, just portions of the parcel depending on the development.

7. The Property Owner did not submit evidence of market value at the Formal Hearing. For Parcel -1, he did not contest the value attributed to the improvements, instead he argued the land value should be lowered based on equalization with other nearby properties. He calculated that the land value attributed to this parcel from the total value was \$\$\$\$\$ or \$\$\$\$\$ per square foot. He provided the County tax records of sixteen other properties with the same commercial zoning as the subject and calculated out the prices per square foot from the value the County had attributed to the land.⁴ Based on the County’s values, the land value attributed to these parcels ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. It was the Property Owner’s argument that based on equalization with these comparables the subject property should be valued at \$\$\$\$\$ per square foot, or a total land value of \$\$\$\$\$.

¹ Petitioner’s Exhibit 2.

² Petitioner’s Exhibit 3.

³ Petitioner’s Exhibit 1.

⁴ Petitioner’s Exhibit 3.

8. Other than that these properties had the same zoning, the Property Owner did not provide evidence that they were actually comparable to the subject. While the subject property was ##### acres in size, there was a wide range of sizes in these comparables with the smallest being ##### acres and the largest ##### acres. Additionally, these properties were in various locations, some farther from commercial development than the subject. Also things like frontage, access, shape and topography were not considered. All these items affect the value of land. Further, despite the zoning, many of these properties were improved and being used as a single family residence or for agricultural uses.

9. For Parcel 0002, the Property Owner asked that it be lowered from \$\$\$\$\$ to \$\$\$\$\$ because of the fill necessary on this parcel before it can be developed. The County had the land value for this parcel at \$\$\$\$\$ per square foot.

10. The County had not prepared a formal appraisal for this hearing. The County provided some sales comparables and argued that they did support the value set by the County Board of Equalization. There had been three sales in a new commercial subdivision just to the north of the subject property. These properties had all sold for \$\$\$\$\$ per square foot. One of these parcels was ##### acres that sold on April 11, 2011. A ##### acre parcel had sold on October 31, 2012 and a ##### acre parcel had sold on November 8, 2013.⁵ After the purchases, these had been developed into a dental office, a pharmacy and another professional office building.

11. The County's representative also provided information regarding the differences between the Property Owner's equalization comparables and the subject. Noting that some of the lots were used for and being valued as agricultural land and others as residential land. It was his contention that the subject lots were located in an area that was becoming more commercial.

12. It was the County's contention that they had already given adequate consideration to the fact that Parcel 0002 would need some fill dirt and grading. It was his position, that the lower value for this parcel as set by the County Board of Equalization was a good value for this parcel. The County's value for Parcel 0002 was at \$\$\$\$\$ per square foot. This was significantly lower than the land value for the other parcel. It was the County's contention that the entire parcel need not be filled before it could be developed, but that some portions would need to be filled. The County also contested that the Property Owner would have to pay that much for fill, as he indicated it could sometimes be obtained for free from construction projects.

13. After reviewing the information submitted at this hearing, the Property Owner has not shown that the value should be reduced based on equalization with other properties because the Property Owner has failed to show that the other properties were actually comparable to the subject. The Property Owner separated out only the portion of the total value attributed to the land and then looked at only the

⁵ Respondent's Exhibit 1.

one factor, zoning. The Property Owner did not provide any properties that were comparable as far as both the land and the buildings to compare the total values. Further, in considering the land separate from the improvement, there are many other factors that contribute to market value of a given property, including location, size, configuration, access, visibility to traffic and views. Even if a ##### acre parcel of land is zoned commercial, if it is located in an area far from commercial development it likely would not have the same value as commercially zoned property that is in an area which is currently being developed for commercial uses.

14. The County did not provide a lot of market value information, but did have sales in a developed commercial subdivision located near the subject property. These were improved subdivision lots, but also had sold for considerably more per square foot than the value set for the subject properties by the County Board of Equalization. Regarding the lack of fill on Parcel 0002, it does appear that the County has taken this into consideration.

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 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).

CONCLUSIONS OF LAW

1. The value set by the County Board of Equalization has the presumption of correctness in property tax appeals. For the Property Owner to prevail he 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. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. 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 Owner’s primary argument, but instead he argues for a reduction 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.” In trying to support a request based on equalization, the Property Owner did not offer “comparable properties” that were similar to the subject in total regarding land and improvements. Instead the Property Owner took the value attributed to the land of the subject and compared it only based on properties in the same zoning. This analysis indicated a wide range of assessed values, some higher and some lower than the subject. The Property Owner failed to provide evidence that any of these equalization comparables were similar to the subject as far as the other factors that affect market value.

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, 2012, is \$\$\$\$ for #####-0001 and \$\$\$\$ for parcel #####-0002. 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.