

13-498
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 3-2-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1, AND PETITIONER-2 , Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 13-498</p> <p>Parcel No. ##### Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Marshall</p>
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Presiding:

Robert P. Pero, Commissioner
Jan Marshall, Administrative Judge

Appearances:

For Petitioner: PETITIONER-2, *Pro Se*
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 19, 2014, 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. Petitioner ("Taxpayer") is appealing the value of the subject property as determined by the Salt Lake County Board of Equalization ("County") for the 2012 tax year.
2. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2012 lien date, which the Board of Equalization sustained.
3. The County is asking the Commission to increase the value to \$\$\$\$.
4. The Taxpayer is asking the Commission to reduce the value to \$\$\$\$.
5. The subject property is parcel no. #####, located at SUBJECT ADDRESS in CITY. It is unit ##### of the NAME OF COMPLEX-1, and was built in YEAR. The County considers the property to be of very good grade, and in excellent condition. The subject property is actually two

units that were combined into a larger unit, and has a total of ##### square feet. It has two bedrooms, two full bathrooms, a balcony, and a parking space in a common garage. (Board of Equalization Record).

6. The subject property is on the ##### floor of a ##### floor condominium complex. The ##### floor consists of penthouse units with higher ceilings and larger balcony space, but the interior unit has an otherwise similar layout to the subject.
7. Taxpayer provided a rendering of the subject neighborhood, as well as an exterior drawing or photograph of the subject complex, NAME OF COMPLEX-2 at ADDRESS-1, and NAME OF COMPLEX-3 at CENTER-1 located at ADDRESS-2. (Exhibits P-1 through P-4).
8. Taxpayer provided an aerial photograph of the subject complex, which shows the location of the property being just south of CENTER-2, and just north of the CENTER-1 shopping center. (Exhibit P-5).
9. The Taxpayer purchased the subject property on DATE AND YEAR for \$\$\$\$\$. (Exhibit R-2).
10. The Taxpayer testified that he signed the purchase contract for the subject property in late 2008 or early 2009. He put \$\$\$\$\$ down, and paid an additional \$\$\$\$\$ to combine two units into one larger unit. Though he believed he was overpaying for the property at the time they closed; the Taxpayer stated that he believed the value would come back and that he could not afford to lose the \$\$\$\$\$ he had already paid for the unit.
11. Taxpayer submitted an appraisal of the subject property that determined a value of \$\$\$\$\$ as of April 22, 2013. Following are the comparables used in the Taxpayer’s appraisal (Exhibit P-12):

	Address	Age	Total Sq.Ft.	Sales Date	Sales Price	Adjusted Price
Subject	SUBJECT ADDRESS	###	###			
Sale #1	ADDRESS-3	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS-4	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS-5	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #4	ADDRESS-6	###	###	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #5	ADDRESS-7	###	###	Listing	\$\$\$\$\$	\$\$\$\$\$
Sale #6	ADDRESS-8	###	###	Listing	\$\$\$\$\$	\$\$\$\$\$

12. Taxpayer believes the appraisal value is too high because it uses properties from the COMPLEX-2 complex.
13. Taxpayer also argued that there should be an adjustment based on the view of interior units compared to those on the north or south end of the subject building. He submitted a letter from an appraiser, NAME, who is of the opinion that the view of the end units is “far superior to the interior units. (Exhibit P-9).

14. The Taxpayer submitted a photograph from the subject looking directly across to the East building of the complex. The photograph shows the windows and balconies of the units in the East building. In comparison, he provided photographs from Unit ##### looking west, southeast, and southwest; these photographs show views of rooftops and CENTER-1. He also provided photographs from Unit ##### looking northeast with a view of the BUILDING-1, and looking north with a partial view of the BUILDING-1 and the BUILDING-2. (Exhibits P-6, P-7, and P-8).
15. Taxpayer’s appraisal includes photographs of the view from the balcony of the subject property, which shows the BUILDING-1 and CENTER-2. (Exhibit P-12, p.24).
16. Taxpayer provided information on the following more recent sales in the subject complex (Exhibit P-14):

	Address	Total Sq.Ft.	Sales Date	Sales Price	Price/ Sq. Ft.
Subject	SUBJECT ADDRESS	#####			
Sale #1	ADDRESS-9	#####	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS-10	#####	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS-11	#####	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #4	ADDRESS-12	#####	DATE	\$\$\$\$\$	\$\$\$\$\$
Sale #5	ADDRESS-13	#####	DATE	\$\$\$\$\$	\$\$\$\$\$

17. The Taxpayer purportedly totaled the assessed land values for each of the units in the West building of the subject, coming up with a figure of \$\$\$\$\$. He then added up the allocated acreage of #####-acres per unit, for a total of #####-acres¹, and determined a value of \$\$\$\$\$ per acre. (Exhibit P-15).
18. The Taxpayer argued not only that his per-acre value was excessive, but that there should be no land value associated with the subject property. In support of this, he submitted portions of the Declaration of Condominium of the NAME OF COMPLEX-1. He argued that because CENTER-1 has a leasehold interest in “airspace” for a condominium unit from CENTER-1, the fee simple owner, that there should be no land value. (Exhibit P-17).
19. He argued that at most, the value of the subject should be \$\$\$\$\$; which is the assessed value less the allocated land value for the 2012 tax year. (Exhibit P-16).
20. The County’s representative testified that the Assessor’s Office is aware of the “airspace” lease. He noted that they are required to assess the fee simple interest, and are required by statute to allocate the total value between land and improvements. The County’s representative was not sure how the computer modeling system determined the land value for the subject property.

¹ The actual acreage of subject complex was not provided at the hearing.

21. The Taxpayer made an equalization argument, and in support thereof, provided print-outs from the County records showing the assessed values for the interior units on the second through tenth floors, and created a table showing the square footage, valuation, and value per square foot of each, as follows (Exhibit P-12):

Unit	Square Feet	Assessed Value	Value/Sq.Ft.
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$
Subject	#####	\$\$\$\$	\$\$\$\$
#####	#####	\$\$\$\$	\$\$\$\$

22. The Taxpayer argued that units ##### and ##### were the most comparable to the subject property, and asked to have an average of the assessed values, or \$\$\$\$ per square foot, applied to the subject property for a value of \$\$\$\$.

23. The Taxpayer stated there were ##### unsold units in the subject building, and argued that the absorption time to sell the remaining units should be taken into account. He prepared a discounted cash-flow that determined a net present value of \$\$\$\$ for the remaining ##### units, or \$\$\$\$ each. He assumed that three units per year would be sold, marketing costs of 6%, closing costs of 1%, and a discount rate of 20% per year. (Exhibit P-13).

24. The County provided a price sheet for units in the subject complex. It shows that two bedroom units with a den, with square footage ranging from ##### to #####, have a price range of \$\$\$\$ to \$\$\$\$ (Exhibit R-1).

25. The County provided statements of primary residence on five units purchased in the subject complex, which include the year of purchase and the purchase price. Following is the information on those sales (Exhibits R-3 through R-7):

	Address	Total Sq.Ft.	Year Sold	Sales Price
Subject	SUBJECT ADDRESS	#####		
Sale #1	ADDRESS-14	#####	YEAR	\$\$\$\$

Sale #2	ADDRESS-15	#####	YEAR	\$\$\$\$
Sale #3	ADDRESS-16	#####	YEAR	\$\$\$\$
Sale #4	ADDRESS-17	#####	YEAR	\$\$\$\$
Sale #5	ADDRESS-18	#####	YEAR	\$\$\$\$

26. The County’s representative did an interior inspection of the subject property and took photographs. The view from the bedroom balcony looking straight across shows the courtyard and the east building; however, if looking to the north, there is a view of CENTER-2 and the BUILDING-1. The view from the living room, when looking north, is a partially obstructed view of the BUILDING-1, the BUILDING-3, and the east building. (Exhibit R-9).
27. The County provided aerial photographs that show the location of the subject property and the angle of the view from the subject of CENTER-2. (Exhibit R-8).

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.
- (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

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The value requested by the Taxpayer is based primarily on his equalization argument; however he did offer alternative values based on an appraisal, a discounted cash flow calculation, and arguing that the subject property should not be assessed a land value. The Taxpayer’s appraisal was more than a year post-lien date; only one of the comparables was located in the subject complex; and it was a listing, for a much smaller unit, on a lower floor. The more recent sales provided by the Taxpayer were significantly post-lien date, and for unknown reasons had sales prices quite a bit lower than the list prices. The Taxpayer’s discounted cash flow calculation is not an appropriate methodology for calculating the value of a single residential property. The Commission has previously rejected the Taxpayer’s argument in Appeal No. 12-1091.² The Taxpayer’s argument that the allocated land value be excluded is not persuasive. When determining market value, the fee simple interest of the property is valued for tax purposes; meaning that the property is valued as if all ownership interests are attached.³

The County’s representative provided information on five sales within the subject complex; two of which were in the same building as the subject. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$. Reviewing all of the sales, it does seem that those units with more square footage are selling for significantly higher than the other units. The County’s representative asked to increase the value based on

² Prior Commission decisions are available online at tax.utah.gov.

³ See Standard of Practice 6.2.1, available online at propertytax.utah.gov.

the Taxpayer's purchase price of the subject property. However, the contract was entered into several years prior to the time the Taxpayer closed on the property and there were significant changes in the market during that time. Thus, the purchase price may not be the best indication of value as of the lien date.

Neither the Taxpayer nor the County has sustained the burden of proof to show not only that the Board of Equalization value was in error, but to provide a sound evidentiary basis in support of a different value. Therefore, the Board of Equalization value of \$\$\$\$ should be sustained.

The Taxpayer has also 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 on 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).

The \$\$\$\$ value determined by the Board of Equalization was found to be the fair market value of the subject property. The Taxpayer asked to have the value of the subject property "equalized" with the average value per square foot of the two units located directly below the subject property. The units the Taxpayer used are not comparable to the subject property. The subject property is comprised of two units with a wall removed between the two. The interior units in the subject building are less than half the square footage of the subject, and are not comparable. The subject property is more similar to the penthouse unit above it than the smaller units below. The Taxpayer has failed to show that comparable units are valued at a lower rate than the subject.

CONCLUSIONS OF LAW

- A. In accordance with Utah Code Ann. §59-2-103, the value of the subject property as of the January 1, 2012 lien date was \$\$\$\$\$.
- B. The value of the subject should not be reduced based on the Taxpayer's equalization argument because he has failed to show that the subject property deviates in value by 5% from the assessed value of comparable properties, in accordance with Utah Code Ann. §59-2-1006(5).

Jan Marshall
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, 2012 lien date, and sustains the Board of Equalization. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
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.