

14-2355

TAX TYPE: PROPERTY TAX

TAX YEAR: 2014

DATE SIGNED: 8-31-2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER-1 &amp; PETITIONER -2,</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF X COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 14-2355</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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**Presiding:**

Robert Pero, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER-1  
PETITIONER-2  
For Respondent: RESPONDENT, Senior Land Analyst

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 24, 2016, 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. Petitioners ("Property Owners") filed an appeal of the decision of the Utah County Board of Equalization regarding the assessed value of the subject property as 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, 2014.

3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) had reduced the value to \$\$\$\$\$. At the hearing the Property Owners requested a reduction to \$\$\$\$\$. The representative for the County provided an appraisal at the hearing and recommended the value be lowered to the appraisal value of \$\$\$\$\$.

4. The property that is the subject of this appeal is parcel no.#####. The property is #####-acres of agricultural land with no water. It is located at SUBJECT ADDRESS in CITY-1, Utah. The property is zoned AR-40. There is access to the subject property via a paved public road and the property is relatively level.

5. One point the property owners addressed was the fact that the assessed value of this property had increased substantially in 2014 compared to the prior years’ values. They originally appealed to the County Board thinking this was a computer glitch. They provided evidence of the valuation history going back to 1984.<sup>1</sup> This #####-acre parcel had been valued from \$\$\$\$\$ to \$\$\$\$\$ per year for the years 1984 through 2006. For tax year 2007, the value was raised to \$\$\$\$\$ and the property was assessed at \$\$\$\$\$ every year from 2007 to 2013. However, for tax year 2014 the original assessed value was raised to \$\$\$\$\$. After the Property Owners appealed the 2014 original assessment to the County Board of Equalization, the value was lowered to \$\$\$\$\$, which is still a substantial increase in value.

6. The Property Owners stated that for the 2015 tax year the value had been assessed at \$\$\$\$\$.<sup>2</sup>

7. The Property Owners argued the value should be reduced based on equalization with comparable properties. They provided the county record for three parcels that were approximately #####-acres in size, were located near the subject property and were valued lower than the subject. These equalization comparables are as follows:<sup>3</sup>

Parcel	Original Assessed Value/BOE Value	Acreage
Subject #####	\$\$\$\$/\$\$\$\$\$	#####
PARCEL-1	\$\$\$\$	#####
PARCEL-2	\$\$\$\$	#####
PARCEL-3	\$\$\$\$	#####

8. The Property Owners did submit two comparable sales to support that the property was overvalued based the sales in the area. They had noted that the first comparable was located in the same town as the subject, but had sold after the lien date. The second comparable was located in CITY-2 and

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<sup>1</sup> Property Owners’ Exhibit 1.1 (A).

<sup>2</sup> Property Owners’ Exhibit 1.

<sup>3</sup> Property Owners’ Exhibit 1.1.

sold about six months prior to the lien date. Although CITY-2 is a different city than the subject city, this comparable is located very near the subject based on an aerial image provided by the Property Owners. The Property Owners provided the MLS Full Report and calculated the price per acre from these two sales. The sales information indicated the following:<sup>4</sup>

Location	Sale Price	Price Per Acre	Sale Date	Zoning
CITY-1	\$\$\$\$\$	\$\$\$\$\$ per Acre	6/2015	RES/AG
CITY-2	\$\$\$\$\$	\$\$\$\$\$ per Acre	6/2013	AG

9. At the value set by the County Board of Equalization of \$\$\$\$\$, the subject is assessed at approximately \$\$\$\$\$ per acre. The original value of \$\$\$\$\$ was approximately \$\$\$\$\$ per acre. The value the County is now requesting at the hearing is \$\$\$\$\$ per acre.

10. The Property Owners also assert “there is no evidence to be found in the public record that was used as a factual basis, by Utah County, to determine the property valuation of any #####-acre parcels of unimproved agricultural property in the local area.”<sup>5</sup>

11. At the hearing, it was the representative for the County’s position that the three equalization comparables provided by the Property Owners were lesser quality land parcels due to soil, slope and drainage issues. She testified these properties were located in “the sinks,” which is an area that had high alkali in the soil and poor access. The County provided aerial satellite photographs which showed the location and condition of these land parcels and what the County had assessed the parcels at per acre. The County provided four parcels which she argued were more comparable to the subject and located near or adjacent to the subject. These were all approximately #####-acres in size, located within ½ mile of the subject and all assessed at \$\$\$\$\$ per acre.<sup>6</sup> So it was her contention that the subject was valued equitably prior to the County Board of Equalization’s reduction with comparable properties and was now assessed at a lower value than the comparable neighboring properties.

12. The County submitted an appraisal which indicated that as of the lien date January 1, 2014, the fair market value of the subject property was \$\$\$\$\$. This had been prepared by RESPONDENT, Appraiser for Utah County.<sup>7</sup> In the appraisal she considered six land sales which are the following:

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<sup>4</sup> Property Owners’ Exhibits 8 & 9.

<sup>5</sup> Property Owners’ Exhibit 1.1, Attachment #1 to 2014 Appeal, pg. 2.

<sup>6</sup> County’s Exhibit A.

<sup>7</sup> County’s Exhibit B.

Parcel No.	Price/Per Sq. Ft	Sale Date	Acreage	Zone	Access/Topo	Other	Adj. Price Per Sq. Ft
Subject CITY-1			#####	AR-40	Paved/Level		
1)Eagle Mtn.	\$\$\$\$/\$\$\$\$	6/13	#####	A	Paved/Level	Seller Financing	\$\$\$\$
2)CITY-1	\$\$\$\$/\$\$\$\$	11/13	#####	AR-1	Paved/Level	Arsenic	\$\$\$\$
3)Cedar Fort	\$\$\$\$/\$\$\$\$	10/12	#####	RR	Dirt/Level	Has Water	\$\$\$\$
4)Cedar Fort	\$\$\$\$/\$\$\$\$	10/12	#####	RR	Gravel/Slope	Has Water	\$\$\$\$
5)Unincorp	\$\$\$\$/\$\$\$\$	11/13	#####	M&G	Dirt/Level		\$\$\$\$
6)Cedar Fort	\$\$\$\$/\$\$\$\$	6/11	#####	RR	Limited/Slope		\$\$\$\$

From these sales, the County’s appraiser had concluded a value for the subject of \$\$\$\$ per acre or \$\$\$\$.

13. The appraiser for the County explained that her comparable 2 had arsenic contamination and although it was zoned #####, it could not be developed and a well could not be dug on the property. It was her contention that her comparable 3, although in a neighboring town, was in a similar setting as the subject. It had water and she did make a -50% adjustment because the subject did not have water. Her comparable 4 had both water and utilities so she had made a -60% adjustment. She acknowledged that she had used sales that had occurred in 2012 and 2011, but stated that there were so few sales that she had to use what she could find.

14. The County’s appraiser also explained why the value of the subject had been lowered so much for 2015. She states that the sale in CITY-1 which was provided by the Property Owners had occurred in June 2015 for \$\$\$\$ per acre. This sale had been considered in setting the value for the subject because the County had it listed as not being in “the sinks” when it was in fact located in “the sinks.” She said this sale should not have been used to value the subject because it was not comparable land to the subject. It was her testimony that everything drains to the “the sinks,” the soil is porous and low quality and nothing grows well at that location.

15. The Property Owners argue that the comparables offered by the County were not very good comparables. The County’s only comparable located in CITY-1, which was #####-acres and sold for \$\$\$\$ total or \$\$\$\$ per acre, was zoned #####. The Property Owners point out this zoning allows for 1 residence per acre while the subject’s zoning allows only ##### residence per #####-acres. The County had noted that this property did have negative influence due to arsenic contamination. The Property Owners also point out that the County had offered comparables that had sold considerably prior to the lien date, in 2011 or 2012. They argue that it is not fair that the County Board of Equalization limits

the information that property owners are able to provide at the BOE hearing level to comparables that sold within six months on either side of the lien date and then present sales that occurred outside those parameters. They did provide a copy of their 2014 Appeal Application to the County Board of Equalization<sup>8</sup> which states “MARKET APPROACH – The sale of comparable properties within six months prior to or after January 1.”

16. At this hearing, both parties questioned the value set for this property by the County Board of Equalization. The County has now appraised the subject property and the sales support the \$\$\$\$\$ per acre appraisal conclusion. The sale also provided by the Property Owners that had occurred in neighboring CITY-2 in June 2013, supports this value. The Property Owners provided one additional sale that was a property located in CITY-1 and sold for only \$\$\$\$\$ per acre. This sale occurred 18 months after the lien date at issue and, according to the County, was located in “the sinks” so it was not comparable to the subject property. Based on these two factors, the Commission should give this sale little weight. The other sales support the \$\$\$\$\$ per acre recommended by the County at the hearing.

17. The parcels that the Property Owners have offered for equalization comparables are not actually comparable to the subject property.

#### 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 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).)

Regarding appeals from decisions of the County Boards of Equalization, Utah Code Sec. 59-2-1006 provides as follows:

- (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.

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<sup>8</sup> Property Owners’ Exhibit 1.1.

(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; (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 weighting the amount of time for which, and manner in which, the property was offered for sale; (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.

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).

#### CONCLUSIONS OF LAW

1. Property tax is based on its "fair market value" as valued on January 1 of the tax year at issue 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 case the evidence of fair market value as of January 1, 2014 supports a reduction to \$\$\$\$\$. The fact that there was such a large increase from 2013 to 2014 may only be indicative of this property not being reappraised for many years. The lower value of the prior year is not a basis to keep a value low for the current year.

2. The value set by the County Board of Equalization has the presumption of being correct and to either raise or lower the value either party must demonstrate that the County Board's assessment contained error and provide a sound evidentiary basis for the new value. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). The Property Owners did not provide sufficient evidence to establish a value as low as they were requesting at the hearing.

3. The County has instructions on its form to appeal to the County Board of Equalization that appear to limit comparable sales to properties that sold six months prior to or six months after the lien date. The County's appraiser did not comply with this limitation in appraising this property. This is not a restriction imposed by the Utah State Tax Commission or by Utah Code. The Utah State Tax Commission weighs many factors in determining which are the best comparables for a property and under Utah Code

Subsection 59-2-1006(3), the Tax Commission may admit additional evidence at its hearings to what had been submitted to the County Board of Equalization. As noted by the County's appraiser, sometimes there are so few comparable sales that you have to go outside of this six month limitation to appraise the property. Certainly many types of properties in small counties and large counties have so few sales that the County will have to go outside a six month parameter when valuing the property and it would be helpful for property owners generally if this were better explained on the County's appeal form.

4. The Property Owners also made an argument based on equalization, providing three nearby properties that were assessed at a lower value per acre than the subject. The County has provided evidence to show that these properties were inferior to the subject and that properties that were actually comparable to the subject had been valued the same as the original assessment for the subject. The subject property was now lower than neighboring properties that were actually comparable. Under Utah Code Sec. 59-2-1006, a property owner may appeal the assessment based on either fair market value or equalization. Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if the issue of equalization is raised and "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." "Equalization" as used in Utah Code Sec. 59-2-1006, does not mean that it is proper to compare the subject to random properties in the County. In arguing an adjustment based on equalization, the property owner needs to show that properties are actually comparable to the subject and are valued lower. The Property Owners in this case have shown some lower valued properties and the County has shown that they are not actually comparable. Equalization has been argued at the Tax Commission and to the Utah Supreme Court. The Court has put a high burden on property owners generally to show that an adjustment is warranted under equalization. *See Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206 (Utah 2004) & *Decker Lake Ventures v. Utah State Tax Comm'n*, 2015 UT 66.

Considering the evidence and the applicable law in this matter, the value should be lowered to the appraisal value of \$\$\$\$\$ for the lien date at issue in this appeal.

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, 2014, is \$\$\$\$\$. 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 and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be assessed.** 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.