

15-208  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2014  
DATE SIGNED: 11-9-2015  
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL  
EXCUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 15-208</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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER  
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor  
RESPONDENT-2, Appraiser, RURAL COUNTY  
RESPONDENT-3, Appraiser, RURAL COUNTY

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the RURAL COUNTY Board of Equalization under Utah Code Sec. 59-2-1006. This matter was argued in an Initial Hearing on July 30, 2015, in accordance with Utah Code §59-1-502.5. The RURAL COUNTY Assessor's Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2014 lien date. Respondent, the RURAL COUNTY Board of Equalization ("County"), sustained that value. At the Hearing, the Property Owner requested a reduction to \$\$\$\$\$. The County asks that the value remain as set at \$\$\$\$.

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).)

(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 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 or 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).

### **DISCUSSION**

The property subject to this appeal is parcel #####, located at SUBJECT PROPERTY, CITY-1, Utah. This is ##### acres of land improved with a single family residence. The

residence was constructed in 1976 and is located in the NAME subdivision. The residence is a two-story with a finished basement. A portion of the second story space is not finished and is attic space. The property is of average quality of construction and considered by the County to be in average condition. There is also a detached two-car garage on this property. The County now has the residence at #####-square feet of above grade living area and #####-square feet in the basement.

Since this property had recently been listed for sale and then purchased by the Property Owners, the County provided the Realtor Full Report from the CITY-1 Board of Realtors. This report indicated the subject residence had ##### total square feet, had been remodeled in 2006, and had two full baths, one three-quarter bath and one half bath. The descriptions from the Full Report states:

The Property shares a pond with the neighbor and an irrigation stream runs through the back yard. The hill in the back could be terraced for an incredible vegetable garden utilizing the copious water rights that transfer with the sale. The home was renovated in 2006 and is in good condition (new kitchen, hardwood floors, new roof with copper trim and gutters, water heater . . .). The home has abundant storage above the garage and in the attic space. The finished basement has a large family room and laundry room, a work shop and an office. This property is zoned for horses and a barn could be built on the west side of the home. See attachments for architectural renderings of home with different exterior options, change not included in sale price.

The listing report indicated that the subject property had been listed for sale for \$\$\$\$\$ on April 12, 2013, and the Property Owners had purchased the property for \$\$\$\$\$ on December 18, 2013.

The Property Owner is not arguing for a reduction based on fair market value, as he acknowledged purchasing the subject property for \$\$\$\$\$ in December 2013, just prior to the lien date at issue in this appeal. The property had been listed for sale for an extended period of time and the Property Owners had purchased in a typical arm's length transaction that indicated this as the fair market value. Instead the Property Owner's reduction request was based on a form of equalization argument. The Property Owner pointed to four other properties that had sold in the same subdivision as the subject property and that the sale prices of these other properties were significantly higher than the values the County had assessed for these properties. He calculated that the properties that had sold were only assessed at 62% to 89% of what they had eventually sold for. So he felt this showed the other properties were under assessed and requested that his property assessment be reduced to 77% of the purchase price so that it would be similarly under assessed. It was his contention that it was not fair for his property to be assessed at fair market

value while the neighboring properties were not. The Property Owner did not provide the MLS report or the County's Property Record Card for any of these equalization properties, so things like the year built, grade, condition, size of residence and size of the lot were not provided and are not known. The Property Owner provided only an address, date of sale, purchase price, assessed value and percentage of assessed value to purchase price, as well as a photograph of these other properties and of the subject. The Property Owner's list was the following:

ADDRESS-1	\$\$\$\$	12/13	\$\$\$\$	%
ADDRESS-2	\$\$\$\$	4/13	\$\$\$\$	%
ADDRESS-3	\$\$\$\$	8/13	\$\$\$\$	%
ADDRESS-4	\$\$\$\$	10/13	\$\$\$\$	%

From the photographs, it appears the subject and these comparables were dissimilar as far as style and curb appeal. This was not a neighborhood where the homes were all very similar.

The County also provided a list of the properties that had sold in the subdivision and the assessed values. The County indicated assessments a bit nearer to the sale price than the comparables provided by the Property Owner. The County's list was by parcel number and not address. The County's comparables and are the following:

Parcel No.	Sale Price	Sale Date	Assessed Value	Sale Price/Assessed Value
SUBJECT PARCEL	\$\$\$\$	12/13	\$\$\$\$	%
ADDRESS-5	\$\$\$\$	12/13	\$\$\$\$	%
ADDRESS-6	\$\$\$\$	2/13	\$\$\$\$	%
ADDRESS-7	\$\$\$\$	7/13	\$\$\$\$	%
ADDRESS-8	\$\$\$\$	7/13	\$\$\$\$	%
ADDRESS-9	\$\$\$\$	4/13	\$\$\$\$	%
ADDRESS-10	\$\$\$\$	10/13	\$\$\$\$	%

The County's representative explained that the County assessed the values by considering sales and other market information and had factored the entire subdivision based on sales. He also indicated that previously the County had the square footage wrong on the subject. The County had on its records that the subject had #####-square feet per each level which was a basement, main floor and second floor. The County now understands the second floor is not as large as the other levels and that there is only #####-square feet above grade, which is the main and second floor combined.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Instead of arguing market value, a Property Owner may request a reduction based on equalization under Utah Code Sec. 59-2-1006(4). The section 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 this case, the Property Owner has made an equalization based argument, but has not provided, as contemplated in the statute, that the assessed value of the subject deviates from the assessed values of comparable properties. To show this the Property Owner would have to find properties that were truly comparable to his so that their fair market value would be about the same as the subject, but were assessed lower than his. Based on the information provided, the neighborhood of the subject is very eclectic, with a wide range of fair market values and assessed values. These properties are not comparable to the subject such that they would have the same fair market value of the subject as contemplated under Utah Code §59-2-1006(4). Utah Code §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. 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.

However, the County should be assessing all properties at fair market value and it appears that there is an issue in the neighborhood of the subject, so a review or reappraisal of the area is something for the County to consider. It is possible that the reason the subject property was valued as high as it was, was due to the error in the square footage on the County records. That error had not been brought to the County’s attention by prior owners. However, the assessed value was at the fair market value for the subject property which is as required by Utah Code Sec. 59-2-103 and the Property Owner has not shown that comparable properties, which are properties with a similar fair market value as the subject, were assessed at a lower than the subject. The appeal should be denied.

Jane Phan  
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, 2014 lien date. 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, or emailed, 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

or emailed to:  
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner

