

15-1827

TAX TYPE: PROPERTY TAX

TAX YEAR: 2015

DATE SIGNED: 7/19/2017

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,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 15-1827</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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**Presiding:**

Rebecca Rockwell, Commissioner

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law  
PETITIONER

REPRESENTATIVE-2 FOR PETITIONER

For Respondent: RESPONDENT-1, COUNTY-1 Deputy Attorney  
RESPONDENT-2, COUNTY-1 Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 27, 2017, 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 COUNTY-1 Board of Equalization regarding the fair market 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, 2015.
3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization ("County") reduced the value to \$\$\$\$\$. At the hearing the

Property Owner requests a reduction to \$\$\$\$\$. The representative for the County asked that the value of \$\$\$\$\$ be upheld.

4. The property that is the subject of this appeal is parcel no. ##### and is located at SUBJECT ADDRESS, CITY-1, Utah.

5. The subject property is a #####-acre residential lot improved with a #####- square foot doublewide manufactured home. The manufactured home had been built in 1985 and had been moved to the subject location in 2011. The County is valuing the subject manufactured home as if it did not have a permanent foundation. The County Assessor testified that a negative adjustment of \$\$\$\$\$ had been made for this factor, which was typical for how the county treated other manufactured homes or modular homes without a permanent foundation.

6. There is no garage or carport on the subject property. The Property Owner testified that due to the small size of the lot they are unable to construct one. She also testified that garages were something that the typical buyer in the area would expect. She testified that CITY-1 was a fishing town and people would want a garage or other outbuilding to store their equipment.

7. The subject is located across the street from a CAMPGROUND and RV park. The Property Owner testified that this causes a nuisance because of the noise, lights that stay on all night and campfire smoke. She testified a real estate agent told her the property would be difficult to sell because of the negative impact of the CAMPGROUND.

8. The Property Owner testified that she had purchased the subject lot in 2010 for \$\$\$\$\$. She testified that she had purchased the manufactured or modular home in 2011 for \$\$\$\$\$, spent another \$\$\$\$\$ for improvements and \$\$\$\$\$ on utility hookups in 2011. She testified she lives in CITY-2 and had purchased the subject lot in CITY-1 and then added the home so she would have a place to go when the air was bad at her CITY-2 residence. She indicated she needed to do this for health reasons.

9. The Property Owner provided a letter from a real estate agent dated August 16, 2012.<sup>1</sup> In the letter the agent stated, "After walking thru your home and going through what has sold and what's currently on the market I would put an asking price for around \$\$\$\$\$." She indicated that \$\$\$\$\$ was the "best case scenario" and that Property Owner "could expect to get around \$\$\$\$\$ for a low and \$\$\$\$\$ for a high." The Property Owner did not provide a letter from an agent updated for the lien date at issue in this appeal, which is January 1, 2015.

10. The Property Owner provided eight comparable sales.<sup>2</sup> She testified that she had asked a real estate agent for comparables and these were all the sales that the agent had found which occurred near the lien date. These sales were properties located in or near CITY-1. One of the properties had sold

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<sup>1</sup> Petitioner's Exhibit 2.

<sup>2</sup> Petitioner's Exhibit P-A.

twice. These properties were primarily mobile homes, not manufactured or modular homes. Only one of the properties appeared likely to be a manufactured or modular home and it was also the only property that had been financed commercially. The other sales were cash sales or seller financing. The Petitioner's comparable sales are the following:

Address	Price	Sale Date	Type as Listed By MLS	Size	Age	Lot	Gar-ages	Comments
SUBJECT PROPERTY			Man/Mod	#####	1985	###	0	Covered Deck
ADDRESS-1	\$\$\$\$\$	10/14	Mobile	#####	1979	###	0	Seller financed, newer pitched roof, wood deck, RV parking, needs a little TLC
ADDRESS-2	\$\$\$\$\$	9/15	Man/Mod	#####	1972	###	0	Cash sale, MLS lists this as Manufactured/Modular but due to age and photo, it appears to be a mobile home w/addition
ADDRESS-3	\$\$\$\$\$	10/14	Rambl	#####	1979	###	0	FHA Financed, MLS says this is a rambler but photo shows a manufactured home, sold "as is," home has a finished basement
ADDRESS-4	\$\$\$\$\$	4/14	Mobile	#####	1976	###	0	Cash sale, new pitched roof, attached mud room, 16x12 covered deck in back, small porch in front, shed, lots of room to build a garage
ADDRESS-5	\$\$\$\$\$	7/15	Mobile	#####	1974	###	1	Cash sale, cinder block foundation, newer metal pitched roof, extra insulation, upgraded wiring, garage has 220, newer carpet, one car garage plus shed
ADDRESS-6	\$\$\$\$\$	5/15	Mobile	#####	1978	###	4	Cash sale, 30x40 Quonset hut garage and 14x20 shed, Greenhouse 2 <sup>nd</sup> trailer
ADDRESS-7	\$\$\$\$\$	10/14	Mobile	#####	1972	###	1	Cash sale, addition, covered Porch, attached garage, carport shed
ADDRESS-7	\$\$\$\$\$	7/14	Mobile	#####	1972	###	1	Cash sale, Needs TLC, has to be a cash deal due to year and condition

11. The only comparable offered by the Property Owner that appeared to be the same type of home as the subject was the comparable at ADDRESS-3. The fact that this property was on the highway, may provide nuisance factors similar to the CAMPGROUND located near the subject.

12. The Property Owner did not make appraisal type adjustments to these comparables. At the hearing the representative for the Property Owner had the County go through a calculation on each of the eight comparables listed above to subtract out a land value from the comparable sale, attribute the remainder to the residence and calculate a price per square foot for the structure. This calculation indicated a price per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$. Dividing the square footage of the subject property, which is #####, by the value set by the County Board for the subject residence is a value of \$\$\$\$\$ per square foot.

13. The Property Owner also testified that she had called other Counties and other Counties did not differentiate between “singlewide” and “doublewide” manufactured homes, they just valued them on a square foot basis.<sup>3</sup> The COUNTY-1 Assessor, however, testified that she did make a distinction between single and doublewide mobile or manufactured homes.

14. The County provided information on why they would not use the comparables offered by the Property Owner to determine a value for the subject property.<sup>4</sup> The County stated that many of the comparables used by the Property Owner were singlewide “mobile homes” that were too old to obtain financing. The County Assessor testified that they saw a value difference between singlewide and double wide manufactured and mobile homes and that the city of CITY-1 no longer allowed singlewides within the city. The County’s Assessor also indicated that the one property that had been financed, the comparable at ADDRESS-3 that appeared to be a manufactured home, was a foreclosure, bank owned and not representative of the market. It was also located outside of the city of CITY-1, on the highway.

15. After reviewing the comparables offered by the Property Owner, they are not good comparables for the subject to determine market value because most of these comparables are “mobile homes,” which are a separate category of structure from “manufactured homes”<sup>5</sup> or “modular homes.” Additionally, the Property Owner’s comparables are also older homes than the subject. These structures depreciate in value as they age faster than site built homes. There is a significant difference between a

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<sup>3</sup> See also Petitioner’s Exhibit 5.

<sup>4</sup> Respondent’s Exhibit 3.

<sup>5</sup> The Commission can take administrative notice of facts within its general expertise in making its determination. Although not specifically noted by either party, the term “mobile home” refers to homes built prior to the implementation of the Federal Manufactured Home Construction and Safety Standard Act of 1976. The federal act mandated a higher standard of quality, fire resistance, durability, energy efficiency and standards for plumbing, electricity, heating and cooling. After this act was implemented, homes that comply with the act are referred to as “manufactured homes.” Homes constructed prior to these standards are “mobile homes.” Financing is generally not available for “mobile homes.”

“mobile home” and a “manufactured home.”<sup>6</sup> The County Assessor states in the information she provided that financing is not available for “mobile or modular homes” constructed prior to 1978 and that does impact the value.<sup>7</sup> In addition there is a difference because “manufactured homes” have to meet certain standards of quality as regulated by the Department of Housing and Urban Development, which the older “mobile homes” were not required to meet. As the subject is a “manufactured home or modular home” built after the HUD standards were set, it has to have been constructed to these higher quality standards. The better comparables to determine a fair market value for the subject are properties with “manufactured homes.” “Manufactured homes” do come in singlewide, doublewide, triplewide or more widths. A singlewide “manufactured home” would have to meet the HUD Standards, but may suffer from lack of functionality due to the long and narrow configuration. Additionally, a singlewide manufactured home may have less curb appeal, due to the fact that it looks more like the older style “mobile homes.” CITY-1 appears to be a market where there are mobile homes and manufactured homes and it appears that there would be sufficient market information to establish values of these type of structures differently.

16. The Property Owner also argued for a lower value based on equalization. She argued that the subject property was valued unfairly compared to her neighbors on either side, although the subject was valued lower than either of these neighbors. The subject, with the ### acre lot and #####-square foot manufactured home, had been valued by the County Board of Equalization at \$\$\$\$\$. The neighbor to the west was valued at \$\$\$\$\$, but this property included three lots, a residence and garages. The west neighbor’s residence was a ##### square foot manufactured home, with a ### square foot addition. However, the County testified that the addition was not yet finished and was valued as 75% complete. This property also had a ### square foot garage and a ### square foot garage addition. The property to the east of the subject was valued by the County at \$\$\$\$\$. This neighboring property has a manufactured or modular home, which was constructed in 2011 with ##### square feet. This property has a permanent foundation and a basement. Additionally, there was a detached garage on this property. The lot is a bit larger than the subject at ##### acres.<sup>8</sup>

17. At the hearing the County Assessor testified that the original values were set based on a cost approach.<sup>9</sup> However, the County also provided a Comparative Market Analysis to support its value.<sup>10</sup> This analysis looked at the sales of three properties in CITY-1 that were listed on the MLS as Manufactured/Modular homes. All three, like the subject, had no basement and no garage or carport.

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<sup>6</sup> Both the Property Owner, County and MLS refer to “manufactured home” and “modular home” interchangeably.

<sup>7</sup> Respondent’s Exhibit 3.

<sup>8</sup> See Petitioner’s Exhibits 4-5.

<sup>9</sup> Respondent’s Exhibit 1.

<sup>10</sup> Respondent’s Exhibit 2.

Although more similar in style and type of home, these properties had sold considerably prior or post lien date. The County Assessor also testified that the market was stable over this period. The County’s comparables in the CMA were the following:

Address	Price	Sale Date	Type as Listed By MLS	Size	Age	Lot	Gar-ages	Comments
SUBJECT PROPERTY			Man/Mod	####	1985	###	0	Covered deck
ADDRESS-9	\$\$\$\$	3/11	Man/Mod	####	2000	###	0	FHA Financed, RV parking
ADDRESS-10	\$\$\$\$	2/16	Man/Mod	####	1984	###	0	Case Sale, shed, large covered deck, room to build garage
ADDRESS-11	\$\$\$\$	6/10	Man/Mod	####	1998	###	0	Conventional Financed, fishing shack in back, mostly furnished

18. Compared to the subject property, the comparables all had a smaller sized residence and a large lot. The County did make adjustments for this difference based on \$\$\$\$ per square foot for the larger residence, a value per acre rate of \$\$\$\$ for the lot. The County also made an adjustment of \$\$\$\$ per year of difference in age. The CMA form indicated that had there been a basement the adjustment would have been \$\$\$\$ per square foot of basement, plus \$\$\$\$ per square foot for basement finish. For all three comparables these adjustments, which are standard appraisal adjustments, resulted in a larger adjustment for the square footage of the residence than for the larger land size, meaning that the larger sized structure contributed more value than the larger acreage. It was the County’s conclusion that these three comparables after adjustments indicated values for the subject of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$, or an average of \$\$\$\$\$. The CMA did not address nuisance factors arising from the location of the subject next to the CAMPGROUND.

19. The Property Owner had not made appraisal adjustments to its comparables.

20. Although the County had argued the one property offered by the Property Owner that was also a “manufactured home” at ADDRESS-3, had been a bankowned property and distressed sale, it was the only “manufactured home” to sell near the lien date at issue in this appeal, selling in October of 2014. This comparable property had sold for \$\$\$\$\$. Subtracting the concession amount indicated on the MLS and making the same adjustments used by the County in its CMA, this would indicate a value for the subject of \$\$\$\$\$. Because they were no sales of “manufactured homes” near the lien date, regardless of the bankowned factor, it is appropriate to give some consideration to this sale equal to the other three other “manufactured home” properties offered in the CMA. The fact that this property is on the highway

may also be comparable to the noise and nuisance factor of the subject located adjacent to the CAMPGROUND. With this property added to the mix, the average of the adjusted values is \$\$\$\$\$.

21. Based on all the information offered, it is appropriate to lower the value for the subject to \$\$\$\$\$ for the lien date at issue in this appeal based on the fair market value evidence.

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

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. *See 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*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

#### CONCLUSIONS OF LAW

1. Property tax is based on a property's "fair market value" as of the lien date 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.

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). There was sufficient evidence provided to support that this property, when compared to other manufactured homes in the area, was valued higher than market value.

3. The Property Owner has also made an argument based on equalization, or that her value was unfair compared to two neighboring properties. However, the two properties were both valued higher than the subject. There were a number of differences between these two neighboring properties and the subject. The Property Owner has not provided sufficient evidence to show that these properties were actually comparable to the subject. 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 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." At the hearing the Property Owner offered comparables that were valued higher and were also arguably superior to the subject. 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. The



Property Owner failed to show the value should be lowered based on equalization to comparable properties.

However, considering the fair market value evidence and the applicable law, the value should be lowered to \$\$\$\$\$ 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, 2015, is \$\$\$\$\$. The County Auditor is to adjust the records accordingly. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.