

19-504
TAX TYPE: PROPERTY TAX
TAX YEAR: 2018
DATE SIGNED: 11/1/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS, EXCUSED
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY 1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 19-504</p> <p>Parcel No. ##-####-####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2018</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney at Law
For Respondent: REPRESENTATIVE FOR RESPONDENT 1, COUNTY 1
Appraiser
REPRESENTATIVE FOR RESPONDENT 2, COUNTY 1
Appraiser

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the COUNTY 1 Board of Equalization pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on DATE, 2019 in accordance with Utah Code §59-1-502.5. The COUNTY 1 Assessor’s Office originally valued the subject property at \$\$\$\$ as of the DATE, 2018 lien date. The COUNTY 1 Board of Equalization (“the County”) sustained the value. At the hearing the Property Owner requests a reduction to \$\$\$\$\$. The County is asking the Commission to uphold its value of \$\$\$\$\$.

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(13), 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.

When assessing property that is under construction as of the lien date DATE, Utah Admin. Rule R884-24P-20 provides the following:

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

...

E. Appraisal of Properties not Valued under the Unit Method.

...

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- (a) The full cash value of the project expected upon completion.
- (b) The expected date of functional completion of the project currently under construction.

- (1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

- (c) The percent of the project completed as of the lien date.

- (1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

- (a) 10 – Excavation-foundation
- (b) 30 – Rough lumber, rough labor
- (c) 50 - Roofing, rough plumbing, rough electrical, heating
- (d) 65 – Insulation, drywall, exterior finish
- (e) 75 – Finish lumber, finish labor, painting
- (f) 90 – Cabinets, cabinet tops, tile, finish plumbing, finish electrical
- (g) 100 - Floor covering, appliances, exterior concrete, misc.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:
 - a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,
 - b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;
 - c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

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).

DISCUSSION

The property that is the subject of this appeal is a ##### acre parcel of land, on which, as of the lien date DATE, 2018, a residence was being constructed. As of the lien date, based on the County records, the residence was 65% complete. The representative for the Property Owner did not have any information to support that the subject residence was less or more complete than the 65% as of DATE, 2018 and provided no information as to what existed on the subject property as of that date.

The residence being constructed was completed in DATE 2018, after the lien date at issue in this appeal, so would be considered complete as of DATE, 2019. The residence has ##### above grade square feet, a basement of ##### square feet and a garage of ##### square feet. There is also ##### square feet of patio and deck area.

At the hearing, the representative for the Property Owner offered two arguments. The first was that because the subject property was still unfinished as of the lien DATE, 2018, it should be valued the same for the 2018 tax year as it had been valued as of DATE, 2017 for the 2017 tax year. For the 2017 tax year the County had assessed the parcel at a land value of \$\$\$\$\$ and an improvement value of \$\$\$\$\$. The Property Owner's representative acknowledged that construction had been progressing between DATE, 2017 and DATE, 2018, but argued because construction was not complete as of DATE, 2018, the improvement value should still be \$\$\$\$\$. When questioned about what if any of the construction had been commenced by DATE, 2017, the representative did not know. When questioned as to what was there on DATE, 2018, the representative did not know.

The County representatives explained that they did try to look at all properties within the County that were under construction around January 1 of each tax year to determine the percentage that they were complete. They point out that based on Utah law, the County has to value the property as it exists on the lien date for each tax year. If a property is under construction on the lien date, the County stated that it estimates the percentage complete and values the property based on an estimate of the value when the property is finished multiplied by the percentage complete on the lien date. The County's representatives explained that for tax

year 2018, they concluded that the residence was 65% complete. They indicated that as of DATE, 2017 the property had been valued as if the residence was only 0% complete and it was their contention that there must have been very little work done at that time.¹ To value the property for DATE, 2018, the County had determined the land value was \$\$\$\$\$. It was the County's contention that when the residence was completed the building value would be \$\$\$\$\$, and that 65% of the completed building value was \$\$\$\$\$. The County provided its 2018 site analysis at the hearing which indicated how the assessed value was calculated. This showed that the assessed value for the residence as it existed on DATE, 2018 was \$\$\$\$\$. To this the County added \$\$\$\$\$ for the land, which equaled the \$\$\$\$\$ assessed value.

The Taxpayer's argument that because the building was still not complete as of the lien date the improvement should be assessed at a \$\$\$\$\$ value is contrary to Utah law. Utah Code Sec. 59-2-103 provides that property is assessed on the basis of its fair market value, as valued on DATE of that tax year. Because properties may be under construction and in various states of being complete as of the DATE lien date, Utah Admin. Rule R884-24P-20 provides how they are to be valued based on the percentage of completion and provides a table for determining the percentage of completion. For the subject as of DATE, 2018, there was no evidence to dispute that the residence was 65% complete and it was properly valued as such.²

The representative for the Property Owner also provided that there was another parcel in the same subdivision near the subject, parcel ##-####-####, which was also under construction but not fully finished on the lien date. The County had valued the improvement on parcel ##-####-#### at \$\$\$\$\$ in 2018. At the hearing the County representatives stated that valuing parcel ##-####-#### was an outright error on the part of the County and the County has now gone back and assessed that improvement. The fact that the County had made a mistake and missed one property in the subdivision is not grounds to establish that the subject should similarly be valued in error. The Property Owner did not cite specifically to Utah Code Subsection 59-2-1006(5) which provides for an appeal based on equalization, but clearly providing only one undervalued property to use as a comparable, when there were many other properties that were not valued in error, is not sufficient basis to establish equalization. This is especially true given that the one undervalued property was undervalued in error and the County has corrected the error. Utah Code Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a

¹ If, in fact, the residence was more than 0% complete as of DATE, 2017, the property was under assessed for that year. This does not provide a basis to argue under Utah law that it should also be under assessed for tax year 2018. Utah Code Sec. 59-2-103 requires that the County set the value at fair market value as of the lien date of DATE, for each tax year.

² Neither party argued for the application of the discount rate under Administrative Rule R884-24P-20 (E)(3)(c).

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.” 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. In reviewing equalization the court concluded, “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(5) 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).

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 a sound evidentiary basis to support a new value.³ The Property Owner has not met this dual burden and the value should remain as set by the County Board of Equalization for the lien date at issue in this appeal.

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 DATE, 2018 lien date. The Wasatch County Auditor is hereby ordered to adjust its records accordingly. 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

³ See *Fraughton v. Tax Comm’n*, 2019 UT App 6; *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).

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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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner