

APPEAL #: 22-1974
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 10/24/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 22-1974</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2022</p> <p>Judge: Phan</p>
---	--

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, Appraiser, COUNTY-1

STATEMENT OF THE CASE

Petitioner (the "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 August 3, 2023, in accordance with Utah Code Ann. §59-1-502.5. The COUNTY-1 Assessor's Office originally valued the subject property at \$\$\$\$\$, as of the January 1, 2022 lien date. The County Board of Equalization (the "County") upheld that value. At this Initial Hearing before the Tax Commission, the Property Owner requested the value of the subject property be reduced to \$\$\$\$\$. The County requested that the value of \$\$\$\$\$ be sustained.

The subject property is located at ADDRESS-1. The subject property is ##### acres of land and is improved with a rambler-style residence. The residence has ##### square feet above grade and a basement of ##### square feet, which is fully finished. The property is ##### years old and the County lists the subject property at a quality of construction of Q3 and the condition at 3.# The subject property has an attached 3 car garage, with ##### square feet. There is also a large detached barn structure.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2) provides for the assessment of property, as follows:

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:

- (a) "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.
- (b) 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.

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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
 - (a) 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 or entity with designated decision-making authority described in Section 59-2-1101; and
 - (b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.
- ...
- (3) In reviewing a decision described in Subsection (1), 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 or entity with decision-making authority.
- (4) In reviewing evidence submitted to the commission to decide an appeal under this section, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented;
 - (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 a decision described in Subsection (1), 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 Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
- (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by a county board of equalization, including a value based on a stipulation of the parties;
 - (ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:
 - (A) the commission, if the commission has issued a decision in the appeal or the parties have entered a stipulation; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; or
 - (iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.
 - (b) "Inflation adjusted value" means the same as that term is defined in Section 59-2-1004.
 - (c) "Qualified real property" means real property:
 - (i) that is assessed by a county assessor in accordance with Part 3, County Assessment;
 - (ii) for which:
 - (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;
 - (B) the appeal described in Subsection (1)(c)(ii)(A) resulted in a final assessed value that was lower than the assessed value; and
 - (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and

- (iii) that, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not had a qualifying change.
- (d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:
 - (i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of the fair market value of the real property or \$20,000;
 - (ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or
 - (iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.
- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
 - (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
 - (C) if Subsection (3) applies, the original assessed value; or
 - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.
- (3)
 - (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:
 - (i) that is not qualified real property; and
 - (ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (b) For purposes of Subsection (3)(a), the following have the burden of proof:
 - (i) for property assessed under Part 3, County Assessment:
 - (A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts

- that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
- (c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:
 - (i) the original assessed value shall lose the presumption of correctness;
 - (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties; and
 - (iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.
- (4)
- (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.
 - (b) For purposes of Subsection (4)(a):
 - (i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or
 - (ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.
 - (c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:
 - (i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or
 - (ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4 below, in pertinent part:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.

- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. Salt Lake County Board of Equalization*, 2021 UT App 4. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the petitioner must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

DISCUSSION AND ANALYSIS

I. General Information

The issue before the Tax Commission at this Initial Hearing is the Property Owner's appeal of the decision issued by the County Board of Equalization in regards to the assessed value of parcel no. ##### for property tax assessment purposes. The lien date at issue in this appeal is January 1, 2022. The value of the subject property had not been appealed in any of the three years preceding tax year 2022.

II. Property Owner's Evidence

The Property Owner submitted some information regarding five comparable sales, which were properties that had sold between January 1, 2021 and December 31, 2021. He explained that he had searched for properties that had sold in CITY-1, CITY-2, CITY-3, CITY-4 or CITY-5 and that had a minimum of 5 bedrooms, 2 bathrooms and a maximum of 4,500 square feet. He

pointed out that the sales prices of the five properties that sold with these criteria averaged \$\$\$\$\$ and that was the value he was requesting for his property. It is not clear whether the square footage data included in the Property Owner's report represented appraisal gross living area (GLA), which is only above grade square footage, total finished square footage or total square footage. Understanding how square footage was measured in this data is important in determining whether the Property Owner's comparables are actually comparable to the subject property.

The Property Owner did not submit information regarding his comparables such as land size, age of residence, size of garages, outbuildings or anything about the grade and quality of the comparables. In addition, the information does not show if there is a basement or any basement finish. The information the Property Owner's report provided about each comparable was limited to the following:

REDACTED TABLE

The Property Owner also expressed concern about not being able to afford to keep the subject residence due to property taxes. He stated that property taxes go up every year and are increasing faster than wages. He stated he built the residence in DATE and the first valuation, when the residence was finished, was \$\$\$\$\$. He indicated that every year the taxes have increased and being able to afford to own the property because of the tax increases was a concern.

III. County's Evidence

The County submitted an appraisal at the hearing, which had been prepared by PERSON-1 of the County Assessor's Office. It was his appraisal conclusion that the value of the subject property was \$\$\$\$\$, as of January 1, 2022. Although this was higher than the County's current value of \$\$\$\$\$, the County was not asking to increase the value to the appraisal value, but instead offered the appraisal to support the current Board of Equalization value. In the appraisal he considered five comparable sales. All five comparables were located in CITY-1, the same city as the subject property, and two were located on the same street as the subject property. All properties were residences on large acreage parcels, with the smallest parcel size being ##### acres of land. Three of the sales had actually occurred after the lien date and the County's appraiser had made negative time adjustments for these sales. All five properties had sold for more than the County's current assessed value for the subject property. The County's comparables with some of the significant adjustments¹ were the following:

¹ The County made other appraisal adjustments, which can be seen in the County's exhibit. This table only includes those significant to the decision.

REDACTED TABLE

IV. Value Conclusion

The subject property is not a “qualified real property” pursuant to Utah Code Subsection 59-2-109(1) and Utah Code Ann. §59-2-301.4 is not applicable in this matter because the subject property had not been the subject of a valuation reduction resulting from an appeal in tax years 2019 through 2021. Only the Property Owner is requesting a value different from the County’s current value. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the Property Owner must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

The Property Owner has provided some very limited information regarding the five sales of properties in CITY-1 and other nearby localities and asked for the value to be based on the average sale price of these properties, regardless that the evidence is lacking to establish that these sales are actually comparable to the subject property. The Property Owner has the burden of proof and failed to establish substantial error in the County’s value with the very limited information he provided regarding these sales comparables. The County has submitted an appraisal that more than supports the position that the County’s current assessed value is not higher than the subject property’s fair market value. All five comparables submitted by the County sold for more than the County’s assessed value for the subject property. They were all smaller in land size and generally smaller in size of residence. Three were similar in quality of construction and condition. In addition, they were all from the same city as the subject property and two of the comparables were located on the same street as the subject property. One had a barn like the subject residence. The County made typical appraisal adjustments for the differences and concluded a value of \$\$\$\$\$. The County was not asking for the value to be increased to the appraisal value.

The Property Owner expressed concern at the hearing about taxes getting so high that he would be taxed out of his property. However, Utah Code §59-2-103(2) requires property to be “assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1.” For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(13), as “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.” The law requires that the Tax Commission set the value at fair market value.² The amount of property tax a property owner can afford is not a consideration in determining “fair market value.”

The Property Owner has not established substantial error in the County’s current assessed value. Therefore, the value should remain at the County’s current assessed value 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 January 1, 2022 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 ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

² There are some property tax relief provisions for eligible individuals. There was no indication that the Property Owner qualified for any tax relief, but the Property Owner could contact the County to submit an application for tax relief for subsequent tax years, if eligible.