

APPEAL #: 23-117
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 6/27/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 23-117 Parcel No: ##### Tax Type: Property Tax Tax Year: 2022 Judge: Phan</p>
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Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER, Property Owner
For Respondent: RESPONDENT'S REP-1, Deputy COUNTY-1 Assessor
RESPONDENT'S REP-2, Appraiser, COUNTY-1 Assessor's
Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 2, 2024, in accordance with Utah Code Ann. §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

I. General Information

1. The issue before the Tax Commission at the Formal Hearing is Petitioner's ("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.

2. The lien date at issue in this appeal is January 1, 2022.

3. The County Assessor had originally valued the subject parcel at \$\$\$\$\$ as of the lien date at issue. The Property Owner had appealed to the County Board of Equalization and the County Board of Equalization upheld the value. At the Formal Hearing, the Property Owner requested a reduction to \$\$\$\$\$. During the hearing, the County requested that the County's current value for tax year 2022 of \$\$\$\$\$ be upheld.

4. The property at issue had not been the subject of an appeal for any of the three tax years preceding tax year 2022.

5. The subject property is located at ADDRESS-1. It is a two-story row house or townhouse style condominium, located mid-row. The condominium was constructed in YEAR. It has ##### square feet above grade and there is no basement and no garage or carport. The condominium development is small and there are no amenities other than a small amount of grass space.

II. Property Owner's Evidence

6. At the hearing, the Property Owner testified that he had purchased the condominium in YEAR, and that it had the original kitchen and flooring at the time he purchased the subject property. He explained that since the time of the purchase he has not made any improvements to the subject property and he has been renting the subject property to his daughter and son-in-law. His daughter and son-in-law have lived there for ##### years with their children and cats and dogs.¹ The Property Owner argued that the subject property was not in the kind of condition as properties that have been sold. He argued that when people listed a property for sale they would clean and fix it up to some extent and any listed property would be in better condition than the subject property. He argued that the County was valuing the subject

¹ He testified his daughter is a school teacher and could not purchase the subject property on her own income. He charged them \$\$\$\$\$ in rent per month because that was all that they could afford.

property based on comparable sales that were newer than the subject property and in better condition as of the lien date.

7. As evidence, the Property Owner provided the Multiple Listing Service reports for four row-mid townhouse style condominium properties, which he stated were comparable and near in location to the subject property. A summary of his comparable sales are the following:²

REDACTED TABLE

8. The Property Owner did not attempt to make appraisal adjustments for the differences between his comparable sales and the subject property. The subject property had been constructed in YEAR. All eight of the Property Owner's comparables were constructed in the time period range from YEAR to YEAR. They were all townhouse/row style middle unit condominiums like the subject property. Like the subject property, none of the comparables had a garage, although some had a carport. The Property Owner did not provide additional photographs of these properties, but each of the MLS reports had a small photograph of the exterior of these properties. Although the MLS photos submitted were rather dark and grainy, based on what could be determined from those photos, the comparables were similar to the subject property. One of the properties was listed as having a community pool. The rest of the comparables, like the subject property, did not have a community pool. Overall these appeared to be good comparables for the subject property.

9. The sales also indicated that the market was very active in 2021. All four of the Property Owner's comparables had gone under contract within a few days of the listing date and sold for more than the list price. All four had sold for more than the \$\$\$\$ that the Property Owner was requesting as the value for the subject property, with only one property selling for less than \$\$\$\$.

III. County's Evidence

10. The County submitted an appraisal at the hearing, which indicated that the market value for the subject property was actually higher as of the

² Petitioner's Exhibit 1, PDF# 13-15.

January 1, 2022 lien date, than the County's assessed market value. However, the County did not request that the value for the subject property be increased and instead offered the appraisal to support the County's current value for the subject property of \$\$\$\$\$. The appraisal had been prepared by RESPONDENT'S REP-2, who is an appraiser for the County. It was the County appraiser's conclusion that the value of the subject property as of January 1, 2022 was \$\$\$\$\$. The County appraisal was based on a sales comparison approach. For this approach, the County appraiser submitted four comparable sales and made appraisal adjustments for the differences between the comparables and the subject property. The County representatives explained at the hearing that they had not seen the interior of the subject property and that the Property Owner had not provided photographs of the interior. Based on an exterior inspection, they concluded the subject property was in good condition and that is how they had appraised the subject property. One of the comparables was from the same complex as the subject property. Like the subject property, none of the County's comparables had basements and none had garages.

11. The County's sales comparison approach with adjustments was the following:³

REDACTED TABLE

12. The County also presented a sales comparison approach at the hearing using three of the four comparables the Property Owner had offered as evidence at the Formal Hearing.⁴ The County made standard appraisal adjustments to these sales and when adjusted these sales also supported the County's current 2022 value for the subject property. The County's exhibit adding appraisal adjustments to the Property Owner's comparables was the following:⁵

REDACTED TABLE

IV. Commission's Value Conclusions

³ Respondent's Exhibit 2.

⁴ The County's Exhibit shows four sales listed in the Adjusted Appellant Sales Comparison Approach. However, one of the sales did not match the four comparable sales offered by the Property Owner at the Formal Hearing.

⁵ Respondent's Exhibit 1, pg. 23.

13. As discussed more in the Conclusions of Law section below, it is the Property Owner who has the burden of proof at this hearing. The Property Owner must establish substantial error in the County's current value and provide a sound evidentiary basis to support the value that he is requesting. The Property Owner presented as evidence four comparable sales and his sales did appear to be similar to the subject property and good comparables. However, the Property Owner's comparable sales did not support the \$\$\$\$ value that he was requesting. They all sold for more than \$\$\$\$ and needed time adjustments because of the escalating residential market in 2021 and other adjustments to account for differences between the comparables and the subject property. This time adjustment is a significant adjustment and the Property Owner did not provide any evidence to indicate that the market was not increasing at this pace. The fact that the housing market was booming at this time is supported by the Property Owner's own comparables and MLS reports. All four of his properties had gone under contract within a few days of being listed and had been purchased for a price above list price. After the County's appraisal adjustments, three of the Property Owner's comparable sales indicated a value range from \$\$\$\$ to \$\$\$\$\$. The County's adjustments to these comparables indicated a higher value for the subject property than the \$\$\$\$ current assessed value.

14. One point that the Property Owner made at the hearing was in regards to the condition of the subject property. The Property Owner testified that the subject property had its original kitchen and carpets and had not been fixed up and remodeled. However, he did not want to allow the County to inspect the interior of the subject property and did not provide any photographs of the interior. Even if the Property Owner established that the subject property was not in good condition, the indicated value for the subject property from all of the adjusted comparables offered ranged from \$\$\$\$ to \$\$\$\$\$. Therefore, if some adjustment was made for condition, the comparable sales would still support the County's value of \$\$\$\$\$. However, the Property Owner has not shown that an adjustment is warranted for the condition of the subject property. The Property Owner has not met his burden of proof to show substantial error in the County's value.

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.
- (2) . . .
- (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.

CONCLUSIONS OF LAW

1. In this proceeding before the Tax Commission it is only the Property Owner who is requesting a value different from the County Board of Equalization value and it is the Property Owner that has the burden of proof. For the Property Owner to prevail in this case, Utah Code §59-2-109(2) provides that he 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 he 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); *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. The Property Owner has not shown substantial error in the County's value.

2. The Property Owner testified in this appeal that the condition of the subject property was not good and the subject property had not been remodeled or updated. The Property Owner did not want the County to inspect the interior of the subject property, which was the residence of his daughter and her family, and the Property Owner did not provide photographs of the interior. The burden of proof is on the Property Owner. This is an issue that the Tax Commission has heard in prior appeals and has concluded that if a property owner does not allow an interior inspection or at least provide good interior photographs, it is permissible for the County to value the property based on the exterior grade and condition.⁶ In this appeal, the comparable sales indicate a value for the subject property that is higher than the current assessed value and even if some downward adjustments for condition were warranted, the current assessed value would be supported.

3. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."

4. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property's "fair market value" as of 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 a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." See Utah Code Sec. 59-2-102. "Fair market value" for a single family residential property is generally estimated based on comparable sales and appraisal adjustments

⁶ See *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision Appeal No. 18-517 (02/21/2019)* and *Orders Granting Rule 34(b)(1) Requests in Utah State Tax Commission Appeal Nos. 04-1218 (11/3/2006) and 06-0973 (4/26/2007)*. These and other Tax Commission decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

for the differences between the subject property and the comparables. When appraisal adjustments were made to the Property Owner's comparable sales and the County's comparable sales, they supported the County's value.

5. The subject property is not a "qualified real property" for tax year 2022 pursuant to Utah Code §59-2-109(1)(c) because the value of the subject property was not reduced based on an appeal for tax year 2021.

6. Utah Code Ann. §59-2-301.4 is not applicable in this matter because the subject property was not the subject of a "valuation reduction" in any of the three years preceding the tax year at issue in this appeal.

The Property Owner has failed to establish substantial error in the County's current value and, therefore, his appeal should be denied. The value for the subject property should remain as set at the County's current value for the lien date at issue in this appeal.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the County Board of Equalization and finds that the fair market value of the subject property as of January 1, 2022, is \$\$\$\$\$. It is so ordered.

DATED this ____ day of ____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.