

APPEAL # 23-500

TAX TYPE: PROPERTY TAX

TAX YEAR: 2022

DATE SIGNED: 5/9/2024

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>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 23-500</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2022</p> <p>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, Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 27, 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’s original assessed value was upheld by the County Board of Equalization (“County”) for the lien date at issue and was the value the County was requesting be sustained at this Formal Hearing. The County’s value and the value the Property Owner was requesting were as follows:

County’s Value Request	Property Owner’s Value Request
\$\$\$\$\$	\$\$\$\$\$

4. The original assessed value of the subject property for tax year 2021 had been appealed to the County Board of Equalization and the value had been reduced to \$\$\$\$\$. Based on the information submitted by the parties at the hearing, there had not been any changes to the subject property between the lien date for the 2021 tax year and the lien date for the 2022 tax year. The inflation adjusted value (“IAV”) for the 2022 tax year was \$\$\$\$\$, and it was lower than the original assessed value for tax year 2022. There was no information presented to show that the value had been reduced as the result of an appeal for tax year 2020 or 2019.

5. For tax year 2022, the County Board of Equalization had not issued its decision until DATE. The Property Owner then filed his appeal of that decision on DATE, with the County Auditor as required by statute. The COUNTY-1 Auditor forwarded the appeal and the County Board of Equalization decision to the Utah State Tax Commission on DATE. The Appeal was then processed by the Utah State Tax Commission and scheduled for its first event on DATE, which was a Mediation Conference. As the appeal was not resolved at that event, it was then scheduled for a Formal Hearing on DATE.

6. The subject property is a residential property located at ADDRESS-1. The property is ##### acres in size and is improved with a two-story residence that has ##### square feet on the main floor and ##### square feet on the second floor, for a total of ##### above grade square feet. There is also a basement which is mostly finished. The basement has a total of ##### square feet, of which ##### square feet are finished. Based on the County records, the main floor living area is smaller than the basement because the basement extends all the way under the garage, which the County lists as being ##### square feet, and also under a covered patio area. The Property Owner argued at the hearing that the subject property has only ##### finished square feet.

II. Property Owner’s Evidence

7. The Property Owner did not present market value evidence, but instead argued for a reduction in value based on equalization. The Property Owner provided information on eighteen residential properties located near the subject property, with eight on the same street as the subject, but all very near in location. The Property Owner provided the finished square footage and lot size for these properties, which he testified he had obtained from Zillow. He also provided the County's 2022 market value, as well as the tax rate and the 2022 property tax amount. The Property Owner did not provide the County’s building cards for each of these properties or any other information about the residences including the age of the residences. The Property Owner’s exhibit contained the following information in relevant part:¹

Address	Sq.Ft ² .	Lot Size	Out	County 2022 Market Value
REDACTED TABLE				

8. Based on these equalization comparables and this limited information, although the subject property was substantially larger in both building size and lot size than most of the comparables, the Property Owner calculated a “linear regression” formula from the comparables, which he argued in his evidence submission was a “statistically significant fit.”³ His “linear regression” formula showed that $Y=#####$ and $X= #####$, where Y was the County’s 2022 assessed value and X was the finished square footage. Using this formula, the Property Owner concluded a value for the subject property for tax year 2022 as follows:

$$#####=(#####) + #####$$

The Property Owner’s requested value for tax year 2022 of \$\$\$\$ was based on this analysis.

9. The Property Owner also requested a refund of the taxes he had paid for tax year 2023 based on this formula and the argument that there had been “no systematic

¹ Petitioner’s Exhibit 1.

² The Property Owner testified at the hearing that he had obtained the square footage for each of these comparables from Zillow. However, a spot check on Zillow did not support this assertion. For the subject property, Zillow had stated that the subject property was ##### square feet. See REDACTED URL For the property at ADDRESS-2, Zillow stated that property was ##### square feet. See REDACTED URL The Property Owner had reported ADDRESS-2 as having ##### square feet on his Exhibit 1, PDF #2. The Tax Commission did not further compare the Property Owner’s reported square footage to the square footage listed on Zillow.

³ Petitioner’s Exhibit 1, PDF #3.

change in property valuations between the 2022 and 2023 tax year for COUNTY-1.” As explained below in the Conclusions of Law, in this appeal the only tax year before the Tax Commission for the subject property is tax year 2022. Tax year 2023 is beyond the scope of this appeal.

10. The Property Owner also argued that the market value versus lot size of the comparable properties was not statistically significant.⁴ In this analysis, the Property Owner looked solely at the total assessed value and the lot size, without taking into account any of the other factors that affect market value.

11. To support the argument that the subject property had only ##### square feet, the Property Owner provided a copy of the Cover Sheet & Index for the building plans of the subject property residence. The date on this document was DATE.⁵ This exhibit stated “Total Finished ##### Sq.FT.”

12. The Property Owner also argued that his share of the overall total property tax revenue had gone up. He provided a statistical chart that stated “COUNTY-1 Property Tax Revenue” for tax year 2021 had been \$\$\$\$\$, and the taxes he had paid for the subject property had been a total of %%% of this assessment. He stated that the overall total “COUNTY-1 Property Tax Revenue” for tax year 2022 had been \$\$\$\$\$, and the property tax he had paid for the subject property had been %%% of that amount. The Property Owner did not provide where he had obtained this data.⁶

III. County’s Evidence

13. The County’s appraiser testified that the County had submitted an appraisal in the 2021 tax year appeal and had measured the subject property at that time. He stated that prior to that appeal the County records showed that the subject property was ##### total square feet, but after re-measuring, the County had changed the record to ##### total square feet and that was taken into account in the reduction in value that occurred in the 2021 tax year appeal. He testified that the County had assessed the subject property for tax year 2022 based on the ##### square footage measurement.

⁴ Petitioner’s Exhibit 1, PDF #5.

⁵ Petitioner’s Exhibit 1.

⁶ Petitioner’s Exhibit 1, PDF #4. The Property Owner did not provide where his “COUNTY-1 Tax Revenue” data came from. The Tax Commission takes administrative notice that its Property Tax Division publishes the Annual Statistical Report regarding tax assessment and tax revenue. This report for tax year 2022 indicated that the total property taxes charged by COUNTY-1 were \$\$\$\$\$. The Property Owner’s number of \$\$\$\$\$, may be some subdivision of that number, but that is not clear. See <https://propertytax.utah.gov/annual-reports/2022annual.pdf>.

14. The County had prepared a sales comparison approach to submit at the Formal Hearing, but had not sent the exhibit to the Property Owner at the email address the Property Owner had provided on the Request for Redetermination of County Decision form. Further, the County had not sent this information to the Property Owner via regular mail. Because of this, the County's sales comparison approach was disallowed at the hearing. The County's appraiser asked that the original assessed/BOE value be upheld and pointed out that the subject property's 2022 valuation had been reviewed by the County's Hearing Officer and sustained by the County Board of Equalization.

IV. Commission's Value Conclusions

15. As discussed more in the Conclusions of Law section below, both the Property Owner and the County have a burden of proof at this hearing. To prevail in this case, Utah Code 59-2-109(2) provides that each of the parties must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which the party's proposed value could be adopted. The County did not meet this burden of proof based on the information and evidence received into the hearing record. The Commission considers the Property Owner's information and argument to see if the Property Owner has demonstrated substantial error in the inflation adjusted value and provided a sound evidentiary basis to support the lower value he requested.

16. The Property Owner argued that the subject property had only ##### finished square feet. To support this, the Property Owner provided a copy of one page of the preconstruction building plans. The plans indicated the subject property would have ##### "Total Finished" square feet. This single page did not state there would be a basement area under the garage and covered patio. The County's appraiser testified at this hearing that the County had measured the subject property during the 2021 tax year appeal to the County Board of Equalization, and had appraised the subject property during that appeal. The County's representative testified that the subject property had ##### total square feet. The County's value reduction for tax year 2021 had taken into account this smaller square footage for the subject property. The Property Owner has not provided any evidence of the after construction measurements of the subject property, or the measurement of the residence as of the lien date. Preconstruction plans are often altered during construction and it may be that the full basement was shown on a different page of the plans, but the single page provided only the listed square footage that would

be finished by the builder. Based on what was presented, the Property Owner has not established that as of the lien date the subject property had only ##### square feet.

17. The Property Owner did not provide market value evidence and instead argued for an adjustment based on equalization. An adjustment based on equalization pursuant to Utah Code Subsection 59-2-1006(5) is warranted if the Property Owner shows that “the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.” The Property Owner provided the assessed value of eighteen properties very near in location to the subject property, but did not show that these properties were actually comparable to the subject property. In fact, the very limited information the Property Owner provided indicated that the subject property was not comparable because it was both larger in building size and larger in acreage than most of these comparable properties. The Property Owner testified that the information on this exhibit had come from Zillow. The Tax Commission takes administrative notice that Zillow information regarding the square footage of residential properties is not always accurate and, therefore, finds the information unreliable. For example, Zillow stated that the size of the subject residence was ##### square feet. The preconstruction plans listed ##### square feet. The County’s 2021 measurements concluded the subject property had ##### square feet. In addition to Zillow’s data being unreliable, the Property Owner’s information also contained a discrepancy in the size of at least one of his comparables from what Zillow had reported about this comparable. For the property at ADDRESS-2, which was ##### acres in land size and next door to the subject property, the Property Owner reported on his exhibit the square footage of the residence was ##### square feet.⁷ This made this property seem like it may be comparable in size to the subject property. However, Zillow reported the residence at ADDRESS-3, as having only ##### square feet.⁸ The Property Owner did not address this discrepancy in the information he provided. Thus, the subject property, at ##### square feet, appears to be considerably larger than any of the Property Owner’s equalization comparables. In addition, when supporting a value reduction based on equalization, all the other factors that affect market value need to be considered in determining whether a property is actually comparable to the subject property. These are things like quality of construction, age, condition, views, and functional utility. The Property Owner has not provided any of this other information. The County website does

⁷ Petitioner’s Exhibit 1, PDF #2.

⁸ See REDACTED URL.

contain the year built of each property and only one of the properties was as new as the subject property, which was built in 2016. This property was the neighboring property at ADDRESS-2, which only had ##### square feet according to Zillow and no evidence was presented disputing this figure. The rest of the comparables had been built from 1997 to 2011.⁹ The Property Owner did not provide sufficient evidence to show that properties that were actually comparable to the subject property were valued lower than the subject property. Additionally, the Property Owner's statistical formula does not support an adjustment based on equalization in the aggregate, given that the properties included in the analysis were not actually comparable to the subject property.

18. Neither the County nor the Property Owner have demonstrated substantial error in the IAV, or provided a sound evidentiary basis upon which the party's proposed value could be adopted.

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

⁹ The years built based on County records added to the Property Owner's equalization comparables are as follows:

Address	County's 2022 Value	Year Built
REDACTED TABLE		

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.

For a qualified real property proceeding before the Tax Commission, Utah Code Ann. §59-2-109(4)(b) provides that the burden of proof is not only on the county where the county proposes a value that is greater than or equal to the subject property's inflation adjusted value, but that the burden of proof is also on the taxpayer where the taxpayer proposes a value that is less than the property's inflation adjusted value. To prevail in this case, Subsection 59-2-109(2) provides that each of the parties must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which the party's proposed value could be adopted.

CONCLUSIONS OF LAW

- 1. 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.”

2. 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” may be determined based on a number of appraisal methods but generally for residential property is determined based on comparable sales.

3. The subject property is a "qualified real property" for tax year 2022 pursuant to Utah Code §59-2-109(1)(c). “Qualified real property” is defined at Utah Code §59-2-109(1)(c) to be a property “(i) that is assessed by a county assessor . . . (ii) for which: (A) the taxpayer or a county assessor appealed the valuation . . . (B) the appeal . . . 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.” Based on the facts noted above, the parcel at issue was the subject of an appeal in tax year 2021. On appeal, the value for tax year 2021 had been reduced to \$\$\$\$\$. The IAV for tax year 2022 was \$\$\$\$\$. The original assessed value for tax year 2022 was \$\$\$\$\$, which was higher than the inflation adjusted value. Additionally, the parties did not assert that the subject property had a qualifying change between January 1, 2021, and January 1, 2022.

4. Utah Code Ann. §59-2-301.4 is also applicable in this matter because the subject property had been the subject of a “valuation reduction” in tax year 2021. Utah Code Ann. §59-2-301.4 states, “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.” In this case, during the 2021 tax year appeal, the County had measured the subject property and had reduced the size of the residence from ##### to ##### total square feet. The County took this change into account in assessing the value of the subject property for tax year 2022.

5. In this proceeding before the Tax Commission, the County requested a value higher than the IAV and, as noted in the Findings of Fact above, the Commission concluded that the County did not meet the burden of proof set out at Utah Code §59-2-109(4)(b). Utah Code §59-2-109(4)(b) provides that for a qualified real property, the burden of proof is on the County where the county proposes a value that is greater than or equal to the subject property's inflation adjusted value. Utah Code §59-2-109(4)(b) also provides that the burden of proof is on the Property Owner if the Property Owner requests a value lower than the IAV. To prevail in this case, Subsection 59-2-109(2) provides that either party must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which its proposed value could be adopted. As noted in the Findings of Fact above, neither party has shown substantial error in the IAV.

6. Pursuant to Utah Code Sec. 59-2-1006, a property owner may appeal an assessment based on either fair market value or equalization. In this appeal, the Property Owner did not argue for a reduction based on market value, but instead made an equalization argument. Utah Code Subsection 59-2-1006(5) provides that the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable 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.” As the Court of Appeals recently explained in *Patience LLC v. Salt Lake County Board of Equalization*, 2021 UT App 4, ¶28, “The Utah Constitution states that “all tangible property in the State . . . shall be taxed at a uniform and equal rate” in proportion to its fair market value.” Utah Const. art. XIII, §2, cl. 1. Consistent with this constitutional mandate, a property owner may seek adjustment of a property valuation if the assessment “stands apart from a group of undervalued comparable properties.” *Citing Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶15, 100 P.3d 1206. The court in *Patience* pointed out that “[a] taxpayer seeking equalization bears the burden of identifying comparable properties that deviate more than 5% from the valuation of the property.” *Id.* ¶29. Based on the court’s decision in

Patience, a property owner must show a “group of undervalued comparables”¹⁰ were assessed at values that deviated at least 5% from the subject property. The Property Owner did not meet this requirement because he failed to show a group of comparable properties that were valued at least 5% less than the subject property. The Property Owner showed that there were other properties on the same street that were valued less than the subject property, but did not show that these properties were actually comparable to the subject property. Differences in the lot size and square footage of a residence should result in different values. Many other factors also affect value, such as age, quality of construction, condition, and views. The Property Owner has not shown that other properties that are actually similar to the subject property were assessed at a lower rate than the subject property. Therefore, the Property Owner has not established a basis for a reduction in value based on equalization.

7. At the hearing, the Property Owner made the request that an adjustment also be made to his tax year 2023 property tax assessment. Even if the Property Owner had supported an adjustment for tax year 2022, the only tax year before the Tax Commission in this appeal is tax year 2022. There are statutory procedural steps that a property owner must follow before the Utah State Tax Commission has jurisdiction to review a property tax appeal. The first step is set out at Utah Code Ann. §59-2-1004(2), which provides a property owner the right to file an appeal to the County Board of Equalization if they are dissatisfied with the valuation or equalization of their property. Pursuant to Utah Code §59-2-1004(3), the deadline to file the appeal for each tax year is September 15th of the tax year at issue. Once the property owner has filed the appeal by September 15th for the tax year at issue, and once the County Board of Equalization has issued its decision on that appeal for that

¹⁰ See also *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, ¶16, in which the Court explained:

“Intentional and systematic undervaluations of property may violate the equal protection and due process rights of property owners not granted preferential treatment. See Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 343 (1989) (holding that the Equal Protection Clause allows states to divide property into classes and assign a tax burden to the property as long as the divisions and burdens are neither arbitrary nor capricious) . . . 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.”

tax year, the property owner may file an appeal of the County Board of Equalization's decision to the Utah State Tax Commission pursuant to Utah Code Ann. §59-2-1006. Pursuant to Utah Code Ann. §59-2-1006(1)(a), the deadline to file the appeal to the Utah State Tax Commission is thirty (30) days from the date that the County Board of Equalization issued its decision. It is only when a property owner has followed these statutory procedural steps that the Tax Commission has jurisdiction to hear an appeal based on valuation or equalization for that tax year.

8. The Property Owner pointed to Utah Code Subsection 59-2-1006(6), which states “The Commission shall decide all appeals taken pursuant to this section not later than March 1 of the following year . . .” The Property Owner argued that the Tax Commission failed to meet this statutory requirement as the Tax Commission should have issued its decision in this appeal by March 1, 2023, and instead the proceeding was still pending at the Tax Commission as of the hearing on DATE. The Tax Commission notes that Utah Code Subsection 59-2-1006(6) does not specify a different procedure or process where the Tax Commission, as in this appeal, was not able to meet this deadline because the appeal was not submitted to the Tax Commission prior to March 1, 2023. As noted in the Findings of Fact above, the County Board of Equalization had not issued its decision until DATE, and the Property Owner’s appeal of that decision was forwarded to the Utah State Tax Commission on DATE. The Utah Supreme Court has previously considered in other cases a similar deadline imposed by statute on the Utah State Tax Commission regarding centrally assessed property appeals. In *Cache County v. Property Tax Div. of Utah State Tax Com’n*, 922 P.2d 758 (1996) the court considered the issue of whether the Commission lost its jurisdiction over a centrally assessed property tax appeal due to the fact that the Tax Commission had not issued the decision by the deadline set forth at that time in Utah Code Sec. 59-2-1007(3).¹¹ In *Cache County*, at 764, the court stated:

Whether a statutory time frame is jurisdictional depends on whether the statute’s time designation is ‘directory’ or ‘mandatory.’ A designation is mandatory, and therefore jurisdictional, if it is “‘of the essence of the thing to be done.’” *Kennecott Copper Corp. v. Salt Lake County*, 575 P.2d 705, 706 (Utah 1978) (quoting 1A Sutherland, *Statutory Construction* § 25.03 (4th ed.)). However, a designation is merely directory, and therefore not jurisdictional, if it is “‘given with a view merely to the proper, orderly and prompt conduct of the business, and by the failure to obey no prejudice will

¹¹ The statute has since been revised and the deadline discussed by the Utah Supreme Court has been substantially revised. See the current version of Utah Code Sec. 59-2-1007(11).

occur to those whose rights are protected by the statute.” *Id.* (quoting 1A Sutherland, Statutory Construction § 25.03 (4th ed.)).

...
In a case recently decided by this court involving the Commission and all of the counties that are parties to this case, we held that section 59-2-1007(3)'s October 1 time designation was not mandatory, but merely directory and therefore not jurisdictional: “[s]ection 59–2–1007(3)'s time designation can be viewed only as a guide ‘given with a view merely to the proper, orderly and prompt conduct’ of the Commission’s business. We hold that the Commission’s failure to meet the October 1 deadline did not result in loss of jurisdiction over [the taxpayer’s] appeal.” *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344, 352.

Although the October 1 deadline in question in these cases before the Utah Supreme Court, at Utah Code Sec. 59-2-1007(3), involved centrally assessed property tax appeals and the subject appeal is a locally assessed property tax appeal filed pursuant to Utah Code Sec. 59-2-1006, the language of Utah Code Sec. 59-2-1007(3) as in effect at the time the court’s decisions were issued is analogous to the deadline at Utah Code Sec. 59-2-1006(6). Based on the court’s guidance, the deadline at 59-2-1006(6) is also a directory and the Tax Commission’s failure to comply with the deadline does not result in the Tax Commission losing jurisdiction over this appeal. Additionally, it is not possible for the Tax Commission to meet the requirement to issue its decision prior to the March 1 deadline, when it receives the appeal after the March 1 deadline.

Based upon these Findings of Fact and Conclusions of Law, the value should be reduced for tax year 2022 to the IAV of \$\$\$\$\$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of January 1, 2022, is \$\$\$\$\$. The County Auditor is to adjust the records accordingly. 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.