

APPEAL #24-19  
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED  
TAX YEAR: 2023  
DATE SIGNED: 02/04/2025  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1 COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 24-19 Parcel No: ##### Tax Type: Property Tax Tax Year: 2023 Judge: Phan</p>
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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: Respondent Rep, COUNTY-1 Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY-1 County Board of Equalization pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on September 10, 2024, in accordance with Utah Code §59-1-502.5. The County Assessor's Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2023 lien date. The County Board of Equalization had reduced the value to \$\$\$\$\$. At the hearing the Property Owner was requesting that the property tax be abated against the subject property, arguing that the subject property was not a taxable property. The County asked the Commission to sustain the County's value of \$\$\$\$\$.

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.

For property tax purposes, "real estate" or "real property" is defined in Utah Code Ann. §59-2-102(32), to include:

- (a) the possession of, claim to, ownership of, or right to the possession of land;
- (b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
- (c) improvements.

For property tax purposes, "improvements" is defined in Utah Code Ann. §59-2-102(18), as:

- (a) Except as provided in Subsection (18)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
  - (i) (A) attachment to land is essential to the operation or use of the item; and (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or
  - (ii) removal of the item would: (A) cause substantial damage to the item; or (B) require substantial alteration or repair of a structure to which the item is attached.
- (b) "Improvement" includes:
  - (i) an accessory to an item described in Subsection (18)(a) if the accessory is: (A) essential to the operation of the item described in Subsection (18)(a); and (B) installed solely to serve the operation of the item described in Subsection (18)(a); and
  - (ii) an item described in Subsection (18)(a) that is temporarily detached from the land for repairs and remains located on the land.
- (c) "Improvement" does not include:
  - (i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;
  - (ii) a moveable item that is attached to land for stability only or for an obvious temporary purpose;
  - (iii) (A) manufacturing equipment and machinery; or (B) essential accessories to manufacturing equipment and machinery;
  - (iv) an item attached to the land in a manner that facilitates removal without substantial damage to the land or the item; or

(v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

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 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

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, 2023. The value of the subject property had not been appealed for any of the three years preceding tax year 2023. Therefore, the value of the subject property was not reduced based on an appeal for the 2022 tax year, and

the subject property is not considered a “qualified real property” under Utah Code Ann. §59-2-109 for the 2023 tax year. Additionally, in accordance with Utah Code Ann. §59-2-301.4, the County is required to consider a valuation reduction that occurred in the three prior tax years when making a determination of the property’s fair market value for the current tax year. The “valuation reduction” provisions described in Utah Code Ann. §59-2-301.4, do not apply in this matter because the value of the subject property was not reduced on appeal for the 2020, 2021, or 2022 tax year.

The issue in this appeal is unusual, in that the Property Owner was arguing that the subject parcel was not real property and, therefore, not subject to property tax. The Property Owner did not provide evidence of the fair market value of the subject property at the Initial Hearing. The subject parcel is a rustic cabin constructed years ago on U.S. Forest Service Land. The Property Owner explained that he does not own the land underneath the cabin, but has a permit with the Forest Service, which automatically renews yearly. The Property Owner stated at the hearing that he pays \$\$\$\$\$ per year in rent to use the land. The County did not dispute that the cabin was built on U.S. Forest Service land. Because the Property Owner did not own the land, just the cabin, the Property Owner argued that the cabin itself was not real property and, therefore, not subject to property tax. The Property Owner did not cite to any section of the Utah Code or point to any case law to support his position.

The Property Owner also explained at the hearing that the subject property has difficult access and is on a dirt road that is not maintained. He indicated there had been damage to the roof and the cabin had been in need of repairs as of the lien date. He had presented the information about the damage and the bids to the County BOE, and that was the reason for the reduction made to the value of the cabin by the County BOE.

The County Assessor explained that the subject property is located near XXXXX. Additionally, he stated that there are about 27 other cabins in the area on leased land like the subject property. The County Assessor explained that the County is not valuing the subject property as if the land were owned with the improvement; rather, the assessment of the subject property was an improvement value only. He also indicated that these cabins were difficult to value because there were few sales of cabins on leased land like the subject property. For that reason, the County assessed the value based on a cost approach for the improvement and added \$0 land value to the cost approach. The County Assessor stated that at the County BOE proceeding, the County had considered the information that the Property Owner had submitted about the roof and other damage to the cabin, and based on that information had reduced the value of the cabin from \$\$\$\$\$ to \$\$\$\$\$ as of the January 1, 2023 lien date.

Upon review of the evidence and arguments of the parties, the issue that the Property Owner has presented at the hearing, whether the subject cabin is real property and subject to property tax, is a legal

question. As noted above, it is the Property Owner who has the burden of proof in this proceeding. The relevant facts are not in dispute. The subject property is a rustic cabin, which was constructed on land leased from the U.S. Forest Service. The County is assessing only the cabin improvement, not assessing any land value to the subject parcel. The Property Owner argued the cabin is not real property, so is not subject to property tax. However, the Property Owner's position is directly contrary to Utah law. Utah Code §59-2-102(32) specifically defines "real estate" or "real property" to include "improvements." Utah Code §59-2-102(18)(a) then defines "improvements" to be "a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land . . ." It is clear from this statutory provision that cabins constructed on leased land are subject to property tax. The Tax Commission is aware of cabin properties located on leased land in other counties, which are assessed in the same manner as the subject based on a cabin value, and they are subject to property tax as "improvements" and are therefore "real property" under Utah law.<sup>1</sup> As the Property Owner's cabin is subject to property tax, there was no evidence submitted by the Property Owner to support a value lower than the value determined by the County BOE.

Considering these factors, the totality of the information and arguments, for the lien date at issue in this appeal, the County BOE value should be sustained.



Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission finds the property at issue in this appeal is real property subject to property tax based on Utah law and the value of the subject property was \$\$\$\$ as of the January 1, 2023 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

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<sup>1</sup> See *Utah State Tax Commission, Initial Hearing Order Appeal No. 14-546 (2/6/2015)*. This and other Tax Commission decisions are available for review in a redacted format at: <https://tax.utah.gov/commission/decision>.



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](mailto:taxappeals@utah.gov)

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this 4th day of February, 2025.



John L. Valentine  
Commission Chair

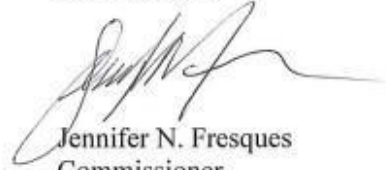


Rebecca L. Rockwell  
Commissioner





Michael J. Cragun  
Commissioner



Jennifer N. Fresques  
Commissioner