

11-1287
TAX TYPE: PROPERTY
TAX YEAR: 2010
DATE SIGNED: 3-7-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-1287</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2010</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE-1, Attorney at Law
PETITIONER REPRESENTATIVE-2, CFO Director, PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE-1, Special Deputy District
Attorney
RESPONDENT REPRESENTATIVE-2, Certified General
Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial

Hearing on November 1, 2012, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2010, lien date. The County Board of Equalization ("the County") sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$. The County asked that the value remain as set by the Board of Equalization.

APPLICABLE LAW

All tangible taxable property 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of 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. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

“Intentional and systematic undervaluation or property may violate the equal protection and due process rights of property owners not granted preferential treatment . . .” (Citations Omitted) “The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.” *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004).

DISCUSSION

The property subject to this appeal is parcel ##### and is located at ADDRESS-1, Salt Lake City, Utah. It is owned by the PETITIONER, and is partially owner occupied for use as the Property Owner’s BUSINESS. The building is a Class B construction that was built in 2008. It has ##### square feet FLOOR-1, and FLOOR-2 of ##### square feet. The building contains BUSINESSES, and COMMON AREA. In addition to use of the building by the Property Owner, a portion of the building is leased to ##### tenants. The amount of space leased by these tenants is about ##### square feet.

The Property Owner requested a reduction in value based primarily on the fact that the County’s assessed values for almost all other properties within a ##### block radius of the subject had decreased over the ##### years leading up to the lien date at issue, while the subject had increased in value each year. The Property Owner requested the property be equalized in value based on the assessments of these neighboring properties. The Property Owner’s representatives also stated that market values had declined in general throughout the state over this two year period.

Originally as evidence, the Property Owner had submitted, prior to the hearing, the Salt Lake County Data Cards for ##### neighborhood properties, a map showing the area and reports published by the Utah Property Tax Division for 2008 through 2010, which showed statewide property assessment values had declined each year. The representatives for the Property Owner pointed out that the Property Owner had ongoing appeals filed for several years leading up to 2010, the year at issue in this appeal, regarding the exemption status of the subject building. While that issue has now been resolved, the Property Owner’s representatives point out that the County continued to increase the market value of the subject property each year.

At the hearing the Property Owner submitted additional exhibits which were compilations of information from the County INFORMATION. This first exhibit was titled “All Comparables” (Exhibit P1). On this were listed 22 of the comparables, including the subject,

from the County INFORMATION, previously provided, that were located within a ##### block radius of the subject. This exhibit showed that for ##### of these neighboring properties the values set by the County had decreased from 2008 to 2009. For one property the value had remained the same. The subject property value was the only one to increase from 2008 to 2009. This list also showed that between 2009 and 2010 the values had decreased for ##### of the properties. One had remained unchanged and #####, including the subject, had increased. However, looking at the two years together, the subject was the only property to increase over the two years from 2008 to the 2010 assessment. The increase was a total of %%%%. All other parcels saw a net decrease ranging from %%%% to %%%% over this same two year period.

The Property Owner did not provide in its exhibits the County's value per square foot for any of these equalization comparables, but focused instead on the percentage of increase or decrease in the County's values from 2008 to 2010. The properties provided were a wide range of properties as far as property type, age, use, size and every other characteristic. They included low income OPERATIONS, most of which were Class C buildings.

In addition to this Exhibit P-1, a second exhibit provided by the Property Owner at the hearing was titled "All Comparables with 2008 value from \$\$\$\$ to \$\$\$\$" (Exhibit P-2); a third exhibit "All Comparables of Class B, or Combined Class B & C" (Exhibit P-3); and the last was "All comparables of Class B" (Exhibit P-4). At the hearing the County objected to Exhibits P-1 through P-4 submitted by the Property Owner because they had not been exchanged ten business days prior to the hearing as was requested by the Tax Commission. They were first presented to the County at the hearing. The County did not, therefore, have time to review these exhibits or check them for accuracy. These exhibits were allowed as evidence at the Initial Hearing as a compilation of the information that had been exchanged prior to the hearing, over the objection of the County. The County was given thirty days after the hearing to submit a written response to these exhibits.

In its response the County again objected to these exhibits because they had not been exchanged ten business days prior to the hearing. In addition, the County stated that the Property Owner's exhibits mistakenly classify several of the buildings, which was also something that the County had argued during the hearing. The witness for the County had testified during the hearing that the subject was a Class B structure and there was no such classification as a combined B&C in the County's system.

In Exhibit P-3, five of the parcels were listed as Class B/C. In response to Exhibit P-3, the County pointed out that the properties listed as Class B/C were either Class C properties or Class B properties. Of the five listed as Class B/C, one, parcel number #####-PROPERTY MANAGEMENT-1, was classified by the County as a Class B building. The main building was Class B, the same class as the subject, but was an older building, having been constructed in 1978. There was a smaller addition which was Class C construction, but the County has classified the building as a whole as Class B. The County indicated that it has classified the rest of the parcels listed as Class B/C by the Property Owner as Class C buildings on the County records. Parcel ##### had a structure that was more than %%%% Class C and less than %%%% built to a higher Class B construction. The County considered this to be a Class C building. The remaining three parcels listed as B/C had Class C buildings, but there was also a (X) on the property that was built to Class B specifications for that type of structure.

In response to the Property Owner's equalization argument the County pointed out that most of the properties provided by the Property Owner were not comparable properties. The County went through each comparable at the hearing. Many of the comparables were LOW INCOME PROPERTIES. REMOVED NAMES OF COMPARABLE PROPERTIES. It was the County's contention that none of these properties were comparable to subject and could not be used to show a reduction based on equalization. Of the 27 comparables submitted by the Property Owner, only 8 were building comparables. However, of these 8, only 2 were Class B buildings like the subject. The rest were Class C office buildings and it was the County's position that Class C construction is significantly lower cost and would have a lower value than the subject building.

The two properties out of the 27 that were Class B office buildings were parcel ##### MANAGEMENT-1, which were constructed in 1978. The second was parcel #####-MANAGEMENT PROPERTY-2, which also had been constructed in 1978. This was a much larger building than the subject and the County's representative stated that the County had reduced the value for this building because of excess vacancy due to a remodel that was in progress on the lien date. The Property Owner did not provide a calculation of how these buildings had been valued by the County per square foot or any other unit of measure to compare the assessed values with the subject assessed value. What the Property Owner did provide was that #####-PROPERTY MANAGEMENT-1 has decreased in value by %%%% over 2008 to 2010 and #####-PROPERTY MANAGEMENT-2 had decreased in value over this same period by %%%%.

It was the County's contention that the information provided by the Property Owner was insufficient to provide a basis for equalization under Utah Code Sec. 59-2-1006(4) and cited to *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004). The County also provided copies of two Tax Commission decisions in which the County had marked over the name of the property owner and a portion of the parcel numbers, that had considered the issue of equalization, *Utah State Tax Commission Initial Hearing Order Appeal No. 10-1033* and *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 11-1777*.¹ The County's representative did state that the County had looked at the valuation of the subject property every year to set the value based on fair market value, but also asserted that all the neighboring properties should have been at fair market value.

Although the Property Owner had not provided evidence of market value or made that an issue prior to the hearing, during the hearing, the Property Owner did make a rebuttal argument regarding market value evidence. The Property Owner's representative stated that the County's measurements for the subject should be based on the actual BUSINESS areas and not include the COMMON AREA. PETITIONER REPRESENTATIVE-2, CFO for the PETITIONER, said he had personally measured just the BUSINESS areas and for the FLOOR-1, this was ##### square foot and not the ##### square foot listed by the County. He also indicated that the FLOOR-2 was only ##### square feet of BUSINESS area and the rest was (X) area. He acknowledged that he was not an appraiser, but he was a CPA for ##### years and familiar with the building. He did recalculate the County's income approach using the smaller square foot numbers from his own measurements, as well as making a change to the expenses and lease rate. However, the Property Owner did not support this approach with rent comparables. Nor did he provide support, publication or studies that would suggest the rentable square foot should be limited to only the space inside each BUSINESS space and not include the common spaces.

The County's appraiser countered that when appraising an office building the common areas, square feet. It was his contention that the Property Owner did not understand the appraisal difference between rentable square feet and usable square feet and it would not be appropriate to use the Property Owner's measurement in the County's income calculation. The Property Owner's representative, PETITIONER REPRESENTATIVE-2, was not an appraiser. The

¹ Many Tax Commission decisions are available on line in a redacted format to protect confidential information at <http://tax.utah.gov/commission/decisions>. Parties are advised to check to see if the decision has been redacted and posted on this site and if not, prior to a hearing in which they wish to present the decision, request redaction of the decision from the Tax Commission, rather than redact their own copy for distribution.

County did present its income calculation to support its requested values, as well as two sales comparables and rent comparables. As noted by the Property Owner, the rent comparables were from properties located more in the central business district of the city, while the subject is located in a less desirable area. However, the County's sales and rental comparables were the only comparables submitted in this matter.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Instead of arguing market value, a Property Owner may request a reduction based on equalization under Utah Code Sec. 59-2-1006(4). The section provides, "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 %%% from the assessed value of comparable properties." In this case only two of the properties provided by the Property Owner are a comparable type of property, although the County pointed out reasons why they should be valued differently from the subject. The two Class B buildings were both older buildings, one was a much larger building with excess vacancy issues, while the subject did not have vacancy issues. These would be factors to consider in determining if these were truly comparable properties as a basis for equalization. The #####-PROPERTY MANAGEMENT-2, property was valued considerably higher than the subject property, although no price per square foot or other unit of measure was provided by the Property Owner to compare this property with the subject which is a considerably smaller building.

In determining whether to reduce a value based on equalization with comparable properties, the statute provides that it is the "assessed value" that is determinative under Utah Code §59-2-1006(4). There is no provision that allows for equalization based on the percentage increase or decrease of the County's values for neighboring properties, or even of comparable neighboring properties. The Property Owner's argument is essentially that all properties in an area should increase or decrease by the same percentage and that is not what the statute provides. Regarding equalization, the Court has held, "Intentional and systematic undervaluation of property may violate the equal protection and due process rights of property owners not granted preferential treatment . . . (Citations Omitted)" "The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be

fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.” *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004).

The Property Owner has not shown that there is an intentional and systematic undervaluation of neighboring properties. Nor has the Property Owner provided sufficient evidence of market value to show error in the value set by the County Board of Equalization. The appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$, as of the January 1, 2010 lien date. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed 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

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

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

