11-2984
TAX TYPE: PROPERTY TAX—LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 9-13-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 11-2984 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Cragun

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:
Marc B. Johnson, Commissioner
Michael J. Cragun, Commissioner

Appearances:
For Petitioner: TAXPAYER-1, Property Owner (by telephone)
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor
RESPONDENT-2, Chief Deputy Assessor
RESPONDENT-3, Deputy Assessor

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 20, 2012, in accordance with Utah Code Ann. §59-1-502.5. The RURAL COUNTY Assessor's Office valued the subject property at $$$$$ as of the January 1, 2011 lien date. The Board of Equalization sustained that value. The County asks the Commission to sustain the Board of Equalization. The Taxpayer requests a value reduction to $$$$$.

APPLICABLE LAW

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

> (1) 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.

Further guidance is provided under §59-2-103.1(2)(a), which states in relevant part:

> The county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

> "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.

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, 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.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on

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, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is a Vacant building lot located in RURAL COUNTY, Utah. The Taxpayer appealed the Board of Equalization's value of the lot for the 2009 tax year to the Tax Commission. While awaiting the Tax Commission's order in that appeal, the Taxpayer appealed the Assessor's value of the lot for the 2010 tax year to the Board of Equalization. For 2010, the Board of Equalization adopted its hearing officer's recommendation of "no change pending the 2009 state appeal decision. Once the decision is reached the market adjustment will be applied." In January 2011, the Tax Commission issued its order that the 2009 value of the subject property was $$$$$.

While the subject's 2010 value is not under consideration in this appeal, the Taxpayer argues that it should have been $$$$$ based upon a 15.25% reduction of the 2009 value ordered by the Tax Commission. He determined the 15.25% reduction by calculating the change between the originally assessed values of $$$$$ for 2009 and $$$$$ for 2010. The Taxpayer further argues that the subject's 2011 value should be $$$$$ based upon a 23.35% reduction of his previously calculated 2010 value of $$$$$. He determined the 23.35% reduction by calculating the change between the originally assessed values of $$$$$ for 2010 and $$$$$ for 2011.

The County responded that the subject parcel was located in the area that it evaluated in 2010 under its five-year reappraisal cycle. Therefore, the 2010 assessment of $$$$$ reflected an estimate of actual market value specifically for the subject property, rather than the prior year's assessment adjusted with a market based factor. For 2011, the assessed value is the 2010 value adjusted with a market based factor. The market based factor was applied to all property in the same area and of the same class as the subject. The County argued that to maintain equity among the subject and neighboring properties that it reappraised in 2010, the Tax Commission should sustain the Board of Equalization. Neither party presented any evidence of market value.

In seeking a value other than that established by the Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the Board of Equalization, but also must provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code

Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller.

The crux of the Taxpayer's claim for relief is whether the Assessor implemented the Board of Equalization's order in the 2010 tax year appeal to apply a market adjustment following the Tax Commission's order in the 2009 tax year appeal. The Taxpayer maintains that it is the 2009 value ordered by the Tax Commission that the Board of Equalization ordered the Assessor to adjust. The County asserts that its five-year reappraisal of the subject and neighboring properties constituted application of a market adjustment. Alternatively, the County stated that had it applied a market based factor to the 2009 value ordered by the Tax Commission, the subject property's 2010 value would have increased.

Despite the County Board of Equalization's order in the 2010 appeal directing that some action occur following the Tax Commission issuing its ruling for the 2009 appeal, the Assessor applied the correct assessment methodologies and procedures for 2010 and 2011. The 2010 reappraisal was equivalent to a market adjustment of the assessed value for the subject property, and was consistent with the 2009 decision by the Commission.

The County appropriately applied the 2011 market factor to the 2010 appraised value. There is no basis to apply the County's 2011 market based factor to the Taxpayer's proposed 2010 value. To do so results in the misapplication of the County's factor as the County applied this factor in all cases to the values set by the Assessor directly, not to individual criteria established by a Taxpayer. Under the provisions of §59-2-103.1(2)(a), the County is directed to annually update property assessments. There are no specific requirements of how such an update is to be effected, let alone direction that the application of any factor implemented by the county[1] be applied to each and every property in a given market area.

The Taxpayer's arguments have neither demonstrated error in the 2011 value set by the County Board of Equalization nor supported a new value. Therefore, the Tax Commission should sustain the County Board of Equalization.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was $$$$$ as of the January 1, 2011 lien date and sustains the Board of Equalization. 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

[1] We distinguish factoring initiated by the County from "corrective action" (including factoring orders) issued by the Tax Commission under §59-2-103.1(4).

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 __________________, 2012.

R. Bruce Johnson Commission Chair	Marc B. Johnson Commissioner
D'Arcy Dixon Pignanelli Commissioner	Michael J. Cragun Commissioner