08-2404
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED: 08-20-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER	**INITIAL HEARING ORDER**
Petitioner,	Appeal No. 08-2402
vs.	Parcel No. #####
COUNTY BOARD OF EQUALIZATION	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2008
	Judge: M. Johnson

Presiding:
Marc B. Johnson, Commissioner

Appearances:
For Petitioner: PETITIONER REP, co-owner and business partner
For Respondent: RESPONDENT REP 1, COUNTY Assessor
RESPONDENT REP 2, COUNTY Chief Deputy Assessor
RESPONDENT REP 3, COUNTY Chief Deputy Clerk Auditor

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the COUNTY Board of Equalization ("the County" or "BOE"). This matter was argued in an Initial Hearing on April 28, 2009. For this Appeal, the COUNTY Assessor's Office initially assessed Parcel No. ##### as residential secondary and secondary land and with a market value of $$$$$ as of the January 1, 2008 lien date. The Board of Equalization sustained the classification and value. The County is requesting that the Commission also sustain the classification and value. Taxpayer requests the classification of the subject property be changed to a primary residence, which would reduce the taxable value. Taxpayer has not challenged the market value of $$$$$.

APPLICABLE LAW

Utah Code Ann. § 59-2-103(1) 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.

The law governing primary residential status is set out in Utah Code Ann. §§ 59-2-103 and 59-2-103.5. Section 59-2-103 provides:

> (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.
> (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
> (3) No more than one acre of land per residential unit may qualify for the residential exemption.
> (4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.
> (b) An owner of multiple residential properties located within the state is allowed a residential exemption under Subsection (2) for:
> (i) subject to Subsection (4)(a), the primary residence of the owner; and
> (ii) each residential property that is the primary residence of a tenant.

Utah Admin. Code Rule R884-52 ("Rule 52") provides:

> F. Administration of the Residential Exemption.
> . . . .
> 3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.
> . . . .
> 6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

Section 59-2-103.5 authorizes, with some limitations, Utah's counties to require owners to provide signed statements to qualify for the residential exemptions. Section 59-2-103.5 states:

> (1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement:
> (a) on a form prescribed by the commission by rule;
> (b) signed by all of the owners of the residential property;

(c) certifying that the residential property is residential property; and
(d) containing other information as required by the commission by rule.

(2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:
(i) the county legislative body enacts the ordinance described in Subsection (1); and
(ii) the county board of equalization determines that the requirements of Subsection (1) are met.
(b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:
(i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;
(ii) an ownership interest in that residential property changes; or
(iii) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103.

. . . .

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:
(i) the form for the statement described in Subsection (1); and
(ii) the contents of the form for the statement described in Subsection (1).
(b) The commission shall make the form described in Subsection (4)(a) available to counties.

In Rule 52, the Commission defined the form and contents of the statement that a county may require under § 59-2-103.5. Rule 52F.(7) provides:

a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:
(1) the owner of record of the property;
(2) the property parcel number;
(3) the location of the property;
(4) the basis of the owner's knowledge of the use of the property;
(5) a description of the use of the property;
(6) evidence of the domicile of the inhabitants of the property; and
(7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:
(1) on a form provided by the county; or
(2) in a writing that contains all of the information listed in F.7.a).

Pursuant to §§ 59-2-103.5 and 59-2-1001(6), COUNTY enacted Ordinance No. 422 ("Ord. No. 422"), which requires owners to submit an application for a residential exemption. Ord. No. 422 1.A. COUNTY requires a new application when the ownership or the property's use or occupancy changes. Ord. No. 422 1.D. Subsection 1.F. of the ordinance allows some owners to not file an application, but it still requires an application when there are changes in the property's ownership, use, or occupancy. Specifically, subsection 1.F. provides:

> If a person owns property that is currently being used as a primary residence and that has been given the residential exemption by the County Assessor for such use, the person need not file an application to continue the exemption. These property owners however may be denied the exemption if the Assessor or the Board determines that their property is not in fact used as a primary residence. *In addition if the ownership, occupants, or the property's use change, the property will not qualify for the exemption until an application is filed and the Assessor or Board determines that the property is used as a primary residence.*
> (Emphasis added.)

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006. 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 board of equalization 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 Unit (X) of the CONDOMINIUMS, located at ADDRESS in CITY, Utah. Taxpayer purchased the subject property on January 3, 2008.

At the hearing the Taxpayer provided a background on the CONDOMINIUMS. The Taxpayer explained that the condominiums were formerly composed of a complex of duplexes. The Taxpayer said that the prior owner, purchased all twelve units, gutted and remodeled them in 2007, converted them into townhouses by filing a condominium declaration in 2007, and began selling the remodeled units shortly

thereafter. The Taxpayer provided that the buildings had been occupied in the past as primary residential property. The Taxpayer also provided that currently some of the units are owner-occupied.

The Taxpayer stated that the property was purchased on January 3, 2008, after the January 1 lien date. The property was the second unit sold by the prior owner after the condominium declaration was made. The Taxpayer purchased the subject property as an investment, and entered into a lease agreement with a tenant on February 15, 2008. Consistent with this testimony, there is a document entitled "Residential Exemption Form" signed and dated August 18, 2008, in which the signer provided that "I am the owner of the following . . . property. This property is leased . . . to the tenant named below as of the 15th day of Feb. 2008. Attached is a copy of the lease." The taxpayer also provided a copy of the lease. The Taxpayer requests that the Commission grant the residential exemption based on the facts presented.

The County explained that the subject property was classified as secondary based on COUNTY Ordinance 422, enacted February 7, 2006, a copy of which the County submitted. The County stated that the county legislative body passed the ordinance because the county has high numbers of secondary occupants.

The County explained that the subject property was classified as primary on January 1, 2007; that the classification was changed to secondary on January 1, 2008 because the construction at the CONDOMINIUMS during 2007 (the building permit was issued in May 2007); and that the classification was changed back to primary for January 1, 2009.

The issue for this appeal is whether the subject property qualifies for the residential exemption as of the January 1, 2008 lien date. This exemption is limited to one per household. § 59-2-103(4)(a). However, an owner of multiple residential properties may receive a residential exemption for property that is the primary residence of a tenant. § 59-2-103(4)(b)(ii) and Rule 52D. "Primary residence" is defined by Commission rule to be "the location where domicile has been established." Rule 52B. In this case, Taxpayer appears to be an owner of multiple residential properties. The Taxpayer may receive a residential exemption for the subject property if the subject property is the primary residence of a tenant as of the January 1, 2008 lien date. *See* § 59-2-103(4)(b)(ii) and Rule 52D.

The Taxpayer asserted that the subject property had been occupied as a long-term rental property in the past, before it was gutted and remodeled. Also, the County provided that the subject property qualified for the residential exemption as of January 1, 2007, the year before the one at issue. However, between January 1, 2007 and January 1, 2008, substantial changes were made to the property. The previous owner acquired all of the units, gutted and remodeled them, converted the duplexes into townhouse condominiums, and then resold the units. In this case there is no evidence that the previous

owner intended to continue the use of the units as primary residences. The nature of residential property in COUNTY is such that numerous properties are used as secondary residences.

Accordingly, when property is under construction and vacant, the county assessor must determine whether the property will qualify as a primary residence upon completion and, if so, grant the exemption while the property is under construction. Rule 52F.3. Similarly, when property is unoccupied, the county assessor must determine whether the property will qualify as a primary residence when it is occupied and, if so, grant the exemption while the property is unoccupied. Rule 52F.6. In this case, the subject property was under construction during 2007 and unoccupied on January 1, 2008. Therefore, the county assessor was required to determine whether the subject property would qualify as a primary residence upon completion of the construction or when occupied.[1] As of January 1, 2008, the subject property's construction was complete and it was unoccupied and for sale. At that time, based on the high number of secondary occupants in the county, the county assessor could not reasonably conclude whether the property would be used as a primary residence, or a secondary residence. Based on the facts as of January 1, 2008, the county assessor could not conclude that the subject property would be primary residential and, therefore, was not required to grant the residential exemption.

Additionally, § 59-2-103.5 authorizes counties to require owners to provide signed statements to qualify for the residential exemptions. COUNTY chose to require such when it enacted Ordinance No. 422. Under § 59-2-103.5(b)(ii)-(iii), a county with an ordinance may require a statement when ownership changes or "the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption . . ." Consistent with this statute, the county ordinance requires a new application when the property's ownership, use, or occupancy changes. Ord. No. 422 1.D.1.F. The County must allow the residential exemption if the requirements of the signed statement are met. § 59-2-103.5(2)(b). Section 59-2-103.5 states that the signed statement would contain the "information as required by the commission by rule." § 59-2-103.5(1)(d). The Commission rule requires "evidence of domicile of the inhabitants of the property . . ." Rule 52(F)(7)a)(6).

In this case, the County was reasonable in requiring the Taxpayer to provide a statement because there was an ownership change when the previous owner purchased all twelve units and because the

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[1] The assessor actually based her argument on Section 2.B,3. of the ordinance, which provides;

> [b]uildings that are not completely constructed and occupied as a primary residence on January 1 of the tax year do not qualify for the residential exemption. To qualify, the building must be: (a) complete, (b) valued by the Assessor for property tax purposes as a completed building, and (c) legally occupied by a person who uses it as their primary residence.

Rule 52.F. is controlling; the Commission therefore will not rule on the merits of this section of the ordinance. However, we have previously ruled, in Appeals 08-2408 and 08-2386, that Section 2.B.3. is invalid.

County BOE reasonably determined that the subject property no longer qualified for the residential exemption because that owner gutted and remodeled the unit, changed all units to a condominium, and proceeded to resell them. Furthermore, as discussed below, the Taxpayer's statement was inadequate for January 1, 2008. The fact that there was a tenant as of February 15, 2008 is not "evidence of domicile of the inhabitants of the property" as of January 1, 2008. Therefore, the Taxpayer did not meet the statement's requirements provided in § 59-2-103.5(1)(d) and Rule 52F.7.a)(6) Based on this, the County reasonably denied the exemption.

The Taxpayer's argument is without merit. The fact that rental duplexes had historically been occupied by long-term tenants is insufficient to establish that the use will automatically continue of substantial remodeling and conversion to individually owned townhouses. And, although in the written petition to the Tax Commission, the Taxpayer requested that the residential exemption be prorated, there is no such provision under property tax law in Utah. Finally, although the Taxpayer filed the required statement timely, certifying that the property was being used as a primary residence, this would not establish that this fact could have been known by the assessor on the lien date.

Based on these facts, the Commission concludes that the subject property does not qualify as being a primary residence as of the January 1, 2008 lien date.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission sustains the BOE and finds that the classification of the subject property (Parcel No. #####) is residential secondary and secondary land for the 2008 tax year.

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 _____, 2009.

_____
Marc B. Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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