

05-1698
Locally Assessed Property
Signed 11/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1698
v.)		
	)	Parcel No.	#####
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF IRON COUNTY,	)	Tax Year:	2005
STATE OF UTAH,)		
	)	Judge:	Johnson
Respondent.)		

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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, 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

Appearances:

For Petitioner: PETITIONER
 PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Iron County Assessor's Office
 RESPONDENT REPRESENTATIVE 2, from the Iron County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on June 27, 2006.

At issue is the fair market value of the subject property as of January 1, 2005. The subject property is a 0.52-acre vacant residential lot located at ADDRESS in CITY, Iron County, Utah. For the 2005 tax year, the County Assessor assessed the property at \$\$\$\$\$, which the Iron County Board of Equalization

(“County BOE”) reduced to \$\$\$\$\$. Also at issue is whether the primary residential exemption should apply to some or all of the property.

Fair Market Value. The Petitioner does not believe the subject’s fair market value, which was assessed at \$\$\$\$\$ for the 2004 tax year, would have increased more than \$\$\$\$\$ in one year. The Petitioner explains that he purchased the lot only to enlarge his size of his yard, as his home is located on the adjacent lot. The Petitioner also explains that he has no intention to build another house on the subject parcel or to sell it. For these reasons, the Petitioner does not believe that the subject lot should be valued as a “buildable” residential lot.

Furthermore, the Petitioner asserts that the property’s value as a building lot is diminished for several reasons. First, the Petitioner explains that power and telephone poles located in the middle of the property decrease its value. Second, the Petitioner asserts that the value is impacted by a 10 to 15-foot right-of-way that exists on one side of the property that reduces the subject’s frontage from 80 feet to 65 feet.

The County assessed the subject property as a residential lot on which a home could be built. The County explains that its original assessment of \$\$\$\$\$ was based on comparable sales of residential lots. The County Assessor further explains that he agrees with the \$\$\$\$\$ reduction made by the County BOE to account for the power and telephone lines and the right-of-way that affect the subject. However, even though the Petitioner may not intend to use the property as a building lot or sell it, the County asserts that its highest and best use is as a buildable lot and that it should be assessed as such.

As evidence that the lot may be built on, the County proffers a letter dated June 8, 2006 from CITY that states that a residential building may be built on the subject property, even though the subject’s 65-foot frontage is less than the 75 feet required by city ordinance. For this reason, the evidence suggests that the

highest and best use of the subject property is as a buildable lot, and pursuant to Utah law, the subject's assessed value should reflect this use.

The County also proffers a list of vacant lots that sold in CITY in 2004. The sales show a difference in value based on whether a home may be built on the lot or not. For example, a residential building may not be built on comparable sales #6 and #7, which sold for \$\$\$\$\$ and \$\$\$\$\$, respectively. The other lots, on which residential buildings can be built, sold for significantly more, with the lots near 0.50 acres in size selling for prices ranging from \$\$\$\$\$ to \$\$\$\$\$. These prices support the value established by the County BOE for the subject property. Even though the subject has several negative factors that affect it, specifically the poles and right-of-way, the County BOE's value of \$\$\$\$\$ was established by decreasing the lot's value by \$\$\$\$\$ to account for these factors. Furthermore, the \$\$\$\$\$ value is near the lower end of the prices at which similarly-sized, buildable residential lots in CITY sold in 2004.

Primary Residential Exemption. The County explains that the subject property, although adjacent to and used in conjunction with the Petitioner's primary residential home next door, has not received the primary residential exemption for the 2005 tax year. Both the subject parcel and the Petitioner's adjacent parcels, where the home is located, are 0.52 acres in size, for a total of 1.04 acres. Because Utah law permits a primary residential exemption for property up to 1.00 acre in size, the County Assessor intends to apply the exemption to the subject property. However, he explains that he believes that the Property Tax Division recommends that the exemption not be applied to property that has been segregated into a separate parcel, even if that parcel is adjacent to and integral to the use of the property on which the residential home is located.

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that "[a]ny 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”

Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

UCA §59-2-103(2) provides that “. . . the fair market value of residential property located within the state shall be reduced by 45%” Subsection 59-2-103(3) provides that “[n]o more than one acre of land per residential unit may qualify for the residential exemption.” For purposes of this exemption, “residential property” is defined in UCA §59-2-102(29) to mean “any property used for residential purposes as a primary residence. . . .”

DISCUSSION

The Petitioner asserts that the property should not be valued as a buildable residential lot because he uses it for a different purpose, specifically to supplement the yard for his home next door. He also asserts that he has no intention to sell the property or to build another home on it in the future. However, Utah law requires a property to be assessed, for property tax purposes, at its highest and best use. Utah law does not provide for a property to be valued at its current use if that use is different from its highest and best use. Because the evidence shows that a home can be built on the subject lot, the Commission finds that the highest

and best use for the subject is as a residential lot upon which a home can be built. Given this highest and best use, the evidence also suggests that the County BOE's value of \$\$\$\$\$ is reasonable. No evidence is given to show that the value should be otherwise. Accordingly, the Commission sustains the \$\$\$\$\$ value, as established by the County BOE.

Remaining at issue is whether all or a portion of the subject property should receive the primary residential exemption for the 2005 tax year. Even though the subject property could be sold as a building lot, it is clear from the evidence and testimony proffered by both the Petitioner and the County that it is currently used in conjunction with the Petitioner's adjacent parcel as a single residential property. Section 59-2-103 provides that the primary residential exemption applies to a residential "property," not to a residential "parcel." Furthermore, "residential property" is defined to mean "**any** property used for residential purposes as a primary residence" (emphasis added). The Commission interprets these statutes to mean that **all** property used as a single primary residence may qualify for the exemption, even if the single residential property is comprised of two or more parcels.¹ Pursuant to this ruling and because the subject parcel is one of two parcels comprising a single primary residence, the Commission finds that the subject parcel may also receive the primary residential exemption for the 2005 tax year.

Because the subject property is part of a single primary residence that is approximately 1.04 acres in size, the entire primary residence may not qualify for the exemption, in accordance with Subsection 59-2-103(3). Because the County has already applied the primary residential exemption to adjacent parcel's

¹ Property Tax Division's Standard of Practice 2.12.0 provides that "[t]he assessor shall grant the residential exemption to the first one-acre of land, if listed in the same parcel description." The Commission believes that restricting the exemption to a single parcel narrows the exemption, as written. For this reason, the Commission finds that more than one parcel may qualify for the exemption if it is shown that the parcels are used in conjunction as a single primary residence.

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0.52 acres, the Commission finds that the primary residential exemption should only be applied to 0.48 acres of the subject parcel.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the \$\$\$\$ value that the County BOE established for the subject parcel for the 2005 tax year. In addition, the Commission finds that the primary residential exemption should be applied to 0.48 acres of the subject parcel, but not to its remaining acreage. The Iron County Auditor is ordered to adjust its records in accordance with this decision. 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 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 _____, 2006.

Marc B. Johnson
Commissioner

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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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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