

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|--|--|
| PETITIONER 1 & PETITIONER 2, Petitioners, v. BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH, Respondent. | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 07-0579 Parcel No. #####-1 Tax Type: Property Tax / Locally Assessed Tax Year: 2006 Judge: Chapman |
|--|--|

Presiding:

Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Attorney
 RESPONDENT REPRESENTATIVE 2, Summit County Assessor
 RESPONDENT REPRESENTATIVE 3, from the Summit County Assessor's
 Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 20, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The lien date at issue is January 1, 2006.
3. The subject property is identified as Parcel No. #####-1 (lot 1 of the SUBDIVISION 1) and is located at ADDRESS in CITY, Summit County, Utah.

4. As of the lien date, the subject property was comprised of 3.55 acres of residential land and a home that was under construction. The building permit had been obtained and the foundation and rough plumbing had been installed as of the lien date. The home was not completed and the Petitioners did not move into it until around Christmas 2006.

5. For the 2006 tax year, the subject property was originally assessed at \$\$\$\$\$, which the Summit County Board of Equalization (“County BOE”) reduced to \$\$\$\$\$. The County determined that no portion of the subject property qualified for the primary residential exemption.

6. The County BOE value of \$\$\$\$\$ was derived by valuing the land and improvements separately, as follows:

| Property Type | Land Value per Acre | Value |
|--------------------------------|----------------------------|--------------------------|
| Primary Lot (1 acre) | \$\$\$\$\$ | \$\$\$\$\$ |
| Secondary Acreage (2.55 acres) | \$\$\$\$\$ | \$\$\$\$\$ |
| Improvements as of Lien Date | N/A | <u>\$\$\$\$\$</u> |
| TOTAL COUNTY BOE VALUE | | <u>\$\$\$\$\$</u> |

7. The County asks the Commission to sustain the value established by the County BOE. The Petitioners ask the Commission to reduce the County BOE value. The Petitioners do not dispute the County BOE’s value of \$\$\$\$\$ for the improvements that existed as of the lien date. They do, however, dispute the County BOE’s determination that the subject’s 3.55 acres of land is worth a total of \$\$\$\$\$, which equates to approximately \$\$\$\$\$ per acre. First, the Petitioners’ assert that the land value does not represent the fair market value of the land. Second, they assert that the land value is not “equalized” to the 2006 assessed land values of other comparable properties in CITY. The last issue is whether or not the subject property qualifies for the primary residential exemption for the 2006 tax year.

Fair Market Value Information

8. On August 4, 2005, PETITIONER REPRESENTATIVE, who is a real estate developer, purchased and platted 30 acres of vacant property in CITY, Utah. PETITIONER REPRESENTATIVE paid \$\$\$\$\$, or \$\$\$\$\$ per acre, for the 30 acres. PETITIONER REPRESENTATIVE developed the property into the six lots that comprise the SUBDIVISION 1, one of which is the 3.55-acre subject property. At the time PETITIONER REPRESENTATIVE purchased the property, there were no infrastructure improvements in the subdivision.

9. PETITIONER 2, who is married to PETITIONER 1, is the daughter of PETITIONER REPRESENTATIVE.

10. In late August 2005, PETITIONER REPRESENTATIVE sold the 3.55-acre subject property to the Petitioners for \$\$\$\$\$, which is approximately \$\$\$\$\$ per acre. Near the same time, PETITIONER REPRESENTATIVE sold another lot in the SUBDIVISION 1 to another of his daughters and her husband for a similar price per acre. PETITIONER REPRESENTATIVE explained that when he purchased the 30 acres, he had an agreement with his daughters and their respective husbands to sell them lots at the same price per acre at which he had purchased the land.

11. The Petitioners assert that the Commission should find that the fair market value of the subject's land is \$\$\$\$\$, the price at which PETITIONER REPRESENTATIVE sold the subject property to the Petitioners and which is near the \$\$\$\$\$ per acre price PETITIONER REPRESENTATIVE paid for the 30-acre property. If a land value of \$\$\$\$\$ is added to the County's improvements value of \$\$\$\$\$, a total value of \$\$\$\$\$ is derived. Exhibit P-1 at p. 6. The Petitioners ask the Commission to find this value to be the fair market value of the subject property as of the lien date.

12. Prior to the lien date, the Petitioners had obtained a building permit to build a home

on the subject property and had brought electricity to the property.

13. In late 2005, PETITIONER REPRESENTATIVE sold a 5.00-acre lot in SUBDIVISION 1 to an unrelated party for \$\$\$\$\$, which equates to \$\$\$\$\$ per acre. This lot did not have water or other utilities at the time of sale.

14. In 2007, PETITIONER REPRESENTATIVE sold a 6.00-acre parcel in SUBDIVISION 1 to an unrelated party for \$\$\$\$\$, which equates to approximately \$\$\$\$\$ per acre.

15. In the past, PETITIONER REPRESENTATIVE has marketed lots in the SUBDIVISION 1 by means of a sign on the property that states that lots are “offered from \$\$\$\$\$.”

16. The County submitted seven sales of lots in support of the County BOE’s land value of \$\$\$\$\$ (\$\$\$\$\$ per acre). Three of the sales were in a subdivision that is located within 0.3 miles of the subject property. These three lots, which range from 3.01 acres to 3.89 acres in size, sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ and prices per acre ranging between \$\$\$\$\$ and \$\$\$\$\$. The Petitioners contend that these properties, unlike the subject property, have views and, as a result, are more valuable than the subject property.

Equalization Information

17. The Petitioners contend that the land values the County BOE established for the subject property are not “equalized” to the assessed land values of other comparable properties in CITY.

18. The County BOE established a value of \$\$\$\$\$ for the subject’s primary lot (i.e., the first acre of land) and \$\$\$\$\$ per acre for the subject’s secondary acreage (i.e., the land in excess of one acre). To show that these values are inequitable, the Petitioners provided a map of CITY on which they included the assessed land values of 15 residential properties that range between 0.80 acres and 8.00 acres in size. Exhibit P-1 at pp. 7-9. The map also shows two properties that are in excess of 18.00 acres in size and indicates that

four additional lots in the SUBDIVISION 2 are assessed at the same rates as the “OWNER 5” property in the same subdivision.

19. Only one comparable provided by the Petitioners, specifically the 1.90-acre (X) parcel, showed an assessment at the same land values used by the County BOE to value the subject property.

20. The assessed land values of the remaining 14 properties that are 8.00 acres and smaller in size are less than those values that the County BOE applied to the subject’s land. None of these properties show a primary lot assessment in excess of \$\$\$\$\$. Furthermore, only one of these properties shows a secondary acreage assessment of \$\$\$\$\$ per acre. The others show secondary acreage values that are no higher than \$\$\$\$\$ per acre.

21. The County pointed out that for two properties shown on the Petitioners’ map, the Petitioners had mistakenly identified a “greenbelt” value as the secondary acreage value.

22. From those properties found on their map, the Petitioners chose five properties that they believed were most similar to the subject property. With the assessed values of these five properties, the Petitioners determined “equalized” land values for the subject property, as follows:

| Owner | Parcel Number | Acreage | Primary Lot Value per Acre | Secondary Acreage Value Per Acre |
|----------------|----------------------|----------------|-----------------------------------|---|
| OWNER 1 | #####-2 | 5.00 | \$\$\$\$\$ | \$\$\$\$\$ |
| OWNER 2 | #####-3 | 5.00 | \$\$\$\$\$ | \$\$\$\$\$ |
| OWNER 3 | #####-4 | 5.30 | \$\$\$\$\$ | \$\$\$\$\$ |
| OWNER 4 | #####-5 | 8.00 | \$\$\$\$\$ | \$\$\$\$\$ |
| OWNER 5 | #####-6 | 4.75 | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |
| AVERAGE | | | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |

23. Based on these above averages, the Petitioners ask the Commission to equalize their land value at \$\$\$\$\$ for their primary lot and \$\$\$\$\$ per acre for their secondary acreage, which equates to \$\$\$\$\$ for the 2.55 acres. These equalized values would result in a total land value of \$\$\$\$\$, which when

added to the improvements value of \$\$\$\$\$, would result in a total value of \$\$\$\$\$ for the subject property. Should the Commission not accept the Petitioners' proposed fair market value of \$\$\$\$\$, as explained earlier, the Petitioners request that the Commission accept \$\$\$\$\$ as an "equalized" value for the subject property.

24. The County did not argue that the properties the Petitioners submitted for their equalization argument were not comparable to the subject property, except for the 5.00-acre OWNER 1 property, Parcel No. #####-2. The County stated that the OWNER 1 property, unlike the subject property and the Petitioners' other equalization comparables, was located in the "county proper," i.e., outside of the CITY city limits. However, information provided by the Petitioners in Exhibit P-2 shows the OWNER 1 property to be located in the same CITY tax district as two of their other equalization comparables.

25. For the County, RESPONDENT REPRESENTATIVE 2 testified that "equity" is a cyclical appraisal problem and that the County had not finished its reassessment for CITY in 2006. She stated that for the 2007 tax year, all properties were now assessed at \$\$\$\$\$ for the primary lot and \$\$\$\$\$ per acre for secondary acreage. She stated that about one-half of the land in CITY had been raised to these values as of the 2006 tax year, with the other half being raised to these values in 2007.

26. The County, however, provided no evidence to show that about one-half of all parcels in CITY were assessed in 2006 at the same land rates as those applied by the County BOE to the subject property.

27. The County explained that some property values are "five years old" in any given assessment year, resulting in disparity over a five-year cycle. RESPONDENT REPRESENTATIVE 2 further explained that because the subject property had been "segregated" in 2005 from a larger parcel, the County had to reappraise the subject for the 2006 tax year, which resulted in its land having a higher value than that of some other properties in CITY for the 2006 tax year.

28. Finally, RESPONDENT REPRESENTATIVE 2 explained that the County only changes assessed values outside of the five-year cycle when the County has enough sales to warrant a change based on a yearly sales analysis.

29. The Petitioners submitted 2007 assessment information for three of the five parcels they used in their “equalization” calculation to refute RESPONDENT REPRESENTATIVE 2’s claim that *all* properties had been “increased” as of the 2007 tax year. Exhibit P-2. First, for Parcel #####-4, the OWNER 3 property, the County increased the parcel’s primary lot from \$\$\$\$\$ in 2006 to \$\$\$\$\$ in 2007, but reduced its secondary acreage from \$\$\$\$\$ per acre in 2006 to \$\$\$\$\$ per acre in 2007. Second, for Parcel #####-6, the OWNER 5 property, the 2006 assessed values of \$\$\$\$\$ for the primary lot and \$\$\$\$\$ per acre for the secondary acreage remained unchanged for the 2007 tax year. Third, for Parcel #####-2, the OWNER 1 property, the 2006 assessed values of \$\$\$\$\$ for the primary lot and \$\$\$\$\$ per acre for the secondary acreage also remained unchanged for the 2007 tax year.

Primary Residential Exemption Information

30. The Petitioners completed and moved into their home on the subject property around Christmas 2006.

31. The Petitioners testified that the subject property is their primary residence. The County did not contest his assertion.

32. The Petitioners did not file an application with the County to receive a primary residential exemption on the subject property for the 2006 tax year. The Petitioners stated that they did not know that they had to file an application to receive the exemption.

33. The County stated that the Petitioners were not entitled to the primary residential exemption on the subject property for the 2006 tax year because they did not file an application to receive the exemption and because County ordinance required the application to be filed in order to receive the exemption.

APPLICABLE LAW

I. Property Valuation.

1. Utah Code Ann. §59-2-103(1) provides that “[a]ll 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 provide by law.”

2. For property tax purposes, “fair market value” is defined in UCA §59-2-102(12)

to mean:

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. . . .

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property . . . may appeal that decision to the commission. . . .

. . . .

(3) In reviewing the county board's decision, 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.

(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.

.....

II. Primary Residential Exemption.

4. UCA §59-2-103 provides for a partial exemption from taxation for certain residential properties, as follows:

.....

(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.

5. UCA §59-2-103.5 provides for procedures that must be met in order for a taxpayer to receive the primary residential exemption, as follows in pertinent part:

(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.

III. Burden of Proof.

7. 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. *See 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).

DISCUSSION

Fair Market Value. The Petitioners claim that their \$\$\$\$ purchase price for the subject property's land in 2005 should be used in determining the fair market value of the subject property for the 2006 tax year under a cost approach, which the County BOE used to establish the subject's value. However, that transaction occurred between family members. As a result, further review is needed to determine whether the sales price was representative of the land's fair market value.

The Commission finds that the price the Petitioners paid for the land did not represent its fair market value as of the lien date. Without corroborating evidence, the Commission finds it unlikely that a 3.55-acre lot and the 30-acre property from which it was segregated would have the same fair market value per acre. Furthermore, between the time of sale and the 2006 lien date, a building permit was obtained for the subject property and electricity was run to it, circumstances that could add to the land's value. Finally, and most importantly, an unrelated party purchased another lot in the subject's subdivision from PETITIONER REPRESENTATIVE in late 2005 for \$\$\$\$\$, which equates to \$\$\$\$\$ per acre. Consideration of this sale and others submitted by the County convinces the Commission that the \$\$\$\$\$ per acre price paid by the Petitioners does not represent the fair market value of the subject property's land, as defined in Section 59-2-102(12) for

property tax purposes. If anything, this evidence suggests that the \$\$\$\$ per acre value established by the County BOE for the subject property may actually be low. Accordingly, the Commission finds that the Petitioners have failed to show that the subject's fair market value should be reduced below the \$\$\$\$ value established by the County BOE.

Equalization. The Petitioners have submitted evidence showing the primary lot values and secondary acreage values at which approximately 20 residential properties in CITY were assessed for the 2006 tax year. Almost all of these values are less than the \$\$\$\$ primary lot value and the \$\$\$\$ per acre secondary acreage value that the County BOE established for the subject property for 2006.

The County testified that the values used by the County BOE to value the subject property were those that were applicable for the 2006 tax year and that, due to cyclical appraisal cycles, other properties in CITY may have been assessed at lower values. Although the County testified that approximately one-half of the properties in CITY were assessed in 2006 at the values used by the County BOE to establish the subject property's value, it provided no evidence of its assertion and the Petitioners' evidence suggests otherwise. Furthermore, with minor exceptions, the County did not contend that the comparables submitted by the Petitioners were dissimilar to the subject property.

From the evidence submitted at the Formal Hearing, the Commission concludes that the Petitioners have met their burden of demonstrating that their 2006 land values are significantly higher than those at which many, if not most, other comparable properties in CITY have been assessed. Concerning the Petitioners' calculations of "equalized" land values based on an "average" analysis, the Commission would prefer some sort of "mean" analysis. However, the County did not affirmatively contest the Petitioners' use of an "average" analysis. As a result, the Commission finds that the Petitioners have met their burden of showing that \$\$\$\$ is the "equalized" value for the subject's primary lot and that \$\$\$\$ is the "equalized" value per

acre for the subject’s secondary acreage for the 2006 tax year.

When these “equalized” land values are applied to the subject property and the resulting land values added to the uncontested improvements value of \$\$\$\$\$, a total value of \$\$\$\$\$ is derived for the subject property, as follows:

| | |
|---|-------------------|
| Primary Lot..... | \$\$\$\$\$ |
| Secondary Acreage at \$\$\$\$ per acre for 2.55 acres | \$\$\$\$\$ |
| Improvements..... | \$\$\$\$\$ |
| TOTAL EQUALIZED VALUE | |
| | <u>\$\$\$\$\$</u> |

In accordance with Section 59-2-1006(4)(b), the Commission may not equalize a value unless it is shown that the “property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.” The rate of deviation in this case is greater than 25% regardless of whether one compares: 1) the total value of \$\$\$\$\$ as established by the County BOE to the total equalized value of \$\$\$\$\$; 2) the total land value of \$\$\$\$ as established by the County BOE to the total equalized land value of \$\$\$\$\$; 3) the primary lot value of \$\$\$\$\$ as established by the County BOE to the equalized primary lot value of \$\$\$\$\$; or 4) the secondary acreage value of \$\$\$\$\$ per acre as established by the County BOE to the equalized secondary acreage value of \$\$\$\$\$ per acre.

Based on the foregoing, the Commission finds that the subject property’s value should be decreased from the \$\$\$\$\$ value established by the County BOE to \$\$\$\$\$ in order to equalize the subject property’s 2006 assessed value to other comparable properties.

Primary Residential Exemption. The Petitioners did not file an application to receive the primary residential exemption on the subject property for the 2006 tax year. The County has testified that it has a County ordinance in place that requires a person to file an application for the exemption in order for that person to receive the exemption. Based on the foregoing and pursuant to Section 59-2-103.5(1), the

Commission finds that the Petitioners have not met the procedural requirements to receive the primary residential exemption on the subject property for the 2006 tax year.

CONCLUSIONS OF LAW

1. The Commission finds that the Petitioners have failed to show that the subject's fair market value for 2006 is lower than the \$\$\$\$ value established by the County BOE.
2. The Commission finds that the Petitioners have demonstrated that the land values established by the County BOE for the subject property for the 2006 tax year results in a deviation of more than 5% from the values at which other comparable properties were assessed for the same tax year. Furthermore, the Commission finds that the Petitioner has demonstrated that for purposes of equalization, the subject primary lot value should be decreased to \$\$\$\$ and the subject's secondary acreage value per acre should be decreased to \$\$\$\$\$. As a result, the Commission finds that the subject's total assessed value for 2006 tax purposes should be reduced from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$.
3. The Commission finds that the Petitioners are not entitled to the primary residential exemption on the subject property for the 2006 tax year.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the \$\$\$\$ value that the County BOE established for the subject parcel should be reduced to \$\$\$\$\$. The Summit County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2008.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 07-0579

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63-46b-13 et seq.

KRC/07-0579.fof.doc