

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF WASATCH COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 08-0111 Parcel No. #####-2 #####-1 Tax Type: Property Tax / Locally Assessed Tax Year: 2007 Judge: Chapman
---	---

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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Wasatch County Assessor

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 July 15, 2008.

At issue is the fair market value of two adjacent properties as of January 1, 2007. The first subject property is a vacant parcel located near ADDRESS 1 in CITY 1, Utah. It is identified as Parcel No. #####-1 ("Parcel 1"). The Wasatch County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which Parcel 1 was assessed for the 2007 tax year. The property owner asks the Commission to reduce

Appeal No. 08-0111

Parcel 1's assessed value to \$\$\$\$\$. The County asks the Commission to sustain the \$\$\$\$\$ value established by the County BOE.

The second subject property is a single-family residential property located at ADDRESS 2 in CITY 1, UT. It is identified at Parcel No. #####-2 ("Parcel 2"). The County BOE sustained the \$\$\$\$\$ value at which Parcel 2 was assessed for the 2007 tax year. It also sustained the County's classification of the property as secondary residential property (i.e., that it does not qualify for the primary residential exemption). The property owner asks the Commission to reduce Parcel 2's land value to \$\$\$\$\$ and its improvements value to \$\$\$\$\$ to \$\$\$\$\$, which would reduce the subject's total value to an amount around \$\$\$\$\$. The property owner also asks the Commission to find that Parcel 2 qualifies for the primary residential exemption. The County asks the Commission to sustain the \$\$\$\$\$ value established by the County BOE and to deny the owner's request for the primary residential exemption.

APPLICABLE LAW

Tax Commission Appeals. 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, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission. . . .
- (2) The auditor shall:
 - (a) file one notice with the commission;
 - (b) certify and transmit to the commission:
 - (i) the minutes of the proceedings of the county board of equalization for the matter appealed;
 - (ii) all documentary evidence received in that proceeding; and
 - (iii) a transcript of any testimony taken at that proceeding that was preserved; and
 - (c) if the appeal is from a hearing where an exemption was granted or denied, certify and transmit to the commission the written decision of the board of equalization as required by Section 59-2-1102.
- (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.

....

Primary Residential Exemption. UCA §59-2-103(2) provides that “. . . the fair market value of residential property located within the state shall be reduced by 45%” For purposes of this exemption, “residential property” is defined in UCA §59-2-102(30) to mean “any property used for residential purposes as a primary residence. . . .”

Utah Admin. Rule R884-24P-52 (“Rule 52”) provides criteria for determining whether a property qualifies for the primary residential exemption, as follows in pertinent part:

....

B. “Primary residence” means the location where domicile has been established.

....

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;
2. the length of any continuous residency in the location claimed as domicile;
3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
4. the presence of family members in a given location;
5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
6. the physical location of the individual's place of business or sources of income;
7. the use of local bank facilities or foreign bank institutions;
8. the location of registration of vehicles, boats, and RVs;
9. membership in clubs, churches, and other social organizations;
10. the addresses used by the individual on such things as:
 - a) telephone listings;
 - b) mail;

- c) state and federal tax returns;
 - d) listings in official government publications or other correspondence;
 - e) driver's license;
 - f) voter registration; and
 - g) tax rolls;
11. location of public schools attended by the individual; or the individual's dependents;
 12. the nature and payment of taxes in other states;
 13. declarations of the individual:
 - a) communicated to third parties;
 - b) contained in deeds;
 - c) contained in insurance policies;
 - d) contained in wills;
 - e) contained in letters;
 - f) contained in registers;
 - g) contained in mortgages; and
 - h) contained in leases.
 14. the exercise of civil or political rights in a given location;
 15. any failure to obtain permits and licenses normally required of a resident;
 16. the purchase of a burial plot in a particular location;
 17. the acquisition of a new residence in a different location.

Burden of Proof. 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).

DISCUSSION

The Commission will address two issues that arose at the hearing before discussing the values of the subject properties at issue. First, when the County Auditor forwarded the property owner's appeal to the

Commission, he did not include a copy of the evidence that the property owner submitted to the County BOE, as required under Section 59-2-1006(2). For this reason, PETITIONER asked the Commission to order the County to remit this information to the Commission and to reschedule the Initial Hearing for a date after the County had complied. The administrative law judge (“ALJ”) denied PETITIONER’S request because he himself had the information available to proffer at the Initial Hearing and because all parties were already present for the hearing. Under these circumstances, the Commission supports the ALJ’s action.

Second, PETITIONER asked the Commission to reschedule the hearing because the Notice of Initial Hearing (“Notice”) stated that “[t]he initial hearing will be conducted as an informal process in which the parties and the presiding officer shall clarify the issues, evaluate the evidence and arguments, and discuss scheduling of future events.” Because the Notice stated that the parties and the ALJ would “discuss scheduling of future events,” PETITIONER argued that a hearing could only be scheduled and, as a result, a hearing could not be held until a future date. The ALJ denied the request. The Commission supports the ALJ’s action because both parties were prepared for the hearing and would not be prejudiced by holding it at the time on the Notice.

I. Parcel 1. This subject property consists of a 0.23-acre vacant parcel that is in the center of a residential block. PETITIONER argued that Parcel 1 has a large number of pine trees on it that limits its utility and decreases its value. He further explained that the parcel has only been used to pasture horses and, due to zoning laws, cannot be built on without using a portion of Parcel 2 for frontage and access. PETITIONER further argued that Parcel 1 is landlocked because it is titled in both his and his granddaughter’s names while Parcel 2, which provides access to the street, is in his name only. Lastly, he proffered that the subject property is less valuable than a 0.20-acre parcel located across the street in the middle of that block. The County assessed this comparable at \$\$\$\$ in 2007. PETITIONER proffers that this comparable is more

valuable than Parcel 1 because of the cost that would be incurred to remove the pine trees from Parcel 1. For these reasons, PETITIONER argued that Parcel 1's value should be reduced from \$\$\$\$\$ to \$\$\$\$\$.

The County proffered that it valued Parcel 1 as "backage" acreage. The County does not consider Parcel 1 to be landlocked because PETITIONER also owns Parcel 2, which is adjacent and has street access. The County also proffered evidence of a nearby, 0.19-acre landlocked parcel that recently sold for \$\$\$\$\$. The purchaser who paid \$\$\$\$\$ for this comparable also purchased an adjacent lot that was located on the street.

First, the Commission agrees that Parcel 1 is not landlocked, given PETITIONER'S interest in both parcels. Second, regardless of whether Parcel 1 is landlocked, there is no evidence to show that Parcel 1's fair market value is incorrect. The only comparable sale is the County's comparable that sold for \$\$\$\$\$. This comparable suggests that Parcel 1 may be undervalued.

Third, the Commission finds that there is insufficient evidence to show that Parcel 1 is not equalized with the assessed values at other similar properties. PETITIONER has shown that a slightly smaller parcel on the next block was assessed at \$\$\$\$\$, approximately \$\$\$\$\$ less than the subject. The Commission is not convinced from the evidence proffered at the Initial Hearing that Parcel 1 has a value equal to or lower than this comparable. Furthermore, the use of only one comparable to illustrate an inequitable assessment is inadequate.¹ For these reasons, the Commission finds that PETITIONER has not shown that Parcel 1's value of \$\$\$\$\$ is incorrect or that it requires equalization.

¹ See *Mt. Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86 (Utah 2004), in which the Utah Supreme Court addressed the equalization of assessed values and determined that "a party seeking an adjustment [must] present more than one similar but disparately valued property in order to be eligible for a valuation adjustment."

II. Parcel 2. This subject property consists of a 0.72-acre lot and an old home that is 1,260 square feet in size. The home was built in 1860, with an addition that was built around 1960 that included a bath with a shower, but no tub. PETITIONER proffered that the home is only habitable for approximately one-half of the year because it does not have a heating system to heat the entire house. He also proffered that the home is not designed to accommodate a heating system, should he wish to add one. In addition, he stated that the house does not have closets in the bedrooms.

The County Assessor used the cost approach to value Parcel 2, as well as other homes in the neighborhood. Using the cost approach, the County determined a value of \$\$\$\$\$ for the home, \$\$\$\$\$ for a shop/garage, and \$\$\$\$\$ for the land, for a total assessed value of \$\$\$\$\$. The County also determined that Parcel 2 did not qualify for the primary residential exemption.

PETITIONER asks the Commission to issue a number of rulings concerning Parcel 2. Specifically, he asks the Commission to: 1) order the County Recorder to change the legal description of the subject property; 2) to find that Parcel 2 qualifies for the primary residential exemption; 3) to find that Parcel 2's land value of \$\$\$\$\$ is not equalized to the assessed values of other similar land; and 4) to find that Parcel 2's home value of \$\$\$\$\$ is not equalized because it is assessed at a similar value as nearby, superior homes.

Legal Description. In 2005, PETITIONER sold off some of his land, which resulted in Parcel 2 coming into existence and requiring Parcel 2's legal description to be recorded. PETITIONER proffered documents to show that several measurements contained in the recorded legal description are off by approximately one foot. He asks the Commission to order the County Recorder to change the recorded legal description to match the description shown in his documents. First, the Commission is only authorized to review matters concerning a property's value or its exempt status, pursuant to Section 59-2-1006(1). The Commission is not authorized to review and correct recorded legal descriptions. Accordingly, the Commission

denies PETITIONER'S request to change Parcel 2's recorded legal description. Furthermore, any changes would have no impact on value, as PETITIONER stated that his proposed changes to the recorded legal description would not affect the size of the 0.72-acre subject parcel.

Primary Residential Exemption. PETITIONER received the primary residential exemption on Parcel 2 until 2005 or 2006, when the County Assessor determined that it was not used as a primary residence and removed the exemption. It appears that the County had granted the exemption in the past because PETITIONER provided it with a multi-year lease for the property that was dated in 1999. PETITIONER does not claim that anyone uses Parcel 2 as their primary residence, which is a requirement to receive the primary residential exemption pursuant to Section 59-2-102(30) and Rule 52. Furthermore, he admitted that the home is only habitable for approximately one-half of each year and that his granddaughter, to whom the property is leased, is an airline pilot who lives in CITY 2, STATE. Nevertheless, he argued that Parcel 2 qualifies for the exemption because of a "grandfather" clause contained a Wasatch County ordinance. In addition, he proffered information to show that a landlord is precluded by law from obtaining certain information from a tenant that may be indicative of a person's domicile. PETITIONER specifically noted that a landlord is precluded from asking a tenant about his or her religion and sources of income.

The Commission rejects PETITIONER'S arguments. The Commission notes that the "grandfather" clause in the Wasatch County ordinance only provides that a person who received the exemption prior to the effective date of the ordinance "need not file an application to continue the exemption." The grandfather clause specifically provides that "grandfathered" property owners "may be denied the exemption if the Assessor of the Board determines that their property is not in fact used as a primary residence." As a result, the Commission finds that the County is not precluded from denying the primary residential exemption under the present circumstances. From the evidence and testimony proffered by PETITIONER, the Commission

finds that Parcel 2 is not used as a primary residence and does not qualify for the exemption. Accordingly, the Commission denies PETITIONER’S request to grant the exemption.

Equalization of Parcel 2’s Land. The County stated that it has assessed Parcel 2 and other nearby residential properties using the cost approach; i.e., the County established a cost value for the land and a separate cost value for the improvements, the added the separate values to arrive at an assessed value for each property.

Parcel 2 contains 0.72 acres of land, which is comprised of a 0.49-acre portion located on the street and a 0.23-acre portion located in the middle of the block. Although the two portions are connected at one corner, the two portions do not appear to be functionable as one lot. The house is located on the 0.49-acre portion. The 0.23-acre portion is vacant and used as pasture. The County assessed the 0.72 acres at \$\$\$\$\$.

PETITIONER provided six comparables of nearby properties with homes. The values at which the comparables’ lots were assessed and the sizes of the lots are, as follows:

Comparable	Acreage	Assessed Value
#1	.37 acres	\$\$\$\$\$
#2	.37 acres	\$\$\$\$\$
#3	.44 acres	\$\$\$\$\$
#4	.32 acres	\$\$\$\$\$
#5	.44 acres	\$\$\$\$\$
#6	.60 acres	\$\$\$\$\$

The County stated that a “base” lot in the subject’s neighborhood is 0.45 acres and that additional land is considered and assessed as “backage” acreage. The County’s statement is supported by the fact that all the comparables that are 0.45 acres in size or less are assessed at the same value of \$\$\$\$\$. For comparable #6, the 0.15 acres of backpage is assessed at \$\$\$\$\$ (\$\$\$\$\$ - \$\$\$\$\$), which equates to \$\$\$\$\$ per one-hundredth of an acre. The 0.23 acres of Parcel 1, which is considered backpage acreage, is assessed at

\$\$\$\$\$, which equates to \$\$\$\$\$ per one-hundredth of an acre. PETITIONER asked the Commission to find that the 0.23-acre back portion of Parcel 2 is worthless and to equalize Parcel 2's land value at \$\$\$\$\$.

The Commission is not convinced that the 0.23-acre portion of Parcel 2 that is located in the middle of the block is worthless. However, from the evidence provided, the backage acreage appears to have a value no higher than \$\$\$\$\$ per one-hundredth of an acre. If the base lot value of \$\$\$\$\$ is applied to Parcel 2's first 0.45 acres and a value of \$\$\$\$\$ per one-hundredth of an acre is applied to the remaining 0.27 acres of backage, the base lot has a value of \$\$\$\$\$ and the backage has a value of \$\$\$\$\$. These two amounts total \$\$\$\$\$ and suggest that the subject property is not equalized to the values at which other, nearby parcels are assessed.

The County has no comparables to dispute PETITIONER'S evidence or to show that the County has assessed parcels at the same rates that it used to assess Parcel 2's land. For these reasons, the Commission finds that Parcel 2's land value should be reduced to \$\$\$\$\$ for purposes of equalization.

Equalization of Parcel 2's Home. The County determined a value of \$\$\$\$\$ for the 1,260 square foot home located on Parcel 2. PETITIONER proffered the cost values at which six nearby, old homes are assessed, as follows:

Comparable	Square footage	Assessed Value (cost)
#1	2,376	\$\$\$\$\$
#2	1,189	\$\$\$\$\$
#3	1,047	\$\$\$\$\$
#4	1,779	\$\$\$\$\$
#5	1,210	\$\$\$\$\$
#6	1,170	\$\$\$\$\$

PETITIONER stated that he is familiar with these six homes and that each of them has a heating system that allows their inhabitants to reside in them year-round. He also stated that these homes are more desirable than the subject's home because they have baths with tubs and bedrooms have closets. He

stated that if these better homes are assessed at values beginning at \$\$\$\$\$, the home on Parcel 2 should be valued at no more than \$\$\$\$\$ to \$\$\$\$\$.

The County Assessor stated that he does not know whether the \$\$\$\$\$ value derived for the subject's home was based on it having a heating system, a bath with a tub, or any other feature. He stated that a County appraiser did not inspect the interior of the home and made assumptions about its interior without seeing inside. He also had no information at the Initial Hearing to show what these assumptions entailed and whether the subject's assessment was based on the actual home features that exist. As a result, he does not know if the subject property and PETITIONER'S six comparables were assessed as though they all had the same features.

The County has not refuted PETITIONER'S testimony about Parcel 2's home and the six comparables' homes. From this testimony, the Commission would conclude that the subject house has a lower value than the six comparables. Three of the comparable homes closest in size to the subject were assessed at values between \$\$\$\$\$ and \$\$\$\$\$, while the subject is assessed at \$\$\$\$\$. Based on the information and testimony proffered at the Initial Hearing, the Commission believes the subject's value must be reduced below \$\$\$\$\$ for equalization purposes. The only estimate of value below this amount is the \$\$\$\$\$ to \$\$\$\$\$ value estimated by PETITIONER. For these reasons, the Commission finds that the home value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for equalization purposes.

Parcel 2 Conclusion. The Commission finds that for purposes of equalization, Parcel 2's land value should be reduced to \$\$\$\$\$ and its home value should be reduced to \$\$\$\$\$. Adding the \$\$\$\$\$ shop/garage value to these amounts results in a total value of \$\$\$\$\$. The Commission also finds that Parcel 2 does not qualify for the primary residential exemption.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the \$\$\$\$ value that the County BOE established for Parcel No. #####-1 (Parcel 1). However, the Tax Commission finds that the \$\$\$\$ value that the County BOE established for Parcel No. #####-2 (Parcel 2) should be reduced to \$\$. In addition, the Commission finds that Parcel 2 does not qualify for the primary residential exemption. The Wasatch County Auditor is ordered to adjust its records to reflect the Commission's 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 taxpayer'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 _____, 2008.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 08-0111

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

KRC/08-0111.int