

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF WEBER
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal No. 08-0143

Parcel No. #####-1

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

R. Bruce Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE, Weber County Assessor’s Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 21, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer acquired the property in May of 2005 for \$\$\$\$ (Exhibit R-1). The parties agree that the value of the subject property remains at \$\$\$\$\$. Taxpayer is requesting that the value be allocated \$\$\$\$ to the residence and first acre, and \$\$\$\$ to the secondary acreage. The County allocated \$\$\$\$ to the residence and first acre, and \$\$\$\$ to the secondary acreage.

2. The subject property is parcel no. #####-1, and is located at ADDRESS, in CITY, Utah. It is a two-acre parcel with a residence. The zoning ordinance requires a minimum of three acres to subdivide and build, but the subject was grandfathered in when the zoning ordinance was changed.
3. Taxpayer testified that he spoke with three realtors in the (X), and that to their knowledge no one who has less than three acres has been able to subdivide and build on their property.
4. Taxpayer submitted as Exhibit P-1 a letter from the Weber County Planning Department indicating that the Department would not allow a subdivision of the subject property. However, the letter did not address the possibility of future zoning changes, or a request for a variance being submitted.
5. Taxpayer stated that there are two neighboring parcels that are approximately one acre, which are valued at \$\$\$\$ per acre. Taxpayer argued that his secondary acreage should not be valued at the same rate, as it cannot be subdivided and sold as a separate parcel.
6. The County submitted information on the excess acreage of several parcels near the subject as Exhibit R-3. The table is summarized below:
 - a. The subject is a 2-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$; of which \$\$\$\$\$ is attributable to the first acre and the second acre is valued at \$\$\$\$\$.
 - b. Parcel no. #####-2 is a 1.66-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$; of which \$\$\$\$\$ is attributable to the first acre, and the additional 0.66-acre is valued at \$\$\$\$\$, or \$\$\$\$\$ per acre.
 - c. Parcel no. #####-3 is 1.01-acre vacant parcel that is adjacent to the subject. It has a total value of \$\$\$\$\$, or \$\$\$\$\$ per acre.
 - d. Parcel no. #####-4 is a 1.16-acre vacant parcel that is adjacent to the subject. It has a total value of \$\$\$\$\$, or \$\$\$\$\$ per acre.
 - e. Parcel no. #####-5 is a 1.09-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$; of which \$\$\$\$\$ is attributable to the first acre, and the additional 0.09-acre is valued at \$\$\$\$\$, or \$\$\$\$\$ per acre.

- f. Parcel no. #####-6 is a 20.47-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$; of which \$\$\$\$\$ is attributable to the first acre, and the additional 19.47 acres is valued at \$\$\$\$\$, or \$\$\$\$\$ per acre.
 - g. Parcel no. #####-7 is a 1.50-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$; of which \$\$\$\$\$ is attributable to the first acre, and the additional .50 acres is valued at \$\$\$\$\$, or \$\$\$\$\$ per acre.
 - h. Parcel no. #####-8 is a 1-acre parcel with an overall value of \$\$\$\$\$. It has a total land value of \$\$\$\$\$.
- 7. Parcel nos. #####-3 and #####-4, which adjoin the subject, cannot be built upon with the current zoning, and so the County has assessed a value as if the parcels were secondary acreage.
 - 8. In support of its secondary acreage valuation, the County submitted as Exhibit R-5 information on five sales of land that has restrictions, including too little acreage to build, no road access, and being landlocked. The parcels ranged from 1-acre to 5.34 acres, with sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$.
 - 9. Taxpayer proposed that the County use a percentage to determine the value of secondary acreage. He stated that the County valued his secondary acreage at \$\$\$\$\$ in 2006, which was 5.45% of the value. He would apply this percentage to future increases in value to determine the value of secondary acreage.
 - 10. The County rejected the Taxpayer's percentage proposal, and argued that it would be difficult to both implement and equalize with comparable properties.

APPLICABLE LAW

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

- (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.

Utah Code Ann. §59-2-103 (2007).

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.

Utah Code Ann. §59-12-102(12) (2007).

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.
- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

CONCLUSIONS OF LAW

The Taxpayer has the burden of proof, and in order to prevail, must show not only that the value established by the County Board of Equalization was in error; but must also 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*

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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).

Both parties agree that the total value of the subject property is \$\$\$\$\$. At issue is the allocation of that value to the secondary acreage. The County has the secondary acreage valued at \$\$\$\$\$, and the Taxpayer believes it should be valued at \$\$\$\$\$. In support of this contention, the Taxpayer pointed out that two neighboring one-acre lots were also valued at \$\$\$\$\$ per acre, and argued that they were more valuable because they could be sold, whereas he is unable to subdivide his property and sell his secondary acreage. The County provided testimony that those lots are valued as secondary acreage because of the zoning restrictions on the property. In addition, the County provided evidence that the subject is valued in the same manner as other parcels, at \$\$\$\$\$ for the first acre, and \$\$\$\$\$ per acre for secondary acreage.

Utah Code Ann. §59-2-103 requires that all property be assessed at a uniform and equal rate on the basis of its fair market value. It appears that the \$\$\$\$\$ per acre valuation for secondary acreage is reasonable. We recognize that the property in question cannot be separately sold. Because of the acreage limitations imposed by statute on the homeowner exemption; however, some allocation of the agreed market value of the entire parcel is necessary. Accordingly, the County did not error in assuming a hypothetical sale. The Taxpayer has not provided any evidence of land sales at less than \$\$\$\$\$. Thus the Commission finds that the Taxpayer has failed to meet his burden to demonstrate the Board of Equalization's valuation was in error.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the \$\$\$\$\$ value of the subject property as of the January 1, 2007 lien date is properly allocated at \$\$\$\$\$ for the residence and first acre, and \$\$\$\$\$ for the second acre. It is so ordered.

DATED this _____ day of _____, 2009.

Jan Marshall
Administrative Law Judge

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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 _____, 2009.

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. Sec. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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