

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF UTAH
COUNTY, UTAH,

Respondent.

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

Appeal No. 08-0325

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:

Pam Hendrickson, Commission Chair
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, *Pro Se*
 PETITIONER 2, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Appraiser for Utah County
 RESPONDENT REPRESENTATIVE 2, Appraiser Supervisor for Utah
 County
 RESPONDENT REPRESENTATIVE 3, Assistant Assessor for Utah County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 13, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in Utah County, Utah. The property at issue is Parcel No. #####-1, located at ADDRESS in CITY 1, Utah.

2. For the January 1, 2007 lien date, the County Assessor had valued the property at \$\$\$\$\$, which the Board of Equalization sustained. The County asked the Commission to sustain the Board of Equalization value. The Taxpayer requested the value be reduced to \$\$\$\$\$.
3. The property is a .50 acre unimproved residential lot. It is the only undeveloped lot in the subdivision.
4. Taxpayer argued that his property is valued at a higher per acre value than a neighboring property, referred to as the "PROPERTY".
5. Taxpayer's Exhibit P-1 is a series of graphs showing the market values, assessed values, and tax amounts of the subject and the PROPERTY from 1997 through 2007. Taxpayer proffered that both the subject and the PROPERTY are unimproved lots that do not have utility connections. For the year at issue, the subject has an assessed value of \$\$\$\$\$ per acre and the PROPERTY has an assessed value of \$\$\$\$\$ per acre.
6. Taxpayer's Exhibit P-1 shows that the 2007 tax liability for the subject property is \$\$\$\$\$, while the 2007 tax liability for the PROPERTY is only \$\$\$\$\$.
7. Taxpayer testified that the County accepted the PROPERTY as comparable in 1997 when he appealed the value of the subject. He argued that there has not been a change in subject property or the PROPERTY that would warrant such a significant difference in value.
8. The County's representative testified that the disparity in tax liability is likely because the PROPERTY is agricultural land that is in greenbelt, while the subject is a residential building lot.
9. Taxpayer's Exhibit P-2 shows a comparison of sixteen different parcels on a per acre value, as follows:

Parcel No.	Lot Size	2007 Value	Value Per Acre
#####-2	7.78 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-3	6.85 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-4	7.76 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-5	0.94 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-6	0.44 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-7	0.30 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-8	0.44 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-9	0.80 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-10	0.75 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-11	1.93 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-12	1.49 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-13	1.05 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-14	1.49 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-15	0.80ac.	\$\$\$\$\$	\$\$\$\$\$
#####-16	0.50 ac.	\$\$\$\$\$	\$\$\$\$\$
#####-17	0.75 ac.	\$\$\$\$\$	\$\$\$\$\$
SUBJECT	0.50 ac.	\$\$\$\$\$	\$\$\$\$\$

10. Taxpayer’s Exhibit P-2 included information on the distance from the subject to several of the parcels. The first five parcels included on the above table the Taxpayer described as being located on the same map. Parcel no. #####-7 is located in CITY 2, 4.5 miles from the subject. Parcel nos. #####-10 and #####-15 are located in CITY 1, 2.2 and 2 miles from the subject. The Taxpayer did not provide information on the distance of the remaining properties from the subject.
11. The Taxpayer did not offer any testimony or other evidence regarding the zoning, characteristics, or use of the properties identified in his Exhibit 2.
12. The County’s appraiser testified that the subject is the only unbuilt lot in the subdivision. He described it as the key lot in the cul-de-sac and stated that it is flat and buildable. The property is zoned for single-family residential, and conforms to the neighborhood.
13. The County provided an appraisal report that determined the value of the subject to be \$\$\$\$\$ as of the January 1, 2007 lien date. (Exhibit R-1).
 - a. The County’s first comparable property is a .55 acre residential lot located 0.21 miles from the subject. Adjustments were made for seller concessions and lot size/view. The lot sold for \$\$\$\$\$ on January 29, 2007 for \$\$\$\$\$ and had an adjusted sales price of \$\$\$\$\$.

- b. The County's second comparable property is a .44 acre residential lot located 0.60 miles from the subject. Adjustments were made for the size of the lot. The lot sold for \$\$\$\$\$ on October 12, 2006 and had an adjusted sales price of \$\$\$\$\$.
 - c. The County's third comparable property is a .40 acre residential lot located 0.40 miles from the subject. Adjustments were made for the size of the lot. The lot sold for \$\$\$\$\$ on August 17, 2006 and had an adjusted sales price of \$\$\$\$\$.
14. The County provided information on the sale of a .34 acre residential lot located near the subject that sold for \$\$\$\$\$ on November 2, 2006. (Exhibit R-2). The County's appraiser offered testimony that the adjusted sales price of this lot would be \$\$\$\$\$.

APPLICABLE LAW

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

- (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).

Utah Code Ann. §59-2-301 provides, “[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.”

The county assessor is required to update property values on an annual basis, under Utah Code Ann. §59-2-306, set forth below in pertinent part:

- (1) Beginning January 1, 1994, each county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data. In addition, the county assessor shall complete a detailed review of property characteristics for each property at least once every five years.

Utah Code Ann. §59-2-306 (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

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). The Commission finds that the Taxpayer has failed to demonstrate that the Board of Equalization's value was in error, nor did the Taxpayer provide any evidence that would support his requested value of \$\$\$\$\$.

To prevail on an equalization theory, a taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. Taxpayer has provided information on sixteen different properties that have a lower per acre value than the subject. However, Taxpayer has not shown the properties to be comparable to the subject. The Commission finds the Taxpayer's evidence insufficient to show that the value should be lowered based on the provisions for equalization in Utah Code Ann. §59-2-1006(4). Therefore, the Commission finds that the taxpayer has not sustained his burden of proof, and there is no evidence to support an adjustment of value determined by the Board of Equalization.

Property tax is based on the market value of the property, which is defined under Utah Code Ann. §59-2-102 as the amount for which property would exchange hands between a willing buyer and seller. While the Taxpayer offered testimony that the PROPERTY should be used as a comparable because it was accepted at a hearing in 1997, the Commission declines to accept the PROPERTY as comparable for the 2007 tax year. The County is required under Utah Code Ann. §59-2-303.1 to determine the value of property each year. In support of its valuation for the January 1, 2007 lien date, the County submitted a retrospective appraisal, using comparable properties located near the subject that sold within a few months of the lien date. The County's appraiser determined the value of the subject property as of the January 1, 2007 lien date to be \$\$\$\$\$, but asked the Commission to sustain the Board of Equalization value of \$\$\$\$\$. The evidence presented indicates that as of the January 1, 2007 lien date, the subject property had a significantly higher market value than the Taxpayer requested. The Commission finds that the value established by the Board of Equalization of \$\$\$\$\$ should be sustained.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. #####-1 to be \$\$\$\$ as of the January 1, 2007 lien date. It is so ordered.

DATED this _____ day of _____, 2009.

Jan Marshall
Administrative Law Judge

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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