
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 08-0414 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2007 Judge: Marshall
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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:
D’Arcy Dixon Pignanelli, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP, Attorney for Taxpayer
 PETITIONER
For Respondent: RESPONDENT REP 1, Senior Appraiser for Summit County
 RESPONDENT REP 2, Appraiser for Summit County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 29, 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 Summit County, Utah. For the January 1, 2007 lien date, the County Assessor had valued the property at \$\$\$\$\$, which the Board of Equalization sustained. The County is asking the Commission to sustain that value. Taxpayer is requesting the value of the secondary acreage be reduced.

2. The subject property is parcel no.#####. It is a 20.61-acre vacant residential lot located in the (X) in CITY, Utah. There are no sewer connections, no utilities, and no water on the property. A public road bisects the subject property.
3. (X) is a subdivision that is mostly open sage covered hills and valleys, with views of (X), and a minimum lot size of (X).
4. RESPONDENT REP 2 created a “land guide” for the County to use in setting the values for the (X). The first acre of each lot is valued at \$\$\$\$\$. The secondary acreage is valued at a base of \$\$\$\$\$ per acre, with an additional percentage of the value of the secondary acreage added to the total value. The factors the County considered in determining what percentage to add are view, terrain, steepness, vegetation, slope, and sales.
5. To determine the values used in the land guideline, RESPONDENT REP 2 looked at all of the available sales information for the subdivision and made a judgment call as to the variables influencing purchasers.
6. Taxpayer submitted the County’s land guide for the (X) as Exhibit B. Following is a breakdown of the factors identified in the land guide for each percentage, and the lots that fall under each percentage:

	Lots 1-12,16- 28,& 63- 67	Lots 13-15 & 29-47	Lots 48 & 49	Lots 50-62	Lots 68-72
Percentage	50%	5%	90%	57%	28%
View	Yes		Yes	Yes	
Terrain			Yes	Yes	Yes
Steepness					Yes
Vegetation	Yes	Yes	Yes		
Slope	Yes	Yes			
Sales	Yes	Yes	Yes	Yes	Yes

7. The County submitted as Exhibit 1 a map of the (X). The County divided the subdivision into five ranges based on sales prices; \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. The subject lies in the \$\$\$\$\$ range.
8. As Exhibit D, the Taxpayer submitted the County’s listing of all properties in the \$\$\$\$\$, and their values.

9. The County has assessed the following values on the lots in the \$\$\$\$\$ range:

<u>Lot Number</u>	<u>Value</u>
Subject	\$\$\$\$\$
Lot 43	\$\$\$\$\$
Lot 44	\$\$\$\$\$
Lot 45	\$\$\$\$\$
Lot 46	\$\$\$\$\$
Lot 47	\$\$\$\$\$
Lot 49	\$\$\$\$\$
Lot 50	\$\$\$\$\$

10. RESPONDENT REP 2 considered the subject and lot 49 to be the two most desirable lots in the subdivision. He testified that sales price, location, and access were the three biggest factors in his determination of value for the subject.
11. Taxpayer submitted as Exhibit A several photographs of the subject. The subject has lake views, and the topography is less steep than other lots in the subdivision. The subject is located on a main road in the subdivision, and there is another road that cuts through the property.
12. Exhibit A also includes photographs of Lot 46, which is located directly North of the subject. Lot 46 is a higher elevation than the subject, has similar vegetation, and is also located on a road.
13. Also included in Exhibit A are photographs of Lot 45, which is located North of the subject. Lot 46 has similar vegetation, appears to have a steeper topography, and has a view of the lake similar to that of the subject.
14. Taxpayer submitted as Exhibit E an appraisal report prepared by the County. The appraisal report notes that land purchases “tend to be highly subjective and the buyers motivation is not readily discernable, hence the wide range of net and gross sale prices.”

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. §59-2-102(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.”

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).

A 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).

CONCLUSIONS OF LAW

The fair market value of the subject is not at issue. Taxpayer's appeal concerns equalization. Taxpayer contends that the valuation of the secondary acreage of the subject is inequitable based on the assessed values of other lots in the subdivision. 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. The Commission finds that the Taxpayer did raise an equalization argument, and thus meets the first prong of the test for a successful equalization argument. The remaining issue is whether Taxpayer has shown that the value of the subject deviates more than 5% from the assessed value of comparable properties.

The Taxpayer provided as Exhibit B a copy of the "land guide" developed and used by the County to determine values in the (X) subdivision. The Taxpayer argued that the land guide was vague and confusing, and that the factors used to determine the additional percentage for the value of secondary acreage were not consistent. As Exhibit D, the Taxpayer provided a copy of a listing of all property values for the (X) that was prepared by the County. The average lot value in the subdivision is \$\$\$\$\$, more than 30% less than the subject.

The County offered as Exhibit 1 a plat map of the (X). The County's appraiser had marked off different sections of the plat map, grouped, and labeled them based on sales prices. The County's representative explained that to establish the land guide, the appraiser looked at land sales, and compared the factors influencing the lots to group the properties on the map. The County's appraiser considered the most important factors to be the sales price, location, and access to the property, and noted that in his opinion, the subject and lot 49 are the most desirable lots in the subdivision. However, upon questioning,

the County's representative was unable to explain how much weight was given to each of the factors identified on the land guide he created, or how he determined the additional percentage amounts.

Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. The Commission is mindful that the County has assessed the subject at less than the Taxpayer's purchase price of \$\$\$\$\$, arguably the fair market value of the property. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm'n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner "singled out" for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

The evidence presented indicates that the secondary acreage of the subject received a higher total valuation per secondary acre than neighboring properties. Typically, the factors identified by the County, such as view, terrain, vegetation, and slope would affect the value of a property. However, in its Exhibit 1, the County grouped the subject property with seven other properties that sold for approximately \$\$\$\$\$. Of those seven properties, only one other property had an additional 90% of the secondary acreage value added to the total. Lots 43 through 47 had only an additional 5% of the secondary acreage value added to the total, and lot 50 had an additional 57% of the secondary acreage value added to the total value. Because the County grouped these properties together, the Commission considers them to be comparable to the subject. The average value of the eight properties the County grouped together in the \$\$\$\$\$ range is \$\$\$\$\$. This is more than 24% less than the subject. The Commission finds that the Taxpayer has shown that the value of the subject deviates more than 5% from the comparable properties.

It is undisputed the subject is one of the most desirable lots in the subdivision. However, the assessed value of the secondary acreage is significantly higher than six of the seven properties the County grouped together. The Commission finds that an addition of 57% of the secondary acreage value is appropriate, and thus the subject would have an equalized total value of \$\$\$\$\$. This value is broken down as follows: \$\$\$\$\$ for the first acre, \$\$\$\$\$ for the secondary acreage, and \$\$\$\$\$ for the addition to the secondary acreage.

DECISION AND ORDER

Appeal No. 08-0414

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. ##### is \$\$\$\$ as of the January 1, 2007 lien date. The County Auditor is hereby ordered to adjust its records in accordance with this decision. 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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