

08-2397
LOCALLY ASSESSED PROPERTY
SIGNED 10-23-09

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p>Petitioner,</p> <p>vs.</p> <p>GRAND COUNTY BOARD OF EQUALIZATION</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-2397</p> <p>Parcel No's. ##### - 1, ##### - 2 ##### - 3, ##### - 4</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: M. Johnson</p>
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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 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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REP, Representative and Real Estate Broker

For Respondent: RESPONDENT REP 1, Grand County Assessor
RESPONDENT REP 2, Grand County Chief Deputy Assessor
RESPONDENT REP 3, Grand County Chief Deputy Clerk Auditor

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Grand County Board of Equalization ("the County" or "BOE"). This matter was presented in an Initial Hearing on August 28, 2009. The subject properties comprise four separate parcels located near CITY, Utah. They are parcel

#’s ##### - 1 (“Parcel 10”), ##### - 2 (“PARCEL (X)”), ##### - 3 (“PARCEL (X)”), and ##### - 4 (“Parcel 40”).

The file and record forwarded to the Tax Commission included one original, and two identical copies, of an appeal for Parcel ##### - 1. However, the County also included the BOE record for all of the parcels listed above. At the hearing, the Taxpayer’s representative (“Representative”), who is a real estate broker, and the assessor also discussed these parcels. For these reasons, the Commission will consider all of the parcels.

For the January 1, 2008 lien date The Grand County Assessor’s Office initially assessed Parcel 10 at \$\$\$\$\$. The Board of Equalization sustained this value. PARCEL (X) was assessed at \$\$\$\$\$, which was sustained by the BOE. PARCEL (X) was originally assessed at \$\$\$\$\$, which the BOE reduced to \$\$\$\$\$¹. Parcel 40 was originally assessed at \$\$\$\$\$, which was also sustained by the BOE. The County is requesting that the Commission also sustain the values set by the BOE. The Taxpayer requests a reduction in the assessment, but did not specify an amount in the written Petition. At the hearing, the representative stated that the properties were worth \$\$\$\$\$ as of the lien date.

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. . . .

Utah Code Ann. §59-2-103 (2008).

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) (2008).

¹ The BOE, based on an appeal initiated by the assessor, reduced the acreage from 24.9 acres to 20 acres. At the same time the value per acre was reduced from \$\$\$\$\$ to \$\$\$\$\$.

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.
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- (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 (2008).

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).

DISCUSSION

Of the four parcels, only PARCEL (X) has an improvement. The value of that improvement was not raised during the hearing or on any of the documents submitted by the Taxpayer. Accordingly, the assessment for the improvement will not be considered in this decision. Parcel 10 is a 116-acre tract, assessed at \$\$\$\$\$ per acre. PARCEL (X) is assessed at \$\$\$\$\$ an acre for 34.71 acres, PARCEL (X) is assessed at \$\$\$\$\$ per acre for 20 acres, and Parcel 40 is assessed at \$\$\$\$\$ per acre for 40 acres.

In the written petition to the BOE, the Taxpayer stated that only surface rights had been purchased, but none of the gas and mineral rights. The Taxpayer wrote that because the surface rights had not changed, "I protest the property tax increase."

At the hearing, the representative questioned why the taxes increased so much from the prior year. From 2007, according to the Taxpayer, 2008 taxes had increased by 130% for PARCEL (X). The assessment records indicate that the 2007 and 2008 values were the same, but do show that the budgeted taxes did increase by approximately 130% from the prior year. The highest increase in taxes was for parcel 10; 16 times over the prior year.² The broker also indentified increases for other parcels, some of which had not been appealed.

The representative stated that the County's valuation for 2008 was higher than was paid for the subject property. He had no information and stated that he had no permission to disclose the sales price.

The representative testified that the subject property was zoned "Range and Graze." He stated that there were future plans to develop the property and that the County improperly valued the subject property in line with a future zoning change. The representative stated that he was confident that zoning would change in 1½ to 2 years. Both parties agreed that the Taxpayer purchased the subject property based on a proposed railroad yard being built on the property. The representative stated that the subject property would currently list at \$\$\$\$\$ to \$\$\$\$\$ per acre. According to the representative, as of January 1, 2008, a value of \$\$\$\$\$ per acre would be appropriate for the subject properties. The Taxpayer's written petition stated that the land was purchased on the basis of "(PORTION REMOVED)" but "they are no longer interested in giving their approval."

The assessor testified that that other properties in the CITY area were zoned "Heavy Industrial," but that she didn't know about the zoning for the subject property. The County also testified that Parcel (X) was sold for \$\$\$\$\$ in October 2007. In support of this, a copy of a document titled "Real Property Transfer Survey" ("Survey") that was issued by the Tax Commission was attached to the BOE file. The document identified a Parcel I.D. of ##### - 1, and indicated a signature for PERSON, which appeared to be the same signature on the petitions to the Tax Commission and the BOE. The date of sale specified on the survey was May 25, 2007. Another survey indicated a purchase price of \$\$\$\$\$ for PARCEL (X), which was the sales price according to the assessor's testimony. The date of sale on the survey was January 31, 2007. However, attached to the BOE file for PARCEL (X) was a Warranty Deed, as well exhibits and schedules, which appeared to be associated with the deed. These documents indicate a price of \$\$\$\$\$, but suggest that a second parcel -- ##### - 5- was also included. Finally, while the assessor did not testify to this sale, a third survey was submitted for parcel ##### - 4. The typewritten "(X)" had been crossed out and a "(X)" had been handwritten in. The date of sale was January 31, 2007 and the sales price was \$\$\$\$\$.

² The representative also asserted a tax increase for parcel (X). There was no appeal for a parcel with that number associated. There was an appeal for parcel ##### - 3, which was not mentioned at all by the representative.

The County explained that there was no change in value for PARCEL (X), which was valued at \$\$\$\$\$/acre for 34.71 acres, even though there was a railroad.

Although the assessor did not know about zoning when the property was being re-assessed, she testified that she was told that the properties were being developed.

Before considering valuation and equalization issues, the Commission will first address the question of tax increases. This is an issue that is not properly before the Commission. Tax increases are a budgetary matter under the jurisdiction of the local entities within a county. The Tax Commission is only allowed under the laws of the State of Utah to hear and rule on property assessments, including valuation and equalization questions. Accordingly, the Commission will not consider the Taxpayer's claim with respect to tax increases, other than indirectly as they may result from valuation increases. The Commission observes that PARCEL (X) was subject to a 30% tax increase without any increase in valuation from the 2007 tax year.

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Taxpayer testified that purchase price was not relevant because the Railroad deal had fallen through, and asked the Commission to reduce the value of the subject. The Taxpayer's representative offered testimony that a value of \$\$\$\$\$ per would be appropriate.

In this case, the sales price for one of the subject parcels is undisputed. The Taxpayer purchased the parcel (X) for investment purposes as of the purchase date in May 2007, based on a perceived change in use at that time. The Taxpayer had expected a railroad yard to be built. The County valued at least some of the subject properties based on that sales price. Because of the inconsistencies surrounding the documents for the sales prices of parcels (X) and (X), the Commission deems those sales to be immaterial for purposes of this hearing.

When determining the fair market value of a property, the statute requires the property to be valued pursuant to its current zoning unless there is a reasonable probability that the zoning would change during the tax year at issue. *See* Utah Code Sec. 59-2-102(12). The statute requires that the market value for property tax valuation not include the value of prospective changes in zoning. The County did not dispute that the subject property is zoned "Range and Graze," and did not argue that the zoning would change within the next year. The County did not argue either that the highest and best use of the property was as a speculative investment, or even that construction of a railroad yard was feasible in the near future. The Commission concludes that it must consider that this property was zoned Range and Graze and value it as such, as there was no reasonable probability during the 2008 tax year that the zoning

would be changed. Therefore, the Commission gives little weight to the comparables offered in this matter, again noting that the basis for two of the sales could not be established. Furthermore, the acreage assessments are erratic, ranging from \$\$\$\$\$ to \$\$\$\$\$ per acre. Although the assessor initially valued the property based on a purchase, at the time of the purchase, it was anticipated that the zoning would change and a railroad yard would be built. It was testified that after the transaction the proposed deal had fallen through, and the zoning was not changed. The only relevant testimony as to the value of the subject property under its current zoning and future use was provided by the representative, who testified that he thought the property was worth \$\$\$\$\$ per acre on the lien date.

Because the County did not refute the Taxpayer's arguments, and did not adequately explain the current assessed values in terms of market conditions occurring subsequent to the transaction, the Commission finds that the Taxpayer has met its burden of proof with respect to the valuation issue.

To prevail on equalization argument, a Taxpayer must show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. The Taxpayer indirectly raised an equalization argument by comparing the "Range and Graze" zoning for the subject properties with the "Heavy Industrial" zoning for other properties in the immediate area. However, no evidence was presented to show the values of those properties. The Commission finds that the Taxpayer failed to show that the value of the subject deviates more 5% from the comparable properties. Therefore, the Commission denies the Taxpayer's equalization claim. Moreover, the assessment for PARCEL (X) will be set in line with the other subject properties.

The Commission finds the value of the subject properties to be \$\$\$\$\$ per acre.

The Commission also has a broader concern. It appears over the course of several hearings during the past few years that the assessor may be selectively reappraising properties when they sell. If this is the case, there are two problems. First, it skews, or at least has the potential to distort, the sales ratio program conducted by the Property Tax Division. Second, and perhaps more importantly it violates the Equal Protection Clause under the 14th Amendment to the U.S. Constitution. The Supreme Court found in *Allegheny Pittsburgh Coal Co. v. County Com'n*, 109 S.Ct. 633 (1989) that the assessment method under review to be unconstitutional because it led to "taxation which in fact bears unequally on persons or property of the same class." That case involved an assessment of a West Virginia coal mine that had been assessed based on its selling price. West Virginia's Constitution provided that the taxation of property shall be equal and uniform and in proportion to its value. This provision is similar to Utah's statutory property tax scheme.

The Tax Commission hereby notifies the Grand County Assessor that it will undertake an independent review of the assessment practices in that county. Specifically, the Commission will

determine whether properties are singled out and reassessed or revalued based on transaction prices, when properties of a similar class remain at existing assessment levels.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject properties as of the January 1, 2008 lien date to be as follows: \$\$\$\$ for Parcel No. ##### - 1; \$\$\$\$ for Parcel ##### - 2; \$\$\$\$ for Parcel ##### - 3; and \$\$\$\$ for Parcel ##### - 4. It is so ordered. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 Petitioner'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 _____, 2009.

Marc B. Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this ____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli

Appeal No. 08-2397

Commissioner

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