

10-0257

LOCALLY ASSESSED PROPERTY

TAX YEAR: 2009

SIGNED: 02-02-2012

COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF RURAL  
COUNTY, UTAH,

Respondent.

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

Appeal No. 10-0257

Parcel No. #####-1

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009

Judge: Phan

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**Presiding:**

Marc Johnson, Commissioner

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor

RESPONDENT REP. 2, Certified Residential Appraiser, RURAL COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on October 25, 2011. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") had filed an appeal of the assessed value of the subject property for the lien date January 1, 2009 as well as the County's denial of the primary residential exemption for the property. Prior to the hearing, during a mediation conference, the parties reached a stipulation to reduce the assessed value to \$\$\$\$ for the lien date at issue. The Tax Commission issued an Order of Approval regarding the stipulation on September 2, 2010. The only issue presented to the Commission during the Formal Hearing was whether or not the property should receive the primary residential exemption.

2. The property at issue is Parcel No. #####-1 and is located at ADDRESS, CITY 1, Utah. It is a

single family residence that has 2,745 square feet above grade and a basement of 1,910 square feet. The residence has 1,480 square feet on the main level and an unfinished basement of 1,450 square feet. The subject residence is located in a subdivision of newer, single family homes near CITY 1. There are eighteen lots in the subdivision with six to ten homes constructed. From the evidence presented by the parties these homes are now used as primary residential homes. The County was unable to provide information at the Hearing on how many had received the primary residential exemption for the 2009 tax year. The Taxpayer noted that the subject subdivision is located in an area near the city, not in any of the recreational areas near the lake or skiing.

3. The Taxpayer had purchased the subject property on June 4, 2009, and moved into the property at that time as his primary residence. He explained that once he moved in, it was his only residence, and he did not own or maintain any other residential property or vacation home.

4. The subject residence was a new construction and no one had lived in the property prior to the Taxpayer. Although a Certificate of Occupancy and Zoning Compliance was not issued for the subject residence until June 1, 2009, the building permit for the residence had been taken out in March 2008. The Taxpayer testified that he had toured the subject home in August or September 2008 and it appeared to him to be completed at that time. He did not purchase then, because the price asked for the home was too high, and then later as the market declined in 2009, they were able to purchase the property for \$\$\$\$\$.

5. Prior to the purchase of the subject, the Taxpayer resided in another residential property in RURAL COUNTY and that property received the primary residential exemption.

6. The Taxpayer did not meet the County's deadline for filing a RURAL COUNTY Affidavit of Primary Residence by May 22, 2009 for the 2009 tax year, as he did not own the residence at that time. He filed the affidavit on June 17, 2009, and then appealed the County's denial of the exemption to the County Board of Equalization.

7. The County did not dispute that once the Taxpayer had moved into the property it became his primary residence and granted the property the exemption for 2010 and 2011.

8. The County representatives testified that in the County they have a large number of secondary homes and that they treat all new construction as secondary until they receive an Affidavit of Primary Residence from the property owner. They did not offer at the hearing a percentage of how many homes in the County were primary and how many were secondary. They also testified that there were a lot of vacant homes in the County for a couple of years and they did not know whether they would end up being used for primary

or secondary residences. They did point to one home located near the subject property's subdivision that was a secondary home.

9. Although some percentage of homes in RURAL COUNTY are secondary, there was no showing that more newly constructed homes were purchased as secondary residences than as primary residences. In the subject property's subdivision, all homes were purchased for use as primary residences. The County has not shown that it is reasonable to assume every newly constructed single family residence will be used as a second home once construction is completed at it becomes occupied. The location of the subject is in a single family detached dwelling subdivision near CITY 1, and not in a recreational area. It was knowable as of the lien date that once the subject residence was finished and occupied it would be the primary residence of the purchaser.

#### APPLICABLE LAW

The law governing primary residential status is set out in Utah Code Ann. §§ 59-2-103 and 59-2-103.5. Section § 59-2-103 provides:

- (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.
- (4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.  
(b) An owner of multiple residential properties located within the state is allowed a residential exemption under Subsection (2) for:
  - (i) subject to Subsection (4)(a), the primary residence of the owner; and
  - (ii) each residential property that is the primary residence of a tenant.

Section 59-2-103.5 provides:

- (1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of

the residential property shall file with the county board of equalization a statement:

- (a) on a form prescribed by the commission by rule;
  - (b) signed by all of the owners of the residential property;
  - (c) certifying that the residential property is residential property; and
  - (d) containing other information as required by the commission by rule.
- (2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:
- (i) the county legislative body enacts the ordinance described in Subsection (1); and
  - (ii) the county board of equalization determines that the requirements of Subsection (1) are met.
- (b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:
- (i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;
  - (ii) an ownership interest in that residential property changes; or
  - (iii) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103.
- . . .
- (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:
- (i) the form for the statement described in Subsection (1); and
  - (ii) the contents of the form for the statement described in Subsection (1).
- (b) The commission shall make the form described in Subsection (4)(a) available to counties.

Utah Admin. Rule R884-24P-52 has been adopted by the Commission and provides in part as follows:

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

. . . .

F. Administration of the Residential Exemption.

....

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

....

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

RURAL COUNTY enacted Section 4.02.01 Applying and Qualifying for the Residential Exemption as follows:

(1) Generally. It is the intent of this section to provide, consistent with the requirements of Title 59, Chapter 2 of the Utah Code, as amended, a standardized criteria and procedure for determining a person's eligibility for the residential exemption from property tax, based on the nature, quality, and quantity of the actual occupancy or use of the structure in question and not by the classification or the intended use of the structures.

(2) Procedure to Qualify for Residential Exemption

(a) Application.

(i) A property owner or the owner's designee shall submit an application for a residential exemption from property taxes to the RURAL COUNTY Assessor no later than May 22 of the tax year for which the owner seeks the exemption. . . .

(b) Determination by County Assessor

(i) The County Assessor shall determine whether property qualifies for the residential exemption. The County Assessor shall disallow the exemption if (a) an owner does not prove eligibility for the residential exemption; (b) an owner fails to disclose information reasonable requested by the County Assessor; or (c) an owner's application is not timely filed.

....

(c) Board of Equalization

(i) A property owner who is dissatisfied with the County Assessor's determination may appeal to the Board of Equalization. If the Assessor disallowed the exemption because the owner failed to prove eligibility, the Board of Equalization may grant the exemption, but only if the owner presents to the Board evidence proving the property is used as a primary residence.

. . .  
(b) Eligibility Guidelines

. . .  
(iii) Buildings under Construction. Buildings that are not completely constructed and occupied as a primary residence on January 1 of the tax year do not qualify for the residential exemption. To qualify, the building must be: (a) complete, (b) valued by the County Assessor for property tax purposes as a completed building, and (c) legally occupied by a person who uses the building as his or her primary residence.

DISCUSSION

The issue before the Commission in this matter is whether the County had properly denied a primary residential exemption for the subject property for the 2009 tax year. The Taxpayer argues that the County’s ordinance requiring an application be filed by the May deadline was contrary to the Standards of Practice which is prepared by the Tax Commission. Although the Taxpayer was likely unaware of a previous decision from the Tax Commission, the facts in this case are very similar to those in Appeal No. 10-0251. In *State Tax Commission’s Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 10-0251*,<sup>1</sup> issued on July 5, 2011, the State Tax Commission found, based on facts<sup>2</sup> very similar to those in this appeal, that the Taxpayer was entitled to the exemption. In that case, RURAL COUNTY’s basis for denial of the exemption was that those property owners had failed to file an application for the exemption by May 22, 2009, thereby missing the deadline set by RURAL COUNTY Ordinance 4.02.01 (County Ordinance 4.02.01). The County had also argued in that case that those property owners’ prior residence had received the primary residential exemption for all of 2009, which they again pointed out in this case.

After consideration of the applicable law, it was the Commission’s Conclusion in *Appeal No. 10-0251* regarding the application deadline set out in RURAL COUNTY Ordinance 4.02.01(2)(a), that the County’s “application procedure is clearly contrary to the statutory provisions of Utah Code § 59-2-103.5.” The Commission noted in Appeal 10-0251 that RURAL COUNTY Ordinance 4.02.01 provides that the application is to be filed with the County Assessor and it is the County Assessor that makes a determination as to whether the requirements are met and then concluded as follows:

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1 Redacted versions of prior Utah State Tax Commission Decisions are available on the internet at [tax.utah.gov/commission/decisions](http://tax.utah.gov/commission/decisions).

2 One of the factors presented in that case by the County was that 7,498 parcels in the County received the primary residential status in the County for 2009 and 3,813 did not.

[i]f the application for a primary residential exemption and the action upon receipt of the application were a decision or a duty of the County Assessor, setting a May 22 deadline would not seem arbitrary. However, under the statutory framework, the Assessor is not the one to whom the application for the primary residential exemption is to be filed, nor is the Assessor the one who is to make a decision based on the application. Utah Code Sec. 59-2-103.5 (1) specifies that the application for the primary residential exemption shall be filed with the County Board of Equalization and Subsection (2) of that section indicates that it is the County Board of Equalization that determines if the requirements are met. This is contrary to the County's Ordinance that places this duty on the Assessor.

It was the Commission's conclusion in *Appeal No. 10-0251* that the fact those property owners had failed to meet the County's May 22 application deadline was not basis for the County to deny them the exemption.<sup>3</sup>

In this case the County points to RURAL COUNTY Ordinance 4.02.01 as support for the position that buildings under construction as of January 1, are prohibited from qualifying for the residential exemption. The Tax Commission had found in *Appeal No. 10-0251* and a prior decision dealing with a similar ordinance in Grand County in *Appeal No. 08-2408*, that this provision was invalid because it was inconsistent with statutory provisions as well as those in Utah Admin. Rule 884-24P-20.<sup>4</sup> The Commission's conclusion in *Appeal No. 08-2408* was stated as follows:

“Nor do we believe that the statute permits a county to create an ordinance that would disallow a residential exemption for an incomplete residential property simply because it is located in a county with a high amount of secondary residential property. To the Contrary, an ordinance is not even necessary for this situation. The assessor is required to grant the exemption only when it can be established that the property will be used as a primary residence. If such a determination cannot be made, there is no requirement to grant the exemption, and the burden is on the property owner to establish both 1) that the property will be a primary residence, and 2) that its status as a primary residence was knowable on the lien date.”<sup>5</sup>

In this case the Taxpayer moved to the subject property in June 2009 and it became his primary

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3 In this appeal the County pointed out that the Property Owner had been living in another house in the County on the lien date. In *Appeal No. 10-0251*, the County had argued that because the property owners' prior property had been given the primary residential exemption for the 2009 tax year they were receiving two exemptions in violation of Utah Code Sec. 59-2-103(4)(a), which limits the residential exemption to one per household. The Commission found against the County on this argument as well in *Appeal No. 10-0251*, citing to the decision *Tax Commission Appeal No. 08-2408*.

4 See *Tax Commission Initial Hearing Decisions*, Appeal Nos. 08-2408 & 08-2386.

5 *Tax Commission Initial Hearing Decision*, Appeal No. 08-2408, pg.10.

residence at that time so he has established that the property will be a primary residence. The second consideration is whether this status as a primary residence was knowable on the lien date. The Commission concludes that it is not sufficient for the County to say because there is a high proportion of non-primary parcels it can assume all incomplete or unoccupied residential construction is non-primary, because this is contrary to Utah Administrative Rule R994-24P-52. In this case the County did not offer a percentage of primary versus secondary residences. The evidence regarding the specific subject property indicates that it was in a residential subdivision located near the city and not in a recreational area. The properties in the subdivision were single family residences on individual lots. There was no indication that it was marketed as recreational property and of the homes purchases became the primary residence for the purchasers. These facts support the conclusion that it was knowable on the lien date that the property would become a primary residence once it was completed and occupied.

#### CONCLUSIONS OF LAW

1. The County Board's interpretation and reliance on the provisions of County Ordinance 4.02.01(2)(a)(i) to deny the appeal because the Taxpayer missed the May 22 deadline to file an application to the County Assessor is contrary to law. Under the provisions of Utah Code Sec. 59-2-103.5 the Property Owner submits an application to the County Board and the County Board acts on that application. There is no statutory requirement to file an application to the County Assessor.

2. The provision of County Ordinance 4.02.01(3)(b)(iii) that dictates that a building under construction on the lien date does not qualify for the residential exemption is invalid as it is contrary to provisions in the Utah Code and Utah Administrative Rules.

3. The County Board should have considered if the subject property would be a primary residence and if its status as a primary residence was knowable on the lien date. It is not sufficient for the County to disallow a residential exemption for an incomplete residential property simply because it is located in a county with a high percentage of secondary residential property. See *Utah Tax Commission's Findings of Fact Conclusions of Law and Final Decision, Appeal No. 10-0251* and Utah Administrative Rule R884-24P-52(F).



The Taxpayer has shown that they used this property as their primary residence and further that it was knowable on the lien date that the property would be a primary residence. The subject property should receive the primary residential exemption.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the property qualifies for the primary residential exemption for tax year 2009. The County is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
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. 63G-4-302. 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 63G-4-401 et seq.