

10-3060
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2010
SIGNED: 08-10-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 10-3060
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2010
	Judge: Jensen

This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the 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:

Michael Cragun, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., for the Taxpayer
For Respondent: RESPONDENT REP. 1, for the County
RESPONDENT REP. 2, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 4, 2012. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The-above-named Petitioner (“the Taxpayer”) is appealing the assessed value of the subject property as set by the RURAL COUNTY Board of Equalization (the “County”) for the lien date January 1, 2010.

2. The subject property, parcel no. #####, is located at ADDRESS 1 in RURAL COUNTY. The RURAL COUNTY Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2010 lien date. The Board of Equalization sustained that value. The County is asking the Commission to sustain the Board’s action. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

3. The subject property is an 80-unit apartment building. Approximately 80% of the units are low-income apartments.

4. To qualify for federal tax incentives, the owners of the subject property made agreements to provide a specified amount of low-income housing at the subject property. Because rental rates for low-income housing are calculated on the basis of tenants’ income, rental income for low-income housing is generally lower than would be expected for market rents.

5. The parties agree that for the 2010 tax year, the subject property should be valued for property tax purposes in accordance with its status as low-income property under Utah Code Ann. §59-2-301.3.

6. Utah Administrative Rule R884-24P-67 (“Rule 67”), requires the owner of low-income housing to provide a report to the applicable county assessor by April 30 of each year that includes an operating statement, rent rolls, and federal and commercial financing terms and agreements.

7. The Taxpayer did not provide the information required by Rule 67 by the April 30, 2010 deadline for the 2010 tax year. The Taxpayer supplied the required information on or about September 13, 2010.

8. When the Taxpayer appeared at the board of equalization hearing in September or October of 2010, the board acknowledged the Taxpayer’s appeal but refused to consider for the 2010 tax year the information that Rule 67 would have required that the Taxpayer submit by April 30, 2010.

9. At the formal hearing before the Commission, the County provided testimony that the County Assessor had determined the \$\$\$\$ for 2010 using information that it received from the Taxpayer before April 30, 2010. Specifically, the County’s representative indicated that the County Assessor used 2006 information as supplied by the Taxpayer.

10. The parties agree that if the Commission determines as a matter of law that the Taxpayer has the right to present at the board of equalization the information that Rule 67 would have required that the Taxpayer present to the county assessor by April 30, 2010, the subject property should be valued at \$\$\$\$ for the 2010 tax year. They likewise agree that if the passage of the April 30, 2010 deadline prevents the Taxpayer from providing the information in time to be considered for the 2010 tax year, the subject property should be valued at \$\$\$\$ for 2010.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

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.

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.

For subsidized housing, Utah Code Ann. §59-2-301.3(2) provides:

In assessing the fair market value of real property that is subject to a low-income housing covenant, a county assessor shall include as part of the assessment any effects the low-income housing covenant may have on the fair market value of the real property.

Utah Administrative Rule R884-24P-67 provides additional guidance for the valuation of real property qualifying for valuation as low income housing, as follows in pertinent part:

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

* * * *

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

DISCUSSION

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 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 Taxpayer maintains that the \$\$\$\$ value set by the board of equalization contains error because the County relied on old information in valuing the subject property for the 2010 tax year. The Taxpayer's position is that the County should rely on more recent information, even if that information comes from a taxpayer that failed to comply with the April 30 deadline provided by Rule 67.

The County acknowledges that it completed its 2010 valuation of the subject property using 2006 information. The County's position is that Rule 67 requires this outcome when a taxpayer fails to comply with the Rule 67 deadline. It cites Utah Administrative Rule R884-24P-67(E) for the requirement that it value the subject property "using the best information obtainable" because the Taxpayer did not meet the April 30 deadline for the 2010 tax year. It likens this outcome to that set forth in statute for taxpayers who fail to comply with deadlines for Utah's Farmland Assessment Act.

Rule 67 is an appropriate exercise of the Commission's authority. It is appropriate to provide rules whereby the Assessor can obtain the information necessary to value low-income

housing pursuant to the statutory directives. It is also appropriate to provide guidance to the Assessor if that information is not forthcoming. However, that the Rule does not preclude the Assessor from considering such information if it is not filed in a timely fashion. Moreover, the Rule does not preclude either the Board of Equalization or the Tax Commission from considering such information.

In reaching this conclusion, the Commission is guided by various principles. First, the Tax Commission rules must be consistent with the governing statute and generally cannot expand or restrict the rights granted by the statute. *See generally, Sanders Brine Shrimp v. Audit Division*, 846 P.2d 1304 (Utah 1993). Utah Code Ann. §59-2-301.3(2) specifically requires information regarding the impact of the low income covenants to be taken into account.

Second, this valuation provision is a substantive valuation rule. It is not an exemption or an exception from the property tax. Presumably, the Legislature enacted the statute because it believed it was an appropriate interpretation of the constitutional mandate to assess all property in the state “at a uniform and equal rate in proportion to its fair market value, *to be ascertained as provided by law.*” *See* Utah Constitution, Article XIII, Section 2 (emphasis added).

Finally, when the Legislature has intended to limit tax treatment based on filing deadlines, it has done so explicitly. Section 59-2-306 allows a county assessor to require a taxpayer to file a personal property statement. If the taxpayer fails to do so, the assessor “shall make an estimate based on known facts and circumstances.” Section 59-2-307(a)(i)(b). This is similar to Rule 67. However, the statute then provides that “[t]he value fixed by the assessor in accordance with Subsection (3)(a)(i) may not be reduced by the county board of equalization or by the commission.” Section 59-2-508(2)(c)(i) sets a May 1 deadline to apply for special tax treatment under Utah’s Farmland Assessment Act. Section 59-2-505(1)(a)(ii)(A) provides that a county assessor shall not consider land for assessment under the Farmland Assessment Act unless the owner has “made a timely application in accordance with Section 508.” There is no such language in the low-income housing statute.

The County cites *Schurtz v. BMW*, 814 P.2d 1108, 1112 (Utah 1991) for the principle that courts “should construe statutory provisions so as to give full effect to all their terms, where possible.” The County argues that for the Commission to allow submission of documents after the April 30 deadline imposed by Rule 67 gives no effect whatsoever to the language imposing the April 30 deadline. The Commission agrees that giving full effect to all statutory language, where possible, is a basic tenet of statutory construction. However, Utah courts have also made clear that statutory language “should be read in harmony with other provisions in the same statute.”

Grappendorf v. Pleasant Grove City, 2007 UT 84, ¶ 9, 173 P.3d 166. While Utah Administrative Rule R884-24P-67(D)(1) imposes an April 30 deadline, Section (E) of the same rule contemplates there will be taxpayers who fail to comply with the deadline. When this happens, county assessors are directed to “assess and list the property described in this rule using the best information obtainable.”

The Taxpayer suggested that the Commission look to an enactment of the 2012 Utah legislature to determine legislative intent for 2010 statutes and rules. The Commission notes specifically that it does not do so in this decision. Rather, it relies on *State ex rel. Div. of Forestry, Fire & State Lands v. Tooele County*, 2002 UT 8, ¶ 10, 44 P.3d 680, as cited by the County, and looks to the “plain language of the” statutes and rules in effect as of 2010 to make its determinations regarding 2010 statutes and rules.

The Commission recognizes the County’s argument that rules should be followed. It has concern that a taxpayer could abuse the situation by withholding information in hopes of a low assessment. A taxpayer could only provide the information if the assessment, based on the best information available, was higher than the taxpayer desired. These are legitimate concerns. Nevertheless, for the Commission to impose a penalty through rule where none existed in statute for the 2010 tax year would be an improper expansion or restriction of rights granted by statute. *See, Sanders Brine Shrimp v. Audit Division*, 846 P.2d 1304 (Utah 1993).

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, the Taxpayer must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by the Taxpayer. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. The board of equalization value for the subject property contains error in that it does not take into account information supplied by the Taxpayer after April 30, 2010 but before the Taxpayer’s hearing before the board of equalization.

3. There is good cause under Utah Code Ann. §59-2-301.3(2) to value the subject property at \$\$\$\$ for the January 1, 2010 lien date.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2010 lien date. The RURAL COUNTY Auditor is ordered to adjust the county records accordingly. It is so ordered.

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 in accordance with Utah Code Ann. §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 Ann. §§59-1-601 and 63G-4-302 et. seq.