

11-2144
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2010
SIGNED: 12-11-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 11-2144 Parcel No. Multiple-14 ¹ Tax Type: Property Tax/Locally Assessed Tax Year: 2010 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 regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Representative
PETITIONER REP. 2
PETITIONER REP. 3
PETITIONER REP. 4
PETITIONER REP. 5

For Respondent: RESPONDENT REP., Salt Lake County Assessor's Office

¹ Following are the parcel nos. at issue: #####-1, #####-2, #####-3, #####-4, #####-5, #####-6, #####-7, #####-8, #####-9, #####-10, #####-11, #####-12, #####-13, and #####-14.

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the Salt Lake County Board of Equalization (“the County”). This matter was argued in an Initial Hearing on January 12, 2012 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor’s Office valued the subject properties at a total value of \$\$\$\$ as of the January 1, 2010 lien date, which the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization’s value. The Taxpayer is requesting the value of the subject properties be reduced to \$\$\$\$\$, the 2009 assessed value.

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.

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.

In addition, for the assessment of golf courses or hunting clubs, there are additional guidelines, as provided in Utah Code Ann. §59-2-301.1(2), as follows:

- (a) In assessing the fair market value of a golf course or hunting club, a county assessor shall consider factors relating to the golf course or hunting club and neighboring property that affect the fair market value of the golf course or hunting club, including:
 - (i) value that transfers to neighboring property because of the presence of the golf course or hunting club;
 - (ii) practical and legal restrictions on the development potential of the golf course or hunting club; and
 - (iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future.
- (b) The valuation method a county assessor may use in determining the fair market value of a golf course or hunting club includes:
 - (i) the cost approach;
 - (ii) the income capitalization approach; and
 - (iii) the sales comparison approach.

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.

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).

DISCUSSION

The subject properties are part of the PETITIONER, located at ADDRESS 1, in CITY 1. The Golf Course consists of ##### parcels with a total of #####-acres². It is a (WORDS REMOVED) #####-hole golf course.

The Taxpayer's representative stated the golf course was (WORDS REMOVED) and was later purchased by the current owners. The development consists of smaller residential lots and condominium units, which back onto the fairways. (SENTENCE REMOVED). The golf course was committed to the city as open space (WORDS REMOVED). The developers were required to designate most of the land as "recreational property" in perpetuity. The current owners purchased the subject property subject to the same restrictions. The Taxpayer's representative stated that the documents filed with the County Recorder's office show that the restrictions remain in effect in perpetuity, but that some of the sales documents showed the restrictions were in place for a period of ##### years. The Taxpayer provided a copy of the Declaration of Covenants Conditions and Restrictions as well as the Statement of Reservations and Protective Covenants that were recorded with the County Recorder's office. The Statement of

² Parcel No. 27-07-128-001 was not included in the appeal.

Reservations and Protective Covenants provides, “The premises described herein shall remain perpetually in recreational use, with ownership and maintenance being the responsibility of CORPORATION, a Utah corporation, its successors and assigns.”

The Taxpayer’s representative argued that in determining the value for the subject, the County failed to consider the value transfer to the neighboring properties, the practical and legal restrictions on development, and the likelihood that use as a golf course will continue into the future. The Taxpayer does not believe the subject properties can be developed for any other use. The Taxpayer’s representative submitted an opinion letter from an attorney indicating that because of the recreational use restriction, the current zoning, the layout of the golf course and existing houses and condominium units, and drainage from CREEK, that any attempt to develop the golf course into residential lots would be likely to fail.

The Taxpayer’s representative argued that they believe the income approach is the most appropriate determination of value for the subject property. He stated that the Taxpayer looked into having an appraisal completed, but that it was cost prohibitive. Rather, the Taxpayer submitted tax returns for the 2007 through 2009 tax years. The Taxpayer’s 2007 Form 1120S shows total income of \$\$\$\$\$, and total deductions of \$\$\$\$\$. The Taxpayer’s 2008 Form 1120S shows total income of \$\$\$\$\$, and total deductions of \$\$\$\$\$. The Taxpayer’s 2009 Form 1120S shows total income of \$\$\$\$\$, and total deductions of \$\$\$\$\$. The Taxpayer’s representative pointed out that income has decreased over the last few years due to the downturn in the economy.

The County’s representative submitted an aerial photograph of the subject properties, a breakdown of the assessed values of those properties for the 2009 and 2010 tax years, and a spreadsheet showing the assessed values of the non-exempt golf courses in the County. The County’s representative stated that at one time they had an appraiser who was knowledgeable about golf course valuations, and that he used the income approach to arrive at values. He stated that appraiser retired, and golf course values in the County remained unchanged from 2005 through 2009. He explained that the County is required to reappraise all property every five years, to appraise everything at fair market value, and to treat everyone in a fair and equitable manner.

The County’s representative stated that they are defending the Board of Equalization value on the basis of equity. He stated that in 2010, the County Assessor’s Office spent significant time and effort valuing golf courses. He stated that they requested, but did not receive, income information from each golf-course. The County made the decision to value all golf

courses on the cost approach for the vertical improvements (office, clubhouse, restaurants, and detached buildings for maintenance equipment) and treat the land as if zoned for public/open space. The County’s representative stated that they used a value of \$\$\$\$ per acre for the land, which he feels is well supported for open space/public land. When asked how the County determined the \$\$\$\$ per acre value, the County’s representative stated that they looked at the sale of 13 acres that was between 40% and 60% open space from AREA 1 for \$\$\$\$ per acre in December 2010; a sale of nearly 16 acres of open space in AREA 2 for \$\$\$\$ per acre in February 2006; the purchase of open space in COUNTY 1 by CLUB for \$\$\$\$ per acre in 2004; the lease of space to ENTITY 1 of land for SCHOOL USE at \$\$\$\$ per acre; the purchase of additional land for a golf course in COUNTY 2 for \$\$\$\$ per acre in 2004; and the purchase of (X) open space near LANDMARK at \$\$\$\$ per acre.

The County’s representative stated that they always look at the highest and best use of a property, but are required to value property based on its current zoning unless there is reasonable probability that the zoning will be changed within the year. He stated that the County did consider Utah Code Ann. §59-2-301.1, specifically that there is probably some value transfer along the back ##### holes to the adjacent homes. The County’s representative stated that the County is not conceding that there are any restrictions on the development of the property. He stated that the County has not researched the restrictions, and he is unsure as to whether it covers (WORDS REMOVED). The County’s representative stated that the subject is zoned A-1, which is a minimum one-acre lot size, and noted that the golf course has a large rectangular area that could be developed into one-acre lots.

The County’s representative stated that all of the non-exempt golf courses in the County were valued at roughly \$\$\$\$ per acre, with the exception of the GOLF COURSE 1. He stated that it is valued at a lower rate because it is located in a (X) area in CITY 2. Following is the information provided by the County on the assessed values of non-exempt golf-courses in the County:

Name	Holes	Lot Size	Zoning	Building Value	Land Value	Land Value Per Acre	Total Value Per Acre
PETITIONER	#####	#####	A-1	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
GOLF COURSE 1	#####	#####	A-1/ac	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
GOLF COURSE 2	#####	#####	A-1	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
GOLF COURSE 3	#####	#####	A-5	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
GOLF COURSE 4	#####	#####	A-1	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
GOLF COURSE 5	#####	#####	Public	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

GOLF COURSE 6	#####	#####	Open Space	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
GOLF COURSE 7	#####	#####	Open Space	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In rebuttal, the Taxpayer’s representative stated that except for one, the sales the County was relying upon all sold prior to the decline in the market. He stated that their understanding is that the subject property is required to be held for open recreation land in perpetuity. He also argued that the County should not have changed their valuation methodology, when Utah Code Ann. §59-2-301.1 specifically allows for the income approach to be used. He acknowledged that it may be possible to break the restrictions, but stated the Taxpayer would need the approval of both the city and neighboring property owners, and they believe it would be a significant legal battle to remove the covenants. He stated that when the current owners purchased the property, they signed documents that they would operate the golf course for ##### years.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer argued that subject should be valued using the income approach, as it had been prior to the 2010 tax year. The Taxpayer submitted tax returns for the 2007, 2008, and 2009 tax years, showing the income and expenses for each year. There was no supporting documentation submitted with the returns. Neither the Taxpayer nor the County provided a valuation calculation, nor did either provide a proposed capitalization rate. Without such information, the value of the subject cannot be determined using the income approach.

The County is asking to have the Board of Equalization value of the subject property sustained on the grounds of equalization. The County reappraised all non-exempt golf courses using the cost approach for improvements and a land value of \$\$\$\$\$. The County’s representative noted that the land value of the GOLF COURSE 1 golf course because of its location and topographical features; however, similar considerations were not made for the subject property. The Taxpayer argued that there were restrictions on the development of the property due to a Statement of Reservations and Protective Covenants recorded against the property indicating it would be used perpetually for recreational purposes. Additionally, the Taxpayer submitted an opinion letter that even if the Taxpayer could get the city and neighboring homeowners to agree

to release them from the covenants, there are practical limitations to development including the layout of the golf course with existing residences and drainage from CREEK 1. The County's representative indicated that the County would not concede there were development restrictions on the subject properties, but acknowledged that they had not researched the issue. Reviewing the information submitted it appears that there are restrictions on the future development of the subject that the County has failed to take into consideration. If the same land value were used for the subject as the GOLF COURSE 1 golf course, it would indicate a total value for the subject properties of \$\$\$\$\$. The value should be reduced accordingly.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2010 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner