

15-1781

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2015

DATE SIGNED: 8/16/2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 15-1781</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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Presiding:

Michael Cragun, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law
REPRESENTATIVE-2 FOR PETITIONER, Representative

For Respondent: RESPONDENT-1, COUNTY-1 Assessor
RESPONDENT-2, Appraiser, COUNTY-1
RESPONDENT-3, Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 2, 2017, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Property Owner") timely appealed the decision issued by Respondent regarding the property tax assessment for the subject parcel for tax year 2015.
2. The lien date at issue in this appeal is January 1, 2015
3. The property that is the subject to this appeal is Parcel No .#####, which is Lot ## of THE DEVELOPMENT at SUBDIVISION-1 in COUNTY-1.
4. The subject property is 41.94 acres in size and is located in a remote, mountainous

recreational property subdivision. There is not year-round access to this subdivision. People are purchasing property in the subdivision generally for access to hunting in the canyon. The lot is improved with a gravel driveway and level cabin site area. The only structure on the property is a yurt and outhouse.

5. The County Assessor had originally valued the subject property at a total market value of \$\$\$\$\$ as of the lien date at issue. It was the County Board of Equalization's ("County's") decision to make no change to this value. The County's notice indicated that of the total value \$\$\$\$\$ was for "building secondary," \$\$\$\$\$ for "land greenbelt" and \$\$\$\$\$ for "land secondary." The County's notice also indicated the difference between the market value and the taxable value. The "building secondary" and the "land secondary" had the same market value as they had taxable value. The "land greenbelt" had a market value of \$\$\$\$\$ and a taxable value of \$\$\$\$\$.

6. The \$\$\$\$\$ value listed as "building secondary" was for the yurt that had been erected on the property. It was the Property Owner's position that this yurt was personal property and should not be included in the real property assessment.

7. The representatives for the Property Owner asserted that the yurt was not owned by the Property Owner, but was instead owned by the Property Owner's wife. There was also testimony that the yurt had been used as a sales office for the Property Owner's real estate business to promote other sales in the subdivision and that it is now being used as temporary housing for workers building roads and other construction in the subdivision. The development of the subdivision was a family business for the Property Owner. The representatives for the Property Owner provided no documentation of ownership of the yurt and neither the Property Owner, nor his wife were present to testify under oath regarding ownership of the yurt.

8. The yurt is built on a raised platform or pedestal. The platform is set on top of concrete blocks with wooden support posts. There is a deck in front of the yurt and stairs leading up to the deck and pedestal. The yurt has no electric power, no natural gas and no bathroom facilities inside. A short distance from the yurt is a former porta-potty that has been converted into an outhouse. There is a propane generator to provide electricity, heat and for cooking inside the yurt. A sink inside the yurt drains to the outside.¹

9. From the testimony at the hearing, the yurt can be taken down and both the pedestal and the yurt moved and set up again at other locations. The testimony at the hearing was that it would take two days to disassemble the yurt and three days to reassemble the yurt at a new location. In fact, the subject yurt had originally been erected on a different lot in the subdivision and was moved to its current location. The testimony was that even the support posts and concrete blocks were movable. Also the testimony at the hearing was that the subject yurt was currently for sale. The purchaser could then move

¹ Testimony of REPRESENTATIVE-2 FOR PETITIONER. Respondent's Exhibit 3.

it to a new location.

10. A building permit is required to construct a yurt in COUNTY-1 and additionally the Property Owner should have obtained a zoning clearance.² The Property Owners had not obtained a permit and the Property Owner's representatives state that they were unaware one was required.³ The representative for the Property Owner testified that trailers are not allowed in the subdivision, so yurts are a more economical way to have recreational housing as compared to the construction of a cabin.

11. The County Assessor testified that there are a number of other yurts in the County and the County has generally assessed them as part of the real property. However, there were two yurts noted that were owned by ski-resorts and they were reported as personal property on those businesses' personal property schedules and taxed as personal property. The County Assessor also testified that a yurt could last many years, as long as a house. The subject yurt had been at its current location for six years.

12. The subject yurt is not permanently attached to land. The yurt has already been relocated one time and the Property Owner is trying to sell the yurt for removal again to a new location. The manner of how the yurt is attached does not suggest that the yurt will remain in the same place over its useful life. Removal of the yurt will not cause substantial damage to the yurt itself or to the land on which it currently sits.

13. The subject lot and other lots in the subdivision are valued under the Farmland Assessment Act as greenbelt property. All lots in this subdivision are large parcels of nearly 40 acres or more.

14. It was the testimony of the witness for the County that all the parcels in the subdivision are assessed in greenbelt, but once the property is improved, a one-acre home site is removed from the portion of the parcel assessed under greenbelt and a home site value is added to the assessment. This means the cabin site is taxed on its market value, while the rest of the lot is assessed based on greenbelt.

15. The Property Owner did not submit an appraisal or comparable sales to establish a fair market value at the Formal Hearing. In addition to arguing that the yurt was personal property, and that no home site value should then be included, the Property Owner had provided an equalization argument with two other comparables located in the subdivision.⁴ One of these had a cabin constructed on the property and one did not have any structure. The significance is that while the "building secondary" and "land secondary" values are taxed at full market value, the "land greenbelt" is taxed significantly less than market value. The subject and two other properties assessments provided by the Property Owner were as follows:

2 Respondent's Exhibit 4.

3 Testimony at Hearing.

4 Respondent's Exhibit 1.

	Subject	PARCEL-03	PARCEL-2
Building Secondary	\$\$\$\$\$	\$\$\$\$\$	
Land Greenbelt Market/Taxable	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$
Land Secondary	\$\$\$\$\$	\$\$\$\$\$	
Total Market/Taxable	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$

16. The County’s witness testified to how lots had been valued in the subdivision. The County had valued Lots 1 through 10 at a price of \$\$\$\$\$ for the first acre, \$\$\$\$\$ per acre for the second through fortieth acre and \$\$\$\$\$ per acre for any acreage over forty. These first ten lots were valued in this manner because they had been appealed in 2011 and the owner of these lots had presented information that he had acquired all of these lots for an equivalent of \$\$\$\$\$ per lot as compensation for constructing roadways or other infrastructure in the subdivision. The County testified that all the other lots in the subdivision were valued at \$\$\$\$\$ for the first acre, \$\$\$\$\$ per acre for the second through fortieth acres and \$\$\$\$\$ per acre for any acreage over 40. The County testified that these other lots were the better lots in the subdivision and had been valued higher based on more recent sales. All sales were for lots just over 40 acres in size and all were from the same subdivision as the subject. The sales provided by the County are as follows:⁵

Parcel	Sale Price	Sale Date
PARCEL-01	\$\$\$\$\$	9/2011
PARCEL-18	\$\$\$\$\$	4/12
PARCEL-48	\$\$\$\$\$	9/2011
PARCEL-26	\$\$\$\$\$	1/2010
PARCEL-27	\$\$\$\$\$	2/2010
PARCEL-34	\$\$\$\$\$	1/2016
PARCEL-42	\$\$\$\$\$	8/2015

17. The representatives for the Property Owner testified that the differences in values were based on how much the lot had been improved before the sale. If there was a roadway or driveway to the cabin site, or if there were utilities to the site, the value would be higher. In some cases a cabin site had been excavated and that all added to the value.

⁵ Respondent’s Exhibit 2.

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 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.

Personal Property is defined at Utah Code Sec. 59-2-102(30) & (31) as follows:

(30) “Personal Property” includes:

- (a) every class of property as defined in Subsection (31) that is the subject of ownership and not included within the meaning of the terms “real estate” and “improvements”;
- (b) gas and water mains and pipes laid in roads, streets or alleys;
- (c) bridges and ferries;
- (d) livestock; and
- (e) outdoor advertising structures as defined in Sec. 72-7-502.

(31) (a) “Property” means property that is subject to assessment and taxation according to its value.

(b) “Property” does not include intangible property as defined in this section.

Improvement is defined at Utah Code Sec. 59-2-102 (20) as follows:

(a) Except as provided in Subsection (20)(c), “improvement” means a building, structure, fixture, fence or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if: (i)(A) attachment to land is essential to the operation or use of the item; and (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or (ii) removal of the item would: (A) cause substantial damage to the item; or (B) require substantial alteration or repair of a structure to which the item is attached.

(b) “Improvement” includes: (i) an accessory to an item described in Subsection (20)(a) if the accessory is: (A) essential to the operation of the item described in Subsection (20)(a); and (B) installed solely to serve the operation of the item described in Subsection (20)(a); and (ii) an item described in Subsection (20)(a) that: (A) is temporarily detached from the land for repairs; and (B) remains located on the land.

(c) Notwithstanding Subsections 20(a) and (b), “improvement” does not include: (i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107; (ii) a moveable item that is attached to land: (A) for stability only; or (B) for an obvious temporary purpose: (iii)(A) manufacturing equipment and machinery; or (B) essential accessories to manufacturing equipment and machinery; (iv) an item attached to the land in a manner that facilitates removal without substantial damage to: (A) the land; or (B) the item; or (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory built housing unit is considered to be personal property under Section 59-2-1503.

Structures and land under a structure that is used in connection with the structure is excluded from Greenbelt assessment under the Farmland Assessment Act at Utah Code Sec. 59-2-507(2) as follows:

The following shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county:

- (a) a structure, except as provided in Subsection (3), that is located on land in agricultural use;
- (b) a farmhouse and the land on which the farmhouse is located; and
- (c) land used in connection with a farmhouse.

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 ...
- (3) In reviewing the county board’s decision, the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
 - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (5) 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 value plus or minus 5% from the assessed value of comparable properties.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. *See 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 (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*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. At issue in this hearing was whether or not the yurt erected on the subject property was real property or personal property. All tangible property located with the state is taxed at a uniform and equal rate on the basis of its fair market value, unless otherwise provided by law. See Utah Code Sec. 59-2-103. Both real and personal property are considered to be tangible property and personal property is also subject to tax in many instances.⁶ However, if the yurt were personal property instead of real property, it should not be included in the County's real property assessment.⁷

2. "Personal property" is defined at Utah Code Sec. 59-2-102(30) to be "every class of property" that is subject to tax, that is "the subject of ownership and not included within the meaning of the terms "real estate" and "improvements." The issue then is whether the yurt is an "improvement." "Improvement" is defined at Utah Code Sec. 59-2-102(20) to be a building, structure or other item "that is permanently attached to land if: (A) attachment to land is essential to the operation or use of the item; and (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item . . ." Or in the alternative the item could be an "improvement" if "removal of the item would: (A) cause substantial damage to the item; or (B) require alteration or repair of a structure to which the item is attached." The subject yurt is not attached in a manner that suggests it will remain where it is over its useful life. Removal from its current location will not cause damage to the yurt or the land on which it is currently attached. Under this statutory definition the subject yurt is

⁶ Personal property in general is subject to tax by the County under Utah Code Sec. 59-2-301 et seq. However, there are a number of exemptions that apply to personal property. For instance under Utah Code Sec. 59-2-1113 household furnishings may be exempt. Items held for inventory may be exempt under Utah Code Sec. 59-2-1114 based on a dollar limit under Utah Code Sec. 59-2-1115. However, if the personal property is being used in a business, the business owner may be required to report the property and pay the tax on his or her personal property as required under Utah Code Sec. 59-2-306.

⁷ See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision*, Appeal No. 13-2476 (November 4, 2015).

personal property. As noted by both parties at the hearing it is possible that other yurts are permanently attached to the extent that they would be an improvement. The County argues that it would be difficult for the County to make this determination for every yurt in the County.⁸ However, the Commission must apply the law as written. There is currently no statute or rule specifically exempting yurts from the test set out at Utah Code Sec. 59-2-102(20). As personal property, this yurt should not have been included in the real property assessment.

3. Although the parties at the hearing spent considerable time arguing over whether the yurt was real or personal property, this has a relatively small impact on the amount of the tax assessment. It appears the real concern for the Property Owner was the fact that the County had valued the subject lot as having a home site and removed the first acre of land from assessment as Greenbelt under the Farmland Assessment Act. If the entire subject property was taxed as Greenbelt under the Farmland Assessment Act the taxable value would be something similar to the taxable value of Parcel No. PARCEL-02, which had no home site and as indicated above had a taxable value of only \$\$\$\$\$, compared to the taxable value of the subject lot, which was \$\$\$\$\$. Utah Code Sec. 59-2-507(2) provides that even where land qualifies for greenbelt assessment under the Farmland Assessment Act, the residence, any other structures and land used in connection with the residence do not receive the greenbelt assessment. The County is required to determine a value for the structure site land and assess it based on fair market value. The subject lot has some improvements for a home site. There is a gravel driveway, and a level, graveled area, where the yurt is currently erected. Furthermore, as noted above, the Property Owner should have obtained a variance and building permit prior to erecting the yurt. The Tax Commission had previously heard an appeal regarding a subdivision that was similar to the subject subdivision due to having very large acreage parcels that qualified for Greenbelt. In that appeal, Wasatch County had left each of the parcels in Greenbelt until the owner took out a building permit to construct a residence and at that time removed a one-acre home site from the greenbelt assessment.⁹ In this subject appeal the Property Owner should have obtained a building permit but failed to do so. It would be appropriate for the County to remove the one-acre home site from greenbelt assessment when a building permit is taken out, or when one should have been taken out. The fact that the County had removed a one-acre home site from greenbelt is consistent with the provisions of Utah Code Sec. 59-2-507.

⁸ The County had made an argument that a yurt was like a mobile home or manufactured home. However, this decision is consistent with statutory provisions that pertain to these transportable factory-built housing units. Part 15 of the Property Tax Act specifically addresses when manufactured homes or mobile homes are personal property or real property. Under Utah Code Sec. 59-2-1503(2) if the manufactured home or mobile home is not located in a mobile home park as defined in the statute, it is considered to be personal property unless it is an improvement.

⁹ See *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision*, Appeal Nos. 06-1504, et al. (April 1, 2005). The Tax Commission's decision was appealed and the Utah Court of Appeals issued its decision in *Osborn et al., and Wasatch County v. Tax Commission*, 2009 UT App. 222, which did not address the issue of when the home site should be removed from greenbelt assessment.

4. The Property Owner has presented an equalization argument by comparing the assessed value of the subject and two other lots in the same subdivision. The Property Owner has not provided sufficient evidence to show that these properties were actually comparable to the subject. One of the lots had a residence and the total value was much higher than the subject. The other was less than 40 acres in size, had no home site and may have been too small to develop due to zoning. The County has provided the information that although lots 1 through 10 were valued lower due to the acquisition value, lots 11 through 49 in the subdivision are valued just like the subject property. The Property Owner's representative stated there were differences in market value based on how much each lot had been improved. Under Utah Code Sec. 59-2-1006, a property owner may appeal the assessment based on either fair market value or equalization. Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other properties if the issue of equalization is raised and "the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties." In arguing an adjustment based on equalization, the Property Owner needs to show that properties that are actually comparable to the subject are valued lower. Evidence submitted does show some lower valued properties but also many properties that are valued the same as the subject. The subject lot has some improvements including a driveway and leveled building site. Two cases have been appealed to the Utah Supreme Court regarding the issue of equalization and the Court has put a high burden on property owners generally to show that an adjustment is warranted under equalization. See *Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206 (Utah 2004) & *Decker Lake Ventures v. Utah State Tax Comm'n*, 2015 UT 66. The Property Owner has not done so in this appeal.

Considering the evidence and the applicable law in this matter, the yurt is personal property and the value of \$\$\$\$\$ for the yurt is to be removed from the real property assessment. The value of the home site or "land secondary" and for the "land greenbelt" should remain as set by the County.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject yurt is personal property. The real property assessment is to be reduced by the \$\$\$\$ attributed to the yurt for tax year 2015. The value of the land, which is a total value of \$\$\$\$\$, is upheld for the January 1, 2015 lien date. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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. §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 et seq. and §63G-4-401 et seq.