

17-270
TAX TYPE: PROPERTY TAX
TAX YEAR: 2016
DATE SIGNED: 01/26/2018
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL
EXCUSED: J VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 17-270 Parcel No. ##### Tax Type: Property Tax Tax Year: 2016 Judge: Phan
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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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Esq.
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY
District Attorney

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the COUNTY Board of Equalization (“the County”) under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on June 27, 2017 in accordance with Utah Code 59-1-502.5. At issue in this appeal was whether property tax should be assessed against the subject parcel as of the lien date January 1, 2016. The County had assessed a property tax on the subject parcel as of the lien date, with the original assessment based on a fair market value of \$\$\$\$\$. The County Board of Equalization upheld that

the subject parcel should be assessed, but reduced the value to \$\$\$\$\$. At the hearing, Petitioner argued that the assessment should be abated in its entirety against the subject parcel and the County argued that the decision of the County Board of Equalization should be upheld.

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.

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 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).

DISCUSSION

The facts in this appeal were not in dispute. The subject parcel is the community center and recreation facility that is now owned by TAXPAYER. ("Community Association"). However, as of January 1, 2016, this property was still owned by the developer, COMPANY ("Developer"). On January 19, 2016, the Developer sold this parcel for \$\$\$\$ to the Community Association. The Warranty Deed was recorded on January 20, 2016. The date of this transfer is a key factor in this appeal, as had the transfer occurred prior to January 1, 2016, and the Community Association owned the property at that time, the County would have concluded that it would not assess the subject parcel separately. The County has indicated that for 2017 the subject parcel would not be assessed separately. It would still be assessed, but by the County capturing the added value that having this community center adds to the residential properties that are part of the Community Association. In other words, once this property was deeded to the Community Association it became an amenity that added value to the residential lots in the community, so the fair market value for those lots are assessed at the higher values that result from ownership in this amenity. The County would then assess a \$0 value to the subject and the added value on all the residential parcels that are part of the Community Association.

The subject community and recreation center was constructed in 2004 and had been operating since that time as a community center for the homeowners who purchased in the COMPANY residential development, up until the Developer sold the property to the Community Association. In fact, it was operated by the Community Association up until the Community Association purchased the parcel and membership in the Community Association was automatic for the purchasers in the community. Maintenance and repair fees were assessed for this community center to the homeowners as part of the HOA fee even before the transfer of ownership.

The County points out, however, that the subject parcel was not designated as a common area on the plat. If a parcel is designated and recorded on a plat as a common area for a development, it cannot be taken away from the individual parcels, which it benefits in the development. The way the subject parcel was set up, until the Developer sold the parcel to the Community Association, the Developer still had considerable control of the parcel based on the

Community Charter for COMPANY.¹ The County points out that at page 33 of the Charter, the Developer “may transfer” the property to the Community Association, but was not required to do so. At Page 75 of the Charter, it provided that “until termination of the [Developer’s] control period” the Developer could “unilaterally amend this Charter for any purpose.” The County also noted that the Developer could appoint, replace and remove board members of the Community Association. So the Developer retained considerable control over this parcel of property until it was sold to the Community Association. It was the County’s contention until it was sold to the Community Association, the individual purchasers in the community did not have an ownership interest in the community center and the County could not assess the individual owners. Because the community center was not designated on the plat as a common area, the County had not assessed it for property tax purposes to the individual homeowners in the community.

The representative for Petitioner argues that the Utah Legislature had carved out an exception to the general property tax assessment provisions for common areas. He cites to a provision of the County Land Use, Development, and Management Act for support, even though that Act is not part of the Property Tax Act, found at Title 59, Chapter 2 of the Utah Code, which is specific to assessment for property tax purposes.² However, the provision the Petitioner cites to in the County Land Use, Development, and Management Act, at Utah Code Sec. 17-27a-606 (2016)³ does help the Petitioner’s case as it specifically states, “a parcel **designated as a common or community area on a plat** . . . shall . . . for the purposes of assessment be divided equally among all parcels created by the plat (emphasis added).”⁴ In this appeal, had the subject parcel been designated as a common area on a plat, the County would have assessed it in the manner Petitioner now requests. It should be noted that it is not clear in Utah Code 17-27a-606(2016) that “assessment” referred to a property tax assessment. The Petitioner tries to get around the requirement that the common area be designated on a plat by applying the definition of “common area” from the Community Associations Act at Utah Code Subsection 57-8a-102(4), which is a broader definition that indicates a “common area” is property that is owned, maintained, repaired or administered by the association. Based on common provisions of statutory construction, it is not reasonable to say the definition specified for the purposes of the Community Associations Act supersedes the specific requirement at Utah Code Section 17-27a-606(2016) that the common area be recorded on a plat to be assessed to the individual homeowner for purposes of the County

¹ This was provided as Respondent’s Exhibit 9.

² In interpreting statutory provisions, the Utah Supreme Court has made it clear that a “more specific statute governs instead of a more general statute.” *Jensen v. IHC Hospitals Inc.*, 944 P.2d 327, 331 (1997). See also *Hall v. Utah State Department of Corrections*, 24 P.3d 958 (Utah 2001).

³ This section has since been revised.

⁴ Petitioner’s Initial Hearing Brief, pg. 2.

Land Use, Development and Management Act. However, if the definitions in the Community Associations Act were applicable to the County Land Use, Development, and Management Act, then it would clear up the question of what was meant by “assessment,” as Utah Code Subsection 57-8a-102(1) provides a definition for “assessment” and is not applicable to property tax. It is instead the fees charged by the homeowner association or community to the individual owners in the association to maintain or administer the common areas. Therefore, the Petitioner has not presented a valid legal argument to support its position that for property tax assessment purposes, prior to the ownership change and absent the designation on a plat, that the subject parcel should not be assessed based on the ownership rights that existed on the lien date.

As noted by the County, there is no constitutional or statutory exemption from property tax for common areas. Common areas are subject to property tax and not exempt. The issue is how they are assessed. Utah Code Subsection 59-2-103(1) provides that the property be assessed and taxed “as valued on January 1, unless otherwise provided by law.” On January 1, 2016, this parcel was owned by the Developer who still had significant control of the parcel and there is no basis in the law to suggest the property should be assessed based on a post lien date change in ownership rights. Had the subject parcel been designated as common area on a plat prior to the lien date, then Utah Code Sec. 17-27a-606 provides a bright line to show that the property has been conveyed to the individual lot owners. Had this been done, the County would have assessed the subject parcel through the individual lot owners. Instead of designating the property in this manner, the Developer transferred it by deed to the Community Association, but that did not occur until after January 1, when the Community Association paid the developer \$\$\$\$\$ to purchase the property. The Utah Legislature has concluded that in some limited circumstances, a proportional tax based on the period of ownership, where the property has changed ownership between an exempt owner and nonexempt owner is warranted. However, in enacting these provisions, the Legislature placed very narrow limitations and these sections apply only to some of the specific entities exempt under Utah Code Sec. 59-2-1101.⁵ Had the Utah Legislature wanted these provisions to apply more broadly, they could have enacted them in that manner.

⁵ As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”

Petitioner has failed to establish a legal basis to abate the assessment against it for tax year 2016.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Petitioner's appeal in this matter regarding the assessment on the subject parcel for tax year 2016 is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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, or emailed, 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

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner