

2003

Mountain Ranch Estates v. Utah State Tax Commission ex rel. Summit County Board of Equalization : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

MOUNTAIN RANCH ESTATES,

Petitioner / Appellant

v.

UTAH STATE TAX COMMISSION *ex. rel.*
SUMMIT COUNTY BOARD OF
EQUALIZATION,

Respondents / Appellees

**BRIEF OF APPELLEE
SUMMIT COUNTY**

Case No. 20030423-SC

PETITION FOR REVIEW OF THE UTAH STATE TAX COMMISSION'S
FINAL DECISION DENYING PETITIONER'S REQUEST FOR AN ADJUSTMENT
OF THE 2001 TAX VALUATION FOR PETITIONER'S REAL PROPERTY

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JURISDICTION OF THE COURT

The Utah Supreme Court has original appellate jurisdiction over final formal agency decisions of the Utah State Tax Commission. Utah Code Ann. § 78-2-2(3)(e)(ii) (2002).

ISSUES PRESENTED

- I Should the decision of the Utah State Tax Commission be upheld?
 - A. Was there substantial evidence to support the factual findings of the Utah State Tax Commission?
 - B. Did the Utah State Tax Commission correctly apply the law?
- II Did the decision of the Utah State Tax Commission violate the equal protection provisions of the United States and the Utah constitutions?:
 - A. Has the Respondent violated Petitioners's rights of equal protection under the 14th amendment of the U.S. constitution?
 - B. Has the Respondent violated Petitioners's rights under Article XIII, Section 2 of the Utah constitution

STANDARD OF REVIEW

The Petitioner/Appellant, Mountain Ranch Estates, has challenged both issues of law and of fact. The standard of review is set forth in Utah Code Ann. § 59-1-610. Questions of fact are reviewed granting the Tax Commission deference concerning its written findings of fact, and applying a substantial evidence standard. The Tax Commission, however is granted no deference on questions of law which are reviewed using a "correction of error standard." Id.

In this case, the Utah Code prescribes the appropriate standard for reviewing a decision by the Commission. The Commission's legal conclusions are reviewed under a correction of error standard. See Utah Code Ann. §§ 59-1-610(1)(b) (1996). The Commission's written findings of fact are reviewed under a substantial evidence

standard. See id. §§ 59-1-610(1)(a). This means the reviewing court--the court of appeals in this case--should uphold the Commission's factual findings if the findings are supported by substantial evidence. See Schmidt v. Utah State Tax Comm'n, 1999 UT 48, ¶¶7, 980 P.2d 690. "'Substantial evidence' is that quantum and quality of relevant evidence which is adequate to convince a reasonable mind to support a conclusion." Id. (citations omitted). Board of Equalization of Wasatch County v. Stichting Mayflower, et al, 2000 UT 57, ¶ 9, 3 P.3d 559, 652.

STATEMENT OF THE CASE

This matter arose out of an appeal by Mountain Ranch Estates to the Summit County Board of Equalization regarding the tax assessment levied by the Summit County Assessor for the 2001 tax year, lien date January 1, 2001, on approximately 69 out of 81 lots located within the Mountain Ranch Estates Subdivision.

The appeal came before the hearing officer of the Board of Equalization on September 13, 2001, at which the Petitioner argued that the lots had been erroneously valued. At the hearing, the Summit County Assessor made an offer to the Petitioner, for a general reduction in value of ten percent (10%). In a five page decision,¹ the hearing officer made findings and conclusions supporting the values given by the Assessor and recommended to the Board of Equalization that the offered ten percent (10%) reduction in value be accepted. The Board of County Commissioners for Summit County sitting as the Board of Equalization adopted the findings and conclusions of the hearing officer.

¹Mountain Ranch Estates refers to the five (5) page decision of the hearing officer and Board of Equalization in their letter and appeal application to the Utah State Tax Commission (R. 155-157), however, at no time has the Petitioner Mountain Ranch Estates submitted or provided to the Tax Commission or to this Court as part of the record, a copy of the Board of Equalization decision from which all appeals flow. A copy of that decision is attached to this Brief as Appendix A for the Court's convenience.

The Petitioner then appealed those findings and conclusions to the Utah State Tax Commission which heard the matter on December 9, 2002. The parties were given the opportunity to brief some of the legal issues raised in the hearing, with the final brief being filed on March 10, 2003.

On April 28, 2003, the Tax Commission entered its decision in favor of the Respondent/Appellee Summit County. Specifically the Tax Commission determined that the Petitioner/Appellant, Mountain Ranch Estates, had failed to meet the burden of proof required under the case of Nelson v. Board of Equalization, 943 P.2d 1354, 1356 (Utah 1997) in showing that there was error in the original assessment and that there was a sound evidentiary basis for reducing the original valuation. (R.11-12; R.17; R.22-24). This appeal followed.

STATEMENT OF FACTS

1. In December, 1999, Andrew Shaw, the owner of a development known as Mountain Ranch Estates, (Petitioner/Appellant) purchased approximately 200 acres of land within the Snyderville Basin area of Summit County, Utah. (*Testimony of Andrew Shaw*, R. 275 at 35)
2. Soon after purchasing the property, Mr. Shaw applied for development approvals for an eighty-one lot subdivision, with the Snyderville Basin Planning Commission and the Summit County Board of County Commissioners. The project known as Mountain Ranch Estates (Petitioner/Appellant), received final development approval in May, 2000, and soon thereafter began construction of the project. (*Testimony of Andrew Shaw*, R. 275 at 36)
3. By October, 2000, most of the infrastructure, including roads, water and sewer lines and

other utility lines were in place and constructed within the Mountain Ranch Estates Subdivision. (*Testimony of Andrew Shaw*, R. 275 at 56, 58, 60-61, 86-87; *Testimony of Julianna Viar*, R. 275 at 164-167-68; R. 221-247).

4. As of the tax lien date in question, January 1, 2001, twelve out of the eighty-one lots had been sold at the full list price, for a total value of \$2,317,000. (*Testimony of Andrew Shaw*, R. 275 at 56, 60-61, 86-87; *Testimony of Julianna Viar*, R. 275 at 164, 167-68; R. 164-174)
5. Julianna Viar of the Summit County Assessor's Office, assessed the subject property for ad valorem taxation by using a sales comparison approach. Using the actual sales data on ten of the twelve sold lots, Ms. Viar assessed the remaining unsold parcels at 95% - 100% of the list price. (*Testimony of Julianna Viar*, R. 275 at 166-167; R. 270; R.164-174)
6. Mountain Ranch Estates agrees and acknowledges that assessed value of the unsold parcels given by Ms. Viar represents the fair market value of the property. (R. 275 at 16; R. 10)
7. There are several single family residential building lot developments located within the Snyderville Basin area of Summit County which compete in the market with Mountain Ranch Estates. (*Testimony of Andrew Shaw*, R. 275 at 49, 82-84).
8. Mountain Ranch Estates acknowledged that all other single family developments were assessed at fair market value with the exception of the Glenwild project, which they allege was undervalued. (*Testimony of Andrew Shaw*, R. 275 at 84; R. 76).
9. While there are several single family residential building lots in the market, they are not all comparable parcels for ad valorem taxation or equalization purposes. (R. 275 at 184,

199-208.)

10. The Glenwild project was a three phase gated community with a golf course, tennis courts, club house and other community amenities which received its first development approval on August 1, 2000, some three months after Mountain Ranch Estates. (*Petitioner's Brief* at 17). The Tax Commission found that they were not comparable properties. (R. 6-11)

SUMMARY OF ARGUMENTS

The decision of the Utah State Tax Commission should be affirmed. The decision contains no error in the application of the law and the findings of facts are supported by substantial evidence in the record.

The subdivisions known as Glenwild and Mountain Ranch Estates were sufficiently different in their location, terrain, and in their stages of development, that the different appraisal values given were appropriate for each subdivision. The differences render the properties not comparable for equalization purposes. Therefore, although there is a five percent (5%) difference in the values of the properties, the provisions of Utah Code Ann. § 59-2-1006(4), do not require an adjustment to the Petitioner's property because the properties are not comparable.

Inasmuch as the properties are different and not comparable for purposes of the equalization statutes, they are also different and not of the same class for purposes of equal protection and uniform taxation. There can be no violation of the equal protection provisions contained within the 14th amendment of the U.S. constitution, nor can there be a violation of the uniform taxation provisions of the Utah constitution, if the properties are not of the same class and not comparable.

ARGUMENT

I SHOULD THE DECISION OF THE UTAH STATE TAX COMMISSION BE UPHELD ?

The Petitioner/Appellant has challenged the Tax Commission's factual findings regarding the comparability of Mountain Ranch Estates to one other subdivision within Summit County known as the Glenwild subdivision. The challenger, Mountain Ranch Estates, has declared their challenge of factual findings to be a mix of fact and law and cite the criminal case of State v. Hansen, 2002 UT 125 ¶ 26, 63 P.3d 660, in support of a standard of review which is contrary to the standard of review set forth in Utah Code Ann. § 59-1-610. Utah Code Ann. § 59-1-610 is the statutory standard of review for all tax appeals. Under that standard, the questions of fact should be reviewed under the "substantial evidence" standard and the questions of law reviewed under the "correction of error standard".

A. WAS THERE SUBSTANTIAL EVIDENCE TO SUPPORT THE TAX COMMISSION 'S FACTUAL FINDINGS?

The Petitioner/Appellant, Mountain Ranch Estates challenges specifically factual finding numbers 3, 6, 7, 13 and 14 as not being supported by substantial evidence. The Petitioner/Appellant does not challenge finding numbers 1, 2, 4, 5 and 11. The Petitioner's Brief is silent as to finding number 8; notes, but does not challenge finding number 9; and objects to the "wording" of finding number 12, but not the finding itself. Therefore, they are all deemed unchallenged. The challenge to finding number 10 is addressed by the Respondent/Appellee Utah State Tax Commission and Summit County adopts and incorporates by reference herein the Tax Commission's Brief in its entirety in response to that challenge.

As this Court declared in Nelson v. Board of Equalization, 943 P.2d 1354, 1356 (Utah 1997), on appeal, the "petitioner has a significant burden of proof that he must meet." In order to "defeat an assessment made for purposes of ad valorem taxation, a petitioner must 'marshal all of the evidence supporting the findings and show that despite the supporting facts and in light of the conflicting evidence, the findings are not supported by substantial evidence.'" Id. quoting Beaver County v. Utah State Tax Commission, 916 P.2d 344, 355-56 (Utah 1996).

A mere re-argument interpreting the facts is insufficient to meet this burden. The Petitioner must first marshal all of the evidence supporting the findings, then show that despite the supporting facts and in light of the conflicting evidence, the findings are not supported by substantial evidence. Id.

The Petitioner/Appellant has failed to take the first step of marshaling all of the evidence in support of the findings in their brief. Rather than marshaling the supporting evidence for the findings, and then challenging them in light of any conflicting evidence, the Petitioner seeks only to re-argue the meaning of a few limited facts and attempts to support their re-argument with only the selected testimony of the Petitioner's primary witness, Andrew Shaw. This effort does not meet the burden established in Nelson and is insufficient to overturn the findings of the Tax Commission.

Had the Petitioner/Appellant marshaled the evidence in support of the findings as required, this Court would see that there is substantial evidence in the record to support the findings of the Tax Commission. Taken individually, each challenged finding is supported in the record by substantial evidence and any challenges made by the Petitioner/Appellant, Mountain Ranch Estates is insufficient to overturn those findings of fact.

I. Finding of Fact Number 3

The Petitioner does not contest that they are a residential development of 81 lots located south of Interstate 80 between Kimball's Junction and Silver Creek Junction in Summit County, nor do they contest that they received development approvals on May 5, 2000. (*Testimony of Andrew Shaw*, R. 275 at 36) They do not contest the fact that the infrastructure work in commenced shortly after approval and that it continued throughout the summer of 2000, nor do they contest that the infrastructure included water, sewer, roads, and other utilities. (R. 221-246; *Testimony of Andrew Shaw*, R. 275 at 54, 56-58, 60-61; R. 270). The Petitioner does not challenge the finding that as of the lien date, twelve lots in the Mountain Ranch Estates subdivision had been sold and that at least two residential building permits had been issued by the end of 2000. (R. 164-170; R. 210, 211). The single finding Mountain Ranch Estates does contest is the finding that "the construction of [their infrastructure] was substantially complete by the end of the year 2000." (R. 7)

Although the Petitioner/Appellant has failed to meet the burden of proof by marshaling the evidence in support, this finding is supported by substantial evidence in the record. The testimony of Andrew Shaw was that the subdivision was substantially complete by the fall of 2000. (R. 275 at 56, 58, 60-61, 86-87). The testimony of Julianna Viar supported the finding that as of the lien date, the subdivision was substantially completed (R. 275 at 164, 167-68). The exhibits presented by the Petitioner Mountain Ranch Estates, supported that finding by the engineering notes submitted in Exhibit P-14 (R. 231), wherein the notes of the contractor indicate that on October 16, 2000, "Mt. Ranch Estates finish paving today." (R. 231; *Testimony of Andrew Shaw*, R. 275 at 86). Further, the Petitioner submitted as exhibits, copies of two (2)

residential building permits for the subdivision which were issued in October and November of 2000, (R. 210, 211), with the testimony of Andrew Shaw and Spencer White that no residential building permits could be issued without complete infrastructure (R. 275 at 55 and 61; R. 275 at 205-207).

Thus, there was substantial evidence in the record that the Mountain Ranch Estates subdivision was substantially completed by the end of the year 2000 and the Petitioner/Appellant has failed to marshal the evidence in support and show that in light of that evidence there was a lack of substantial evidence in support of the finding, sufficient to overturn that finding.

2. Finding of Fact Number 6

The finding of the Tax Commission that "[b]efore the winter commenced in 2000, the Mountain Ranch Estates subdivision was substantially complete . . ." is supported by substantial evidence as discussed above regarding finding number 3. Finding number 6 also addresses the level of completion of the Glenwild subdivision which was the sole alleged comparative property and the subject of the equalization challenge. Had the Petitioner/Appellant marshaled the evidence in support as required, they would have shown that the testimony of Andrew Shaw and the testimony of Ted Daugherty support this finding (R. 275, at 73-75, 88-91; R. 275 at 107-110, 119, 128, 131-32, 135-36). Further, the engineering notes submitted as an exhibit by the Petitioner, (R. 221-247), support the finding regarding the different level of completion of the Glenwild subdivision.

Although there was conflicting testimony regarding the completion of certain roads within the Glenwild subdivision, there was consistent and substantial evidence that there were areas of Glenwild in which the roads were not paved at all which supports the Tax Commission

finding. (Compare: *Testimony of Andrew Shaw*, R. 275 at 70-75, 85-91 and 227-231 and *Testimony of Ted Daugherty*, R. 275 at 107-110. See also R. 285 (*Exhibit R-7*) for illustration). Further, it is undisputed that there were no residential building permits issued to the Glenwild subdivision due to the level of infrastructure not being complete enough to warrant those permits (R. 213-219; *Testimony of Spencer White*, R. 275 at 206, 219-20; *Testimony of Andrew Shaw*, R. 275 at 55 and 61)

Thus, there was substantial evidence in the record that the Mountain Ranch Estates subdivision was substantially completed by the end of the year 2000 and that the Glenwild subdivision was at a different and lesser level of completion as of the lien date. The Petitioner/Appellant has failed to marshal the evidence in support of the findings and show that in light of that evidence there was a lack of substantial evidence in support of the finding, sufficient to overturn that finding.

3. Finding of Fact Number 7

As discussed regarding finding numbers 3 and 6 above, there is substantial evidence in the record to show that Mountain Ranch Estates and Glenwild were at different stages of completion as of the lien date, January 1, 2001² as found again in finding number 7. Further, as discussed in finding number 6, the finding that Glenwild did not have paving, curb, gutter, etc. is also supported by substantial evidence. (R. 221-247; *Testimony of Andrew Shaw*, R. 275 at 89-91; *Testimony of Ted Daugherty*, R. 275 at 107-110) The finding that there was insufficient

²The lien date listed in finding number 7 erroneously states the date of January 1, 2000 rather than January 1, 2001. The Tax Commission properly found in uncontested finding of fact numbers 2 and 8, that the lien date was January 1, 2001. Thus, this error is not determinative to the overall findings regarding comparability and is most likely a typographical error.

evidence "to determine the percentage of completion of development of Phase One of Glenwild, or to determine the portions of development which had not yet been completed" is also supported by substantial evidence in the record. (Compare: *Testimony of Andrew Shaw*, R. 275 at 70-75, 85-91 and 227-231; and *Testimony of Ted Daugherty*, R. 275 at 107-110. See also R. 285 (*Exhibit R-7*) for illustration).

Mountain Ranch Estates refuses to recognize that their failure to provide sufficient evidence regarding the roads or other infrastructure that may or may not have been completed in the Glenwild subdivision supports the Tax Commission's finding that the Petitioner failed to meet their burden of proof under the Nelson test (R. 6-24).

Thus, the Petitioner/Appellant has failed to marshal the evidence in support and show that in light of that evidence there was a lack of substantial evidence in support of the finding, sufficient to overturn that finding.

4. Finding of Fact Number 13

Once again in challenging finding number 13, the Petitioner/Appellant has failed to marshal the evidence in support of that finding before attempting to attack the finding. The finding that the Respondent, Summit County had introduced substantial evidence to demonstrate that the properties are not comparable is supported by the record. Summit County presented evidence that the properties were in different planning neighborhoods (*Testimony of Spencer White*, R. 275 at 199-208; R. 261-267). Summit County presented evidence that the neighborhoods have different characteristics and planning goals (*Testimony of Spencer White*, R. 275 at 200-205, 207-208; R. 266-267). Summit County presented evidence and the Petitioner/Appellant does not dispute that Glenwild was a three (3) phase project while Mountain

Ranch Estates was a single project developed at one time (*Petitioner's Brief* at 17). Petitioner argues that the difference in the subdivisions, however, is "irrelevant" and that only one phase should be considered, although they themselves presented evidence regarding work conducted on all three phases (R. 213-219; R-221-247; R. 285, *Exhibit R-7*). Summit County presented evidence and Mountain Ranch Estates does not dispute that Glenwild is a gated community with an 18-hole golf course and clubhouse, with many lots adjacent to the golf course and tennis courts, while Mountain Ranch Estates has none of those amenities. These amenities can make a difference in the appraisal values. (*Testimony of Barbara Kresser*, R. 275 at 184)

Again the Petitioner/Appellant has failed to marshal the evidence in support and show that in light of that evidence there was a lack of substantial evidence in support of the finding, sufficient to overturn that finding.

5. Finding of Fact Number 14

As challenged and discussed regarding the other findings, there was substantial evidence to support the finding that the developments of Mountain Ranch Estates and Glenwild were at a different stage of completion as of the lien date, and that the completion stage of the infrastructure within the developments was different as well.

There is also substantial evidence to support the finding that Mountain Ranch Estates was at a stage of completion to allow residential building permits to be issued and construction to be commenced therein, whereas Glenwild was not sufficiently developed for residential building permits as evidenced by the Petitioner's own exhibit numbers P-12 (R. 210-211) and P-13 (R. 213-219) and the testimony of Andrew Shaw wherein he admitted that no residential permits would be issued without paved roads and other infrastructure. (R. 275 at 55, 61). Mr. Shaw's

testimony was corroborated by the testimony of Juliana Viar (R. 275 at 167-68) and the testimony of Spencer White (R. 275 at 205-207).

Despite their own exhibits and the testimony, Petitioner/Appellant argues that the Tax Commission finding regarding building permit was erroneous because Glenwild had "twice as many" building permits. (*Petitioner's Brief* at 26). Again, Petitioner/Appellant failed to marshal the evidence in support of the finding regarding building permits which shows that in fact, there were two (2) **residential** building permits issued for Mountain Ranch Estates Subdivision (*Testimony of Andrew Shaw*, R. 275 at 87; R. 210-211) and **no residential** building permits issued for Glenwild (R. 213-219). The permits issued to Glenwild were of a type that did not need completed infrastructure. (R. 275 at 205-207).

The finding that the properties of Glenwild also have different "zoning"³ than do the properties in Mountain Ranch Estates and that Glenwild is substantially mountainous, whereas Mountain Ranch Estates is primarily a flat or rolling meadow is also supported by substantial evidence in the record. While both subdivisions are regulated by the Snyderville Basin General Plan and Development Code, they are located in different neighborhood planning areas within the General Plan and Code (*Testimony of Spencer White*, R. 275 at 200-205, 207-208; R. 262-268) The primary witness for Mountain Ranch Estates, Andrew Shaw, testified that they were in different "zoning districts" or "planning zones". (*Testimony of Andrew Shaw*, R. 275 at 48). Mountain Ranch Estates is located within the Old Ranch Road neighborhood planning area, south of Interstate 80, which topographically is more of a meadow area (*Testimony of Juliana*

³Although under the same development code, the properties are within different neighborhood planning areas with different development criteria, thus the word "zoning" if used in this context would be correct. (See *Testimony of Spencer White*, R. 275 at 200-205).

Viar, R. 275 at 170-71; *Testimony of Spencer White*, R. 275 at 204; R. 267). Glenwild is North of Interstate 80, which topographically is more mountainous (*Testimony of Spencer White*, R. 275 at 202-203; R. 266). The testimony of Andrew Shaw (R. 275 at 48) and Ted Daugherty (R. 275 at 146-147, 150) also support this finding.

As for the finding that Mountain Ranch Estates is at least 500 lower in elevation than is Glenwild, Respondent Summit County concurs with the Brief of the Respondent Tax Commission in addressing the error in that finding, but would direct the Court to the general statements of Mr. Daugherty which were not stricken (R. 275 at 150), and others regarding the general topography.

Thus, when looked at it total, if the Petitioner/Appellant had marshaled all of the evidence presented by Summit County in support of the differences between the properties, the evidence would provide substantial evidence that they were not comparable for equalization purposes. The findings of the Tax Commission, should therefore be upheld.

On appeal, the burden of proof lies with the party appealing the administrative order, which in this case is Mountain Ranch Estates. If the appealing party fails to meet the burden of proof, the appeal must fail. Nelson, 943 P.23d at 1356. Mountain Ranch Estates has not met the burden of proof necessary to dispute the factual findings of the Tax Commission. They have failed to marshal the evidence supporting the findings and have failed to show that despite the supporting facts, that the findings are not supported by substantial evidence. Id. As a result, the findings and decision of the Tax Commission should be affirmed.

B. LEGAL CHALLENGE - THE APPLICABILITY OF UTAH CODE ANN . § 59-2-1006(4)

Petitioner/Appellant, Mountain Ranch Estates, asserts that if a single comparable parcel

or development is under-assessed, then the provisions of U.C.A. § 59-2-1006(4) require that the County reduce the value of Plaintiff's property even though Mountain Ranch Estates admits that the assessed value of their property is in fact, the fair market value.

The relevant portion of the Utah Code on which Petitioner relies is § 59-2-1006(4) which states:

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.

Under this statute, the primary inquiry is whether or not there are "comparable properties" (plural) to the property that is the subject of the appeal.

Mountain Ranch Estates has acknowledged that all other single family developments which were competitors in the market were assessed at fair market value. They allege that there was one exception, that of the Glenwild project, which they allege was undervalued. (*Testimony of Andrew Shaw*, R. 275 at 84; R. 76). They acknowledge that their argument is based upon only one other single family subdivision. (R. 76; R. 80). In making the equalization challenge they argue that the properties are comparable because they compete in the same market place. However, as discussed above, the Tax Commission determined that they were not comparable which finding is supported by substantial evidence.

Mountain Ranch Estates also argues that there was error in the assessment methodology that Summit County Assessor's office used when valuing the fair market value of Glenwild which should trigger the application of the equalization statute. The proper application of appraisal techniques, however, is a question of fact not law. Beaver County v. Utah State Tax

Comm'n, 919 P.2d 547, 554 (Utah 1996). As a question of fact, Mountain Ranch Estates must marshal all the evidence in support of that valuation and then show that it is not supported by substantial evidence before they can prevail on appeal. Id. Mountain Ranch Estates has not met this burden and in fact, has not challenged finding number 8 which addresses the methodology used for Glenwild. As stated in the Nelson case, offering "anecdotal evidence showing that the similarly situated [] property was assigned a value much lower than [the appellant's] . . . is insufficient to overturn the Commission's determination of fair market value." Nelson, 943 P.2d at 1356.

The Tax Commission correctly applied the law in the case and there was no error in the application of law which needs to be corrected. To prevail before the Tax Commission

the Petitioners 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 value to the amount proposed by Petition.

Nelson v. Board of Equalization of Salt Lake County, 943 P.2d 1354, (Utah 1997).

This case is unique in that the argument is not that Mountain Ranch Estates is over assessed or over valued, or that the County Assessor erred in the values of comparable properties (plural) which would trigger the equalization statute. Rather, the question is whether the County's use of a different appraisal methodology for one subdivision which may or may not have undervalued the parcel, mandates a reduction in the Petitioner's tax assessment under the equalization statute even though there was no error in the petitioning parcel's value.

The record is replete with admissions from the Petitioner that they do not contend that they were over assessed or that all other parcels but Petitioner's was assessed at fair market value. In fact, the admission is that every other subdivision and parcel was assessed at fair

market value except Glenwild which was under-assessed because a different methodology was used based upon the level of infrastructure completion. Therefore, Petitioner, (and arguably every property owner within the County) should receive a reduction under the equalization statute.

The Tax Commission correctly applied the law in this case and there is no error in that application which would require correction. Because there was no error in the appraisal of Petitioner's parcel, nor a sound evidentiary basis on which to reduce the original value, under Nelson, the argument must fail.

II DID THE DECISION OF THE UTAH STATE TAX COMMISSION VIOLATE THE EQUAL PROTECTION PROVISIONS OF THE UNITED STATES AND THE UTAH CONSTITUTIONS?

A. HAS THE RESPONDENT VIOLATED PETITIONERS'S RIGHTS OF EQUAL PROTECTION UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION ?

Petitioner cites the case of Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 488 U.S. 336 (1989), as authoritative to support their contention that Summit County has violated the 14th amendment guarantee of equal protection under the U.S. constitution. In Allegheny, the Supreme Court found that

The Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class' *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 190 (1945) (collecting cases). The use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command. As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, see *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 353 (1918); *Coulter v.*

Louisville & Nashville R. Co., 196 U.S. 599 (1905).

Id. at 343. The Allegheny Court further stated that the "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." *Id.* at 345 *quoting Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 353 (1918); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445-446 (1923); *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County Pa.*, 284 U.S. 23, 28-29 (1931).

In order to prevail on an equal protection claim, Petitioner must show: 1) that the disparate valuation must be on comparable properties of the same class, *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 190, 65 S. Ct. 624, 629, 89 L. Ed. 857, 863 (1945); 2) that the alleged disparate treatment is something more than a simple mistake in judgement or occasional error, *Id.* ; and 3) a systematic and intentional system of undervaluation "of some but not all of the taxed property in a single class" *Id.* at 191; Petitioner has failed to make this showing that the assessment between the Appellant/Petitioner, Mountain Ranch Estates, and one other property owner was unconstitutionally discriminatory.

1. The properties in question are not comparable properties of the same class.

As discussed above, the Tax Commission found that the Petitioner's property was not comparable to the alleged undervalued subdivision known as Glenwild. This finding was supported by substantial evidence and the discussion regarding the facts will not be repeated here.

A finding that the properties are not comparable defeats any claim of disparate treatment or any discussion of an equal protection violation. To violate equal protection, the properties

must be of the same class. A finding that they are not, ends the inquiry.

2. *The alleged disparate treatment, if any, was no more than a simple mistake in judgment, not occurring in any other tax year.*

Respondent/Appellee Summit County does not admit to nor concede the position that there was any error in the appraisal methodology or any error in the assessed value given to the Glenwild subdivision in the disputed tax year. It is the position of Summit County that there was a legitimate basis for the method used and value given by Ted Daugherty (R. 275 at 100-150), that the determination of appraisal methods and values is a question of fact, Beaver County, 919 P.2d at 554, and that the Petitioner/Appellant has failed to meet the burden of proof necessary to support any allegation of error in that method or value. Nelson, 943 P. 2d at 1356.

Nonetheless, for the sake of this argument, even if the Petitioner had standing to challenge the value placed on the Glenwild subdivision or error was found in the value of Glenwild, or even if Mountain Ranch Estates had been able to meet the burden of proof to challenge the method of appraisal used for the Glenwild subdivision, the error, if any, was merely a mistake in judgement for a single tax year (2001) which has not been repeated. (R. 275 at 196-198). As a result, it cannot be said that the error, if any, was anything more than a simple mistake which under Allegheny, does not rise to the level of an equal protection violation.

3. *There was no systematic and intentional system of undervaluation.*

Petitioner/Appellant argues that to meet its burden of showing a "systematic and intentional system of undervaluation" as set forth by the Supreme Court in Allegheny, they need only show that the tax assessment of the Glenwild parcel was intentional and that it was done "in accordance with a defined system" (*Petitioner's Brief* p.32). This argument contradicts the

position taken by Mountain Ranch Estates before the Tax Commission. During opening statements, counsel for Mountain Ranch Estates stated their position that it was the use of a different appraisal methodology for Glenwild which created a "different system". (R. 275 at 20). However, in closing argument, counsel for Mountain Ranch Estates admitted that they could not show a systematic undervaluation scheme within Summit County. (R. 80). The argument as it now exists, also lacks merit in light of existing case law.

As the U.S. Supreme Court stated in Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County Pa., 284 U.S. 23, 28-29 (1931) (and cited in Allegheny):

It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property. [citations omitted] In *Sioux City Bridge Co. v. Dakota County*, [260 U.S. 441, 446 (1923)] this Court, referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent. of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, state the rule to be as follows: "This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute.

What the Supreme Court addressed in Cumberland and Allegheny, was the intentional discrimination against property owners who for several years in a row, were taxed at a rate substantially higher than the rate applied to surrounding and comparable property owners. It was the ongoing higher valuation of the petitioner's property for several years which violated the equal protection clause. This position is supported by the Supreme Court's discussion of other state court decisions in which it was the overvaluation for several years that violated equal

protection. Allegheny, 488 U.S. at 341.

In this case, the Petitioner/Appellant admits that its property was not overvalued. It admits that its property was assessed at fair market value. The alleged disparate treatment is asserted based upon the tax value given to another non-comparable subdivision for a single tax year. A different tax value given to a non-comparable property for a single tax year does not rise to the level of a "systematic and intentional system of undervaluation" .

In fact, Petitioner has admitted that there was no corruption by Summit County (R. 75), that there was no action of the County that was intentionally done (R. 75, and R. 78) and that there were no other properties or any other evidence that others were systematically undervalued. (R. 75, and R. 78). The Petitioner has not and cannot show a systematic and intentional system of under valuation and as a result, under the doctrine invoked in Allegheny, the equal protection argument must fail.

B. HAS THE RESPONDENT VIOLATED PETITIONERS'S RIGHTS UNDER ARTICLE XIII, SECTION 2 OF THE UTAH CONSTITUTION ?

Article XIII, Section 2 of the Utah constitution provides that

All tangible property in the state . . . shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

This provision of the constitution requires that all parcels of land be taxed according to their fair market value. Utah Code Ann. § 59-2-103; Nelson v. Board of Equalization, 943 P.2d 1354, 1356 (Utah 1997). "The uniformity requirement is satisfied when the property valuation is made a fair market value". Nelson, 943 P.2d at 1357 *citing* Rio Algom Corp. v. San Juan County, 681 P.2d 184, 191 (Utah 1984).

In the instant case, the Petitioner has presented no evidence that his property was assessed at anything other than the fair market value. In fact, the testimony of Mr. Shaw and others was that Petitioner was assessed at fair market value. (R. 78) The argument made in this case is not that the property was over valued or over assessed, but rather, that Petitioner should receive a discount or reduction to something less than fair market value, under the equalization statute.

In light of the admissions made and testimony presented at the hearing, the argument fails because the uniformity requirement of the Utah constitution is met when Petitioner's property was assessed at fair market value. Id. To argue that discounts should be awarded defeats the purpose and goal of equalization. Board of Equalization of Salt Lake County v. Utah State Tax Commission, ex. rel. Benchmark, Inc., 864 P.2d 882 (Utah 1993). Further, an equal protection argument cannot be made because Petitioner acknowledges that there are no other properties or any other evidence proving an intentional or systematic undervaluation scheme. In fact, Petitioner cannot show that any other property was undervalued other than perhaps one subdivision for one year. (R. 75, and R. 78).

Inasmuch as the Petitioner acknowledges in both the testimony and the arguments made that the assessed value of Petitioner's property was at fair market value, and admits that all of the similar properties but one, were assessed at fair market value, the uniformity requirement of Article XIII, § 2 has been met and there is no violation of equal protection under the Utah Constitution.

CONCLUSION

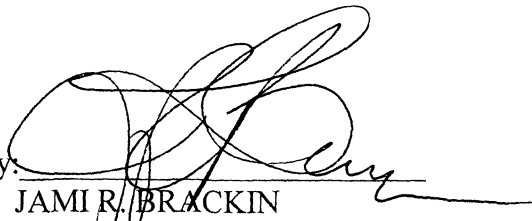
The Petitioner/Appellant, Mountain Ranch Estates has failed to meet the necessary burden of proof showing that there was error in the findings of fact or error in the application of the law. The factual findings were supported by substantial evidence in the record of a sufficient quantum and quality to convince a reasonable mind to support the conclusion. Board of Equalization of Wasatch County v. Stichting Mayflower, et al, 2000 UT 57, ¶ 9, 3 P.3d 559, 652.

Further, there was no error in the application of the law. The equalization statutes are inapplicable to this case because the Petitioner has failed to meet the burden of proof necessary to show that there was error in the County Assessor's assessed value and there is no sound evidentiary basis for reducing what is admittedly the fair market value of Petitioner's property. Additionally, the properties are not comparable for purposes of the provisions of Utah Code Ann. § 59-1-610.

Finally, there is no equal protection violation nor has the uniformity requirement of the Utah Constitution been violated when there has been no showing of a systematic and intentional system of under-valuing comparable parcels of real property, within Summit County.

RESPECTFULLY SUBMITTED this 12th day of September, 2003.

SUMMIT COUNTY ATTORNEY

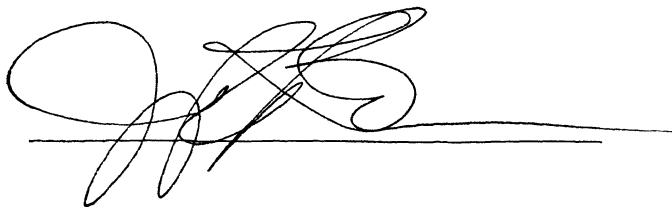
By: 
JAMI R. BRACKIN
Deputy Summit County Attorney

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing **Respondent's Brief** this 12th day of September, 2003, to the following:

Joseph E. Tesch
Kraig J. Powell
Victoria Romney
TESCH GRAHAM
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P.O. Box 140874
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A handwritten signature in black ink, appearing to be "JL", is written over a horizontal line.

Tab A

BEFORE THE SUMMIT COUNTY BOARD OF EQUALIZATION

Parcel Number: MRE-1 through MRE-81
Appeal Number: N/A
Owners of Record: Mountain Ranch Estate, Inc.

<u>Lot Number(s)</u>	<u>Current Value</u>	<u>Proposed Value</u>
2	\$165,000	\$148,500
3	\$160,000	\$144,000
4	\$155,000	\$139,500
5	\$150,000	\$135,000
6	\$145,000	\$130,500
7	\$140,000	\$126,000
8	\$135,000	\$121,500
9	\$142,500	\$128,300
10	\$145,000	\$130,500
11	\$147,500	\$132,800
12	\$152,500	\$137,300
13	\$142,400	\$128,200
14	\$150,000	\$135,000
48	\$150,000	\$135,000
49	\$152,500	\$137,300
50	\$152,500	\$137,300
51	\$152,500	\$137,300
52	\$152,500	\$137,300
53	\$152,500	\$137,300
54	\$152,500	\$137,300
75	\$155,000	\$139,500
76	\$155,000	\$139,500
77	\$155,000	\$139,500
78	\$155,000	\$139,500
79	\$155,000	\$139,500
80	\$155,000	\$139,500
81	\$155,000	\$139,500
MRE-A	Unknown	\$146,700
MRE-B	Unknown	\$42,400
MRE-C	Unknown	\$23,000
JB-2	Unknown	\$9,150
JB-3-1	Unknown	\$6,350

Dear Board of Summit County Commissioners;

As you are aware, on September 13, 2001, this matter came before the 2001 Board of Equalization. The following are the facts, findings, conclusions, and recommendation of assessment on the above referenced property for the 2001 tax year.

Conclusions Summary: The petitioner has the burden of proof to show the Board of Equalization that an erred assessment has occurred. The petitioner must also provide the Board of Equalization with an alternative value, which is reasonably supported by the evidence of record.

Petitioners appeared before the Board of Equalization presenting evidence and arguments that, the subject properties should be valued at per lot market value far less than currently assessed. Petitioner believes that because of the impact on market values created by the current water situation or lack of, values have declined dramatically.

Petitioner further argues that the common areas (*open space*) associated with the subject development should be valued as substantially less, as their contributory values are intrinsic in the subject lot values.

Initially, respondent argued that based on their research, utilizing sales from the subject's immediate neighborhood, the subject's current assessment is well supported.

However, after having listened to the petitioner's points of valuation, respondent agreed that some of the subject lots should receive an adjustment. Respondent offered petitioner a 10% reduction on selected lots within the subdivision.

Additionally, a resolution regarding the subject's common area being values at an open space per acre rate was also agree too.

Recommendation Summary: Having reviewed the factual evidence and taking oral testimony offered by both the petitioner and respondent, it is concluded by a preponderance of evidence that downward adjustments on some of the subject's selected lots and common area are warranted as recommended by respondent.

Property Description: The subject is described as a tract of land, which has recently been developed into 81-acre lot subdivision. Associated with the 81 lots are areas of open space accessible to all owners within the subdivision.

Issue: The issue before this Board of Equalization is one of establishing a fair and reasonably supported market value for ad valorem tax purposes.

Petitioner: Petitioner appeared before the board of equalization, sighted several issues regarding the valuation of the subject land parcels.

Petitioner stated that some of the subject subdivision lots suffer from substantial traffic exposure, rendering them less desirable than other lots with superior locations within the development.

Petitioner further argues that other lots within the subdivision suffer inferior views, rendering them less desirable than other lots within the subject development.

Petitioner also brought forth the argument that all of the subject common areas (open spaces) (parcels MRE-A, B, and C) are freely accessible to all owners residing in the subject subdivision. Petitioner believes that because of the strict nature of the subject subdivision's restrictive covenants,¹ any contributory value associated with these common areas are captured in the sale prices of the subject's individual lots. Petitioner argues that these common areas should be valued at a nominal per acre rate.

¹ See Subject Subdivision Restrictive Covenants, attached.

Petitioner then brought forth the argument that because of a recent culinary water concurrency ordinance; lots sales have declined dramatically along with accompanying prices. Petitioner claims that until this ordinance is lifted and water is once again made available to the subject lots, market values will continue to decline. Petitioner stated that unless a water concurrency letter is issued, Summit County is unwilling to issue building permits for future residential development.

Petitioner claims that as a result of this implication, lot sales within the subject subdivision have declined by at least 50%. As a result, petitioner states that they have been forced to provide a rescission clause as part of their selling strategies, where lots sales during this water concurrency period would be contingent on petitioner providing water within a specific time frame. Petitioner states that if this contingency is not met, any buyer would be able to terminate the purchase contract with a full purchase refund.

Petitioner indicated that lots JB-2 and JB-3-1 were considered buildable lots when the subject subdivision plat map was originally recorded. Petitioner states that because of alterations as a result of concessions with the Park City Planning Commission have rendered them unbuildable at the current time. Petitioner asserts that these lots should be valued at a nominal rate as well.

Respondent: Respondent indicated that the land value for the subject was estimated by the Sales Comparison Approach. The respondent indicates that sales of vacant land in the subject's immediate or competing areas were gathered, analyzed, and adjusted were made for any dis-similarities when compared to the subject property.

Respondent indicates that the land sales gathered and analyzed were then utilized in the development of a land guide, which was used to reappraise all land within the boundaries of Summit County for the current assessment year. This land guide was developed not only to estimate the market values of land within areas, which require reappraisal, but also to aid in establishing market values on an annual basis, as required by statute. This method of appraisal is to insure a consistent level of assessment values.

Respondent pointed out that their primary source of valuing the subject subdivision lots were the petitioner's asking prices. Respondent stated that they had tracked the lot sales occurring within the subdivision, claiming that most had sold for their asking prices. Respondent stated that as a result of this methodology, they felt confident that all lots within the subdivision were reasonably assessed.

Respondent after hearing petitioner's testimony agreed that some adjustment was in order. Respondent stated that lots within the subdivision, which had an obscured view, should be reduced 10%. Respondent further stated that lots within the subdivision that were exposed to heavier commuter traffic should also be reduced by 10%.

Respondent agreed that the subject common area market values should be reduced to reflect the fact that most of their contributory values are captured in the individual building lot values. Respondent agreed that these areas should be valued at a nominal open space per acre rate of \$2,500. Respondent further agreed that lots JB-2 and JB-3-1 should also be assessed at a nominal market value.

Respondent, addressing the current water concurrency ordinance, stated that while it may have an impact on market values if restrictions are long term, asserts that this is a short term limitation. Respondent argues that a resolution is currently being negotiated, and that they

have been unable to gather evidence from the market that would lead to a conclusion that market values have been significantly impacted.

Findings: Having listened to oral testimony and reviewing the factual evidence submitted by both parties, I have made the following observations:

- ◆ Petitioner provided evidence to support the argument that selected lots within the subject subdivision had been impacted by obscured views and increased traffic exposure.
- ◆ Petitioner provided evidence that subject common areas contributory values were captured in the subject's individual lot values.
- ◆ Petitioner argued that the current water concurrency ordinance had dramatically and negatively impacted the subject's market values.
- ◆ Petitioner stated and provided evidence to support their conclusion, but this evidence was in the form of offers and not bonafide sales transactions.
- Respondent originally asserted that the subject's current assessment is well justified by recent sales occurring in the subject neighborhood.
- Respondent originally submitted evidence to support their assertions of a supportable market value assessment for the current year.
- However, after reviewing petitioner's evidence and hearing petitioner's testimony, agreed that certain lots within the subdivision should receive downward adjustments.
- Respondent offered a 10% reduction to those lots identified as either suffering from obscured views or increased traffic exposure.
- Respondent further agreed that the subject's common areas should be valued at a nominal price of \$2,500 per acre.
- Respondent also agreed that because of changed utility of lots JB-2 and JB-3-1 as a result of development concessions, should also be valued at nominal market rates.
- Respondent argued that the current market bore no evidence of reduces values as a result of the current water concurrency ordinance.

Conclusions: By Supreme Court decision, the presumption of correctness is in favor of the respondent, until such time as evidence has been entered into an appeal record which places that presumption into question. The petitioner's burden of proof² is twofold;

- **First**, the petitioner must provide clear and convincing evidence that the subject property's assessment is representative of a market value that is unsupported by circumstances in existence as of the January 1 lien date;

²First Nat'l Bank v. Christensen, 39 Utah 568, 118 P. 778 (1911).

- **Second**, the petitioner must provide the Board of Equalization with an alternative market value, which is reasonably supported by evidence.

Until otherwise questioned, respondent has been given the presumption of correctness. Petitioners submitted evidence of obscured views and increased traffic exposure on certain lots has provided sufficient evidence to call the respondent presumption of correctness into question.

Respondent offered market value resolutions for certain lots located within the subject subdivision. Respondent also offered resolutions to petitioner's argument regarding the subject's common areas and lots JB-2 and JB-3-1.

Petitioner claimed that the lack of culinary water has resulted in a significant decline in sales activity and substantial reduction market values.

Respondent as part of their ongoing assessment practices are to consider all relevant issues impacting market value, but to appraise each property within their jurisdiction assuming "fee simple" ownership. However, when governmental ordinances outside the owner's control make development so restrictive that it causes a diminished market value, these factors must be addressed. While this issue would bear importance to the subject's market value, to claim that the subject properties' have been significantly and negatively impacted without support is highly speculative.

The subject properties' do offer utility, while perhaps not currently for what their original development intended, they do have utility, and do have value. To what degree the lack of culinary water would negatively impact the subject's values would require substantial analysis of the subject neighborhood market. Petitioner did not offer any such analysis for this Board to consider.

The Summit County Board of Equalization is a quasi-judicial tribunal and is governed by judicial rules of evidence. As such, the Board does not have within its digression, the ability to make any arbitrary determinations of market value.

Based on the forgoing record and evidence, it is concluded that the respondent has supported their alternative market value proposals for the subject properties by a preponderance of the evidence of this appeal record.

Recommendation: Accordingly, it would be my recommendation to the Board of Equalization that the subject's current assessments be reduced as proposed by respondent.

Respectfully,



Ed Kent,
Hearing Officer,
Summit County Board of Equalization