

08-2227  
LOCALLY ASSESSED PROPERTY  
SIGNED 05-21-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION  
OF SAN JUAN COUNTY, STATE OF UTAH

Respondent.

**INITIAL HEARING DECISION**

Appeal No. 08-2227

Parcel Nos. ##### -1  
##### -2

Tax Type: Property Tax / Locally Assessed  
Tax Year: 2008

Judge: R. Johnson

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**Presiding:**

R. Bruce Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER 1

For Respondent: RESPONDENT REP 1, San Juan County Assessor  
RESPONDENT REP 2, San Juan County Clerk/Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on April 30, 2009. The parcels in question are two vacant lots with parcel numbers ##### -1 (##### -1) and ##### -2 (##### -2). The lots were assessed, as of January 1, 2008, for \$\$\$\$ and \$\$\$\$, respectively. ##### -1 is 3.93 acres and ##### -2 is 3.78 acres. Those values were upheld by the County Board of Equalization. Taxpayers request that the values be reduced to \$\$\$\$ for ##### -1 and \$\$\$\$ for ##### -2.

It is undisputed that Taxpayers paid \$\$\$\$ per lot on or about September 28, 2007 in an arm's length purchase. Pursuant to the purchase agreement, the developer agreed to put in roads in a condition that would allow them to be deeded to the county. The developer was also obligated to install electricity, phone, and water and sewer hook-ups. The developer agreed to make those improvements by March, 2008. Those improvements, with the exception of some pipe in the ground, have not been made as of the date of this hearing, and the developer has disappeared.

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The County has recognized this situation for 2009 and has lowered the value of the parcels to \$\$\$\$ for ##### -1 and \$\$\$\$ for ##### -2. These are the values that Taxpayers now request for 2008.

APPLICABLE LAW

Utah Code Ann. § 59-2-103 requires all tangible taxable property in the state to be assessed and taxed “on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

DECISION AND ORDER

The facts of this case are not in dispute. If the properties contained the improvements promised by the developer, the Board of Equalization values would be justified. If, however, the improvements are not made, the values proposed by the Taxpayers are justified. It is undisputed that the improvements were not in place on the lien date. It also appears, however, that the developer promised to make the improvements by March of 2008. Accordingly, as of the lien date, the developer had not yet breached his agreement.

The County Assessor argues that he is required to assess the property as of the lien date. At that time, prior to the developer’s breach, he argues that the BOE values are supported by the sales price.

We agree with the Assessor’s statement of the law and the principle involved. We believe, however, that the conclusion must be different. It is undisputed that the BOE values are based on the sales price of the properties as if improved. It is undisputed that, on January 1, 2008, the properties were not improved. The taxpayers owned land, which is taxable, and a promise from the developer to improve land, which is not taxable. The properties must be valued in their condition on the lien date—that is, without the improvements. We hold that the fair market value of ##### -1 is \$\$\$\$\$ and the value of ##### -2 is \$\$\$\$\$ as of January 1, 2008.

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

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within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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R. Bruce Johnson  
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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