

03-0159  
Locally Assessed Property  
Signed 04/02/2004

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
	)	
Petitioner,	)	Appeal No. 03-0159
	)	Parcel No. Multiple-172
v.	)	
	)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)	
OF DUCHESNE COUNTY,	)	Tax Year: 2002
STATE OF UTAH,	)	
	)	Judge: Davis
Respondent.	)	

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**Presiding:**

G. Blaine Davis, Administrative Law Judge  
Palmer DePaulis, Commissioner

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE 1, from the law firm of COMPANY  
A  
PETITIONER REPRESENTATIVE 2, Owner  
PETITIONER REPRESENTATIVE 3, Owner  
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy, Duchesne County  
Attorney  
RESPONDENT REPRESENTATIVE 2, Duchesne County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 24, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.

2. The year in question is 2002, with a lien date of January 1, 2002.
3. The subject property is a series of developed recreational lots located in Duchesne County, commonly referred to as SUBDIVISION 1.
4. The Duchesne County Assessor initially valued the subject property at \$\$\$\$\$ for each of the lots in question as of the lien date.
5. The Duchesne County Board of Equalization sustained a value of \$\$\$\$\$ for each of the lots. This would equal an assessed value of approximately \$\$\$\$\$ per acre.
6. Petitioner has developed a subdivision located a few miles east of CITY, Duchesne County, consisting of 172 different parcels. Most of those lots are undeveloped parcels of land which, as of the lien date, had not been sold and are under appeal in this proceeding. Most of those lots are approximately 2.5 acres.
7. Petitioner does not attempt to sell the vacant lots without a construction or building package. Instead, Petitioner sells a total package consisting of a building lot plus a cabin, and the prices for the building lots and cabin range between \$\$\$\$\$ and \$\$\$\$\$, plus any add-ons determined by the purchaser.
8. At the time a package is purchased, the contract contains a statement which represents a lot with a value of \$\$\$\$\$ is included in the total purchase price. Purchasers of the package may make payments until they are ready to construct the cabin, but if they never construct the cabin they will have paid \$\$\$\$\$. Purchasers of a cabin package do not need to decide which cabin to build, or the add-ons until they are ready for construction to begin.

9. Petitioner represented that the amount of \$\$\$\$\$ includes almost all of its profit anticipated on the construction of the building, so if a purchaser never constructs a cabin or other improvements on the property, Petitioner will have received most of its potential profits, but the purchaser will have paid an excessive price for the land. Petitioner also argued that any of the purchasers would be foolish to not go forward and construct the cabin, because all they would have to pay is the actual out-of-pocket cost to construct the cabin.

10. Petitioner, as of the lien date, has sold approximately 50 lots within the subdivision, and there was only one purchaser who purchased the land without a package for a cabin on the property. That purchaser paid an amount of \$\$\$\$\$, for property that was originally scheduled to be lots #####-1, #####-2, #####-3, and #####-4, consisting of approximately 9.13 acres. However, because that purchase was made before the plat was recorded, the recorded plat reflects the entire 9.13 acres as a single lot, no. #####-1. Of the \$\$\$\$\$ purchase price, that purchaser paid an amount of \$\$\$\$\$ as a down payment, and the balance of \$\$\$\$\$ was due and payable six months thereafter.

11. In support of its proposed value, Petitioner submitted an appraisal prepared by APPRAISER, a Utah State Certified General Appraiser with the appraisal firm of COMPANY B. APPRAISER based his appraisal on the sales comparable method, using eight separate comparable sales which occurred in the Duchesne County area. The appraisal was made for one single lot within the SUBDIVISION 1 area, but the parties agreed that there would be very little difference in the lots except for a small size adjustment. APPRAISER selected lot no. #####-5 which is 2.510 acres. All

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of the lots in the SUBDIVISION 1 area have electricity, phone service, and water service, and are approximately the same size.

12. Four of the eight comparable sales selected by APPRAISER were in the CITY 1 area, and four of the comparable sales were in the CITY 2 area. APPRAISER testified that the properties in the CITY 2 area would have a higher value for recreational use than the sales from the CITY 1 area. The primary reason for that difference in value is because the properties in the CITY 2 area have substantial trees and other vegetation, and more variance in the topography and land. To get to an equivalent comparative basis, APPRAISER analyzed the properties on a per acre basis. The sales in and around CITY 1 sold for prices per acre of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The highest sale of \$\$\$\$\$ per acre was the sale referred to above of 9.13 acres in the SUBDIVISION 1 area which sold for \$\$\$\$\$ for an amount of land that was originally four separate lots. The comparable sales in the CITY 2 area used by APPRAISER sold for per acre prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

13. Using those eight separate sales, APPRAISER made the adjustments which he deemed necessary for location, size, and utility service. After the adjustments which APPRAISER deemed appropriate, he arrived at an adjusted value per acre for each of the sales, and those adjusted values per acre for the eight (8) sales were from a low of \$\$\$\$\$ to a high of \$\$\$\$\$. The average of those sales was \$\$\$\$\$ per acre after the adjustments deemed appropriate by APPRAISER.

14. APPRAISER reviewed each of the sales and gave the greatest weight to his sale no's. 1, 3, and 6, which respectively had an adjusted value per acre of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

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Based upon that weighting, APPRAISER estimated that the fair market value of the subject property, based upon other comparable sales in the area, would be \$\$\$\$\$ per acre. Based upon that value and the size of the lot he had selected of 2.51 acres, APPRAISER, on behalf of Petitioner, estimated the value of lot no. #####-5 to be \$\$\$\$\$.

15. Respondent submitted an appraisal prepared by RESPONDENT REPRESENTATIVE 2, the Duchesne County Assessor. RESPONDENT REPRESENTATIVE 2 selected as his comparable lot in the SUBDIVISION 1, lot no. #####-6, which is the lot that joins lot no. #####-5, the lot selected for appraisal by Petitioner's appraiser. In his appraisal, RESPONDENT REPRESENTATIVE 2 also used the comparable sales approach and used nine separate comparable sales plus two separate listings within Duchesne County from the Uintah Basin Multiple Listing Service. On Respondent's appraisal, comparable sale nos. 1, 5, 6, 7, 8, 9, 10 and 11 were all from the SUBDIVISION 1 area and were all based upon responses to the Utah State Tax Commission questionnaire. Comparable sale no. 6 was the sale referred to above, which was designated as lots no. #####-1, #####-2, #####-3, and #####-4 at the time of purchase, but was later merged into a single lot no. #####-1 at the time the plat was filed. Therefore, on comparable sale no. 6, Respondent calculated it as a sale of a 2.5-acre lot at \$\$\$\$\$. The remaining 6.63 acres were valued as "backage" for a value of \$\$\$\$\$. Respondent therefore deemed the value of a 2.5 acre lot to be \$\$\$\$\$.

16. Comparable sale no's. 10 and 11 from the SUBDIVISION 1 area were each listings on the Uintah Basin Multiple Listing Service and were proposed secondary sales. In addition

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to the land, the person who had purchased the lot originally and was attempting to sell it at a price greater than the amount originally paid for the land and the right to build a cabin at a specified price.

Comparable sale no. 10 was listed on the MLS for a proposed selling price of \$\$\$\$\$, and comparable no. 11 was listed on the MLS for a proposed selling price of \$\$\$\$\$. Those prices included the right to a building package. Those properties had not sold at those prices and no offers had been received at any price. Petitioner's appraiser represented he had talked to the real estate agent or broker with whom each of the lots was listed and there had not been any interest expressed in either of those lots from any potential purchaser.

17. Comparable sale no's. 7, 8, and 9 were three different lots at the SUBDIVISION 1 subdivision which included the full construction price of the cabin which has been constructed upon the land. Respondent attempted to remove from the total price the construction costs calculated from the Marshall and Swift Costing Service, to arrive at a value for each lot. Comparable sale no's. 8 and 9 were each approximately 2.53 acres, but comparable sale no. 7 was 12.55 acres. Using that method RESPONDENT REPRESENTATIVE 2 arrived at indicated values for the lots between \$\$\$\$\$ and \$\$\$\$\$. Those values would not be supported by any other sales in the area. Respondent testified he did not rely upon those sales to determine his values.

18. Comparable sale no's. 1 and 5 from the SUBDIVISION 1 were based upon questionnaires which had been sent to the purchasers of those lots, and they both answered and stated that they had paid \$\$\$\$\$. That was based upon the advertisement and the contract which indicated \$\$\$\$\$ was the purchase price. However, with the land both parties also received a cabin package,

i.e., a right to construct a cabin at any time within three years for a fixed price with no increase in pricing during that three-year period.

19. Comparable sale nos. 2 and 4 from Respondent's appraisal were in a subdivision called "SUBDIVISION 2" which is located 28 miles northeast of the subject property. Upon cross-examination, it was determined that the SUBDIVISION 2 is very different than the subject property. The SUBDIVISION 2 includes the right to have horses on the property, and it also includes irrigation rights. Further, the subdivision is primarily permanent residential homes rather than recreational cabins as are constructed on the properties in the SUBDIVISION 1 area.

20. Comparable sale no. 3 was in a subdivision called "SUBDIVISION 3", and is 25 miles northeast of the subject property. This property contains substantial trees, rocks and other attractive landscaping, and sits on a creek with running water during part of the year. This subdivision also is a primary permanent residential facility rather than a recreational cabin area. This property was also purchased with two (2) other lots, and then the total price was allocated among the three (3) lots.

21. When the Duchesne County Assessor was asked in cross-examination if he knew of any other developments in the Duchesne County area in which recreational lots sold, without a cabin package for a price in the neighborhood of \$\$\$\$\$ or \$\$\$\$\$, the only ones he could identify were the SUBDIVISION 2 and the SUBDIVISION 3. Those developments are each more than 25 miles away and are designed primarily for permanent residential housing. The Commission specifically finds that the sales from the SUBDIVISION 2 and SUBDIVISION 3 are properties that

are not comparable to the subject property in terms of pricing, amenities, nature of the residence, or the potential purchasers of those properties.

#### APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. To prevail, the Petitioner 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 valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

#### DISCUSSION

Based upon the cross-examination of the County Assessor by Petitioner's attorney, the Commission specifically finds that the properties in the comparable sales of the appraisal of Respondent are not really comparable to the subject property. In each of the sales used by Respondent, there are factors such as a cabin-building package, trees, topography, horse property, irrigation, and other factors which differentiate those properties from the lots within the SUBDIVISION 1.

The two listings used by Respondent are not good evidence of the value of a lot without a building package. Further, the comparison made with the full construction cost including the land, and then attempting to remove the construction costs pursuant to Marshall & Swift did not



produce a reliable indicator of the fair market value of the subject property. In addition, as stated, the SUBDIVISION 2 and SUBDIVISION 3 are not comparable. The sales used by Respondent at the SUBDIVISION 1 all included the value of a cabin-construction package, which is not included with the sales of any other lots in the area. Therefore, for those sales to be a reliable indicator of the fair market value for the subject property, an appropriate allowance or adjustment must be made to remove the value of that cabin-construction package from the full price paid by the purchasers to arrive at the true fair market value of the land.

Respondent presented its appraisal which, on its face, supported the assessed value of the property of approximately \$\$\$\$ for each lot. While it is accurate that Petitioner advertises that the lots have a value of \$\$\$\$\$, and the written contract implies to purchasers that they are paying \$\$\$\$\$ for a lot, the testimony and evidence are clear that purchasers receive more than just a lot for \$\$\$\$\$. In addition to the lot, a purchaser receives a three-year guarantee on the price of building a cabin, and the purchaser has already paid a portion of the profit on the construction of the cabin.

The structure of this arrangement is a cleverly designed marketing plan or scheme to get purchasers to pay in advance for some items. Some persons may challenge the ethical propriety of representing that a lot has a value of \$\$\$\$\$ if the market will not support that value for a lot that is sold after the three-year price guarantee on the cabin has expired. However, this Commission does not have jurisdiction to deal with that issue. The jurisdictional areas for this Commission are to determine, based upon a totality of the evidence, the most probably selling price, or "the amount at which property would change hands between a willing buyer and a willing seller, neither being under

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any compulsion to buy or sell and both having reasonable knowledge of the relevant facts" (U.C.A. 59-2-102(12)). It must therefore be assumed that a potential buyer has "reasonable knowledge of the relevant facts." Accordingly, it is assumed that a prospective purchaser has reasonable knowledge that the price includes a three-year price guarantee on the construction of a cabin, and that other properties in the area, without such a three-year price guarantee, are selling for significantly less than \$\$\$\$\$.

When an examination is made of the comparable sales upon which the appraisal of Respondent was made, such sales do not support the notion that 2.5 acre lots in the SUBDIVISION 1 Subdivision, without a cabin construction package, have a value of \$\$\$\$\$. If a cabin construction package is included with the purchase of a lot of 2.5 acres, and that cabin construction package provides a contractual right to build a cabin within three (3) years of the purchase date at a guaranteed fixed price, the value of that cabin construction package must be removed from the total purchase price to determine the fair market value of the land.

Petitioner presented its appraisal based upon eight (8) comparable sales in the area. Petitioner's appraiser made adjustments to those comparable sales which were not significantly challenged by Respondent. Based upon those comparable sales, and the adjustments thereto, Petitioner's appraiser determined the value of the 2.5-acre lots, without a cabin construction package, was \$\$\$\$\$ per acre or approximately \$\$\$\$\$ per lot.

The Commission finds the appraisal presented by Petitioner makes more correct assumptions and is a more reliable indicator of the fair market value of the 2.5-acre lots in the

SUBDIVISION 1 Subdivision. The value of the lots determined by Respondent includes the value of a three-year price guarantee for the cabin construction package. The value of the lots determined by Petitioner does not include any value for the cabin construction package.

However, the Commission further finds that neither appraisal gave sufficient weight to the comparable sale that provides the most reliable indicator of value for those lots. That comparable sale is the only sale in the SUBDIVISION 1 Subdivision which sold without a cabin construction package. That sale was for 9.13 acres at a price of \$\$\$\$\$, or a price (rounded) of \$\$\$\$\$ per acre. The Commission finds the most persuasive evidence is that \$\$\$\$\$ per acre is the reasonable fair market value for all of the vacant lots within the SUBDIVISION 1 Estate.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the property within the SUBDIVISION 1 is \$\$\$\$\$ per acre. The Duchesne County Auditor is hereby ordered to adjust its records to value each of the lots at a price of \$\$\$\$\$ per acre. That will result in a small but reasonable difference in the value of each of the lots within the subdivision, but the only difference will be based upon the size of the lot. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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G. Blaine Davis  
Administrative Law Judge

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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 \_\_\_\_\_, 2004.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
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. §63-46b-13. 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 and 63-46b-13 et. seq.

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