03-0267
LOCALLY ASSESSED PROPERTY
SIGNED 09-28-2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION**
Petitioner,	)	Appeal No. 03-0267
v.	)	
BOARD OF EQUALIZATION OF SUMMIT COUNTY, STATE OF UTAH,	)	Tax Type: PropertyTax/Locally Assessed
	)	Tax Years: 2001, 2002
Respondent.	)	Judge: Davis

Presiding:
G. Blaine Davis, Administrative Law Judge
Palmer DePaulis, Commissioner
Marc B. Johnson, Commissioner

Appearances:
For Petitioner: PETITIONER REP 1, from COMPANY A
PETITIONER REP 2, from COMPANY A

For Respondent: RESPONDENT REP 1, from COMPANY B
RESPONDENT REP 2, from COMPANY B
RESPONDENT REP 3, from COMPANY B
RESPONDENT REP 4, Deputy, Summit County Attorney

This Order may contain confidential "commercial information" within the meaning of Utah Code Ann. §59-1-404, and such information is protected from disclosure pursuant to the Protective Order included herein.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 15, 16, 17, and 18, 2004. The parties were then given time to file briefs, and the last

brief was filed on April 30, 2004. 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 years in question are 2001 and 2002, with a lien date of January 1, 2001 and January 1, 2002.

3. The subject property is fourteen (14) separate parcels of land located in the resort core of PETITIONER.

4. Petitioner appealed the valuation of the 14 parcels of property because the 2001 values on the tax notice increased substantially over the values for the year 2000. The values for the year 2000 and the values stipulated to by the parties for purposes of sending the appeal to the Tax Commission for 2001 and 2002 are as follows:

Item	Tax ID No.	2000 Values	2001 Values	2002 Values
1	#####-1	$$$$$	$$$$$	$$$$$
2	#####-2	$$$$$	$$$$$	$$$$$
3	Intentionally omitted			
4	#####-3	$$$$$	$$$$$	$$$$$
5	#####-4	$$$$$	$$$$$	$$$$$
6	#####-5	$$$$$	$$$$$	$$$$$
7	#####-6	$$$$$	$$$$$	$$$$$
8	#####-7	$$$$$	$$$$$	$$$$$
9	#####-8	$$$$$	$$$$$	$$$$$
10	#####-9	$$$$$	$$$$$	$$$$$
11	#####-10	$$$$$	$$$$$	$$$$$
12	#####-11	$$$$$	$$$$$	$$$$$
13	#####-12	$$$$$	$$$$$	$$$$$
14	#####-13	$$$$$	$$$$$	$$$$$
15	#####-14	$$$$$	$$$$$	$$$$$
	TOTALS	$$$$$	$$$$$	$$$$$

5. Petitioner did not stipulate that the above values for 2001 and 2002 were correct, but instead stipulated the Board of Equalization could enter an order for those values so that the matter could be forwarded to the Utah State Tax Commission.

6. PETITIONER (herein referred to as "PETITIONER"), is a subsidiary of (PORTION REMOVED). The tax parcels at issue in this proceeding constitute land upon which PETITIONER plans to develop commercial, lodging and residential real estate projects to be used and marketed as part of PETITIONER. In PETITIONER Core, where all of the 14 appealed parcels are located, 90% of the allowable building density is classified as hotel lodging. Throughout the entire AGREEMENT A area (as defined below) more than 80% is designated as hotel lodging. The remaining area in the Resort Core is designated for commercial/retail use.

7. PETITIONER assembled and acquired ownership interests in at least TAX PARCELS which were part of or in the vicinity of the old RESORT A resort (the "TAX PARCELS") on which PETITIONER and its affiliates are developing a destination ski resort similar to RESORT B and RESORT C. While some of the TAX PARCELS may be owned in fee by PETITIONER, its interests in more of the TAX PARCELS were acquired pursuant to a certain Ground Lease Agreement dated (X) between RESORT A Resorts, L.C., as lessor and seller, and PETITIONER, as lessee and buyer (The "AGREEMENT B"). Pursuant to the AGREEMENT B, PETITIONER leases from RESORT A certain land with an option to purchase portions of the land of RESORT A on which PETITIONER desires to construct buildings or improvements. The AGREEMENT B provides that PETITIONER will pay all real estate taxes and assessments on the leased land.

8. To facilitate the development of PETITIONER and the adjoining real estate projects on the TAX PARCELS, Summit County and PETITIONER, together with another affiliate of PETITIONER named (X) ("(X)") and certain other landowners, entered into a Development Agreement for PETITIONER (X)Plan dated (X) (the "AGREEMENT C")

which was enacted as the zoning ordinance for the TAX PARCELS by Summit County Ordinance No. 333. The AGREEMENT C included numerous exhibits which established certain "Project Sites" to be developed in the future. PETITIONER (X) is a 7,750± acre area containing the ski terrain and all planned resort development for PETITIONER. The (X) includes over 20 separate land owners, the largest of which is COMPANY C (COMPANY C). Most of the (X) is dedicated as open-space and ski terrain, but about 500 acres at the base are dedicated (PORTION REMOVED). As of 2001, PETITIONER development project was approximately three years into a 20-year development horizon. It contains considerable vacant but entitled land.

9. To facilitate the expansion of the resort and create a master planned resort community as depicted in "PETITIONER (X) Plan Book of Exhibits" which was attached to the AGREEMENT C, the AGREEMENT C was amended and restated by an Amended and Restated Development Agreement for PETITIONER (X) dated November 15, 1999 (the "AGREEMENT A"), which was enacted as the applicable and amended zoning ordinance for the TAX PARCELS by Summit County Ordinance No. (X).

10. The AGREEMENT A functions as a specially created zoning ordinance for the TAX PARCELS and other additional surrounding tracts of land. The area which is subject to this special ordinance and the AGREEMENT A is commonly referred to as the "(X)" or "PETITIONER (X)".

11. The AGREEMENT A as enacted by Ordinance (X) contains numerous limitations and restrictions regarding the types of projects and build-outs that may be undertaken, the project mix between accommodation and commercial/retail space, the phasing of projects and the sequencing of infrastructure and improvement systems. The AGREEMENT A also vests development rights in the TAX PARCELS and streamlines and simplifies the normal zoning and land use requirements generally applicable to properties in the County. Prior to the

AGREEMENT A, the TAX PARCELS were zoned in a manner that allowed for much lower density and PETITIONER had few vested rights in development approvals.

12. Pursuant to the AGREEMENT A, any development must start in the resort "core area". For every three (3) square feet developed in the core area, one (1) square foot may be developed outside of the core area. The AGREEMENT A requires that this 3:1 ratio must be maintained so this imposes some development restrictions on the properties in the (X) area.

13. The AGREEMENT A provides and contemplates that phased development will occur by "Project Site". Some of the Project Sites cover more than one of the TAX PARCELS, and multiple Project Sites cover (X) of the (X) tax parcels at issue in this proceeding. Under the AGREEMENT A and the (X) Zoning Ordinance, a functional subdivision is created which is unrelated to the historical parcel boundaries. Therefore, instead of purchasing a present tax parcel, a potential buyer would want to acquire a Project Site designated to permit land uses the purchaser would want to develop. Accordingly, until a project is specifically planned for a project site, the size, configuration, height, tenant mix, and density requirements for a particular parcel of land cannot be determined. Those factors will all affect the final lot configuration and subdivision platting after the development is completed.

14. Section 5.12.1 of the AGREEMENT A permits PETITIONER to sell property in combination with the applicable development rights intact.[1] Specifically, Section 5.12.1 of the AGREEMENT A provides that: "Developers shall be entitled to sell or transfer any portion of the property subject to the terms of this Amended Agreement upon written notice to the County and acknowledgment signed by the transferee and the County."

15. Pursuant to the provisions of Utah Code Ann. §59-2-103, tax liens were placed on the TAX PARCELS as of January 1, 2001 and January 1, 2002 for ad valorem tax purposes.

[1] For example, in 2000 PETITIONER sold a development parcel to COMPANY D, which is a critical land sale comparable in all appraisals.

16. In early 2001, the Summit County Assessor (the "County Assessor") retained APPRAISER A ("APPRAISER A") of Appraisal Group, Inc. to conduct the cyclical commercial appraisals required once every five years pursuant to Utah Code Ann. §59-2-303.1 for PETITIONER, RESORT C and RESORT B Resorts.

17. On or around May 18, 2003, APPRAISER A submitted a summary report for the TAX PARCELS (the "APPRAISAL A"). The APPRAISAL A were based on the density allocation developed by APPRAISER A, who made a reasonable effort to allocate the permissible density among the various parcels. That density allocation is not part of the AGREEMENT A.

18. The APPRAISAL A cover all TAX PARCELS in a single binder to avoid lengthy repetition in the reporting process, and constitute separate and independent appraisals of the value of each of the TAX PARCELS.

19. On or around May 22, 2001, assessment notices were issued pursuant to Utah Code Ann. §59-2-303 and the assessment roll with estimated fair market values for the TAX PARCELS was delivered to the County Auditor.

20. Subsequently, the County Assessor issued tax notices for 2001 for the TAX PARCELS based on the values determined in the APPRAISAL A.

21. PETITIONER filed appeals with the County Board of Equalization on (X) of the TAX PARCELS (the "DISPUTED PARCELS"). PETITIONER did not file appeals with respect to the assessed values of 48 of the TAX PARCELS.

22. On October 1, 2002, the Summit County Board of Equalization conducted a hearing with respect to the assessed values of the DISPUTED PARCELS (the "Equalization Hearing").

23. At the Equalization Hearing, PETITIONER argued that because of the common development plan and the existence of the AGREEMENT A, the DISPUTED

PARCELS should be valued as if they constituted a single integrated property and not on a "parcel-by-parcel" basis.

24. PETITIONER also argued that the (X) Disputed Parcels should be valued using the "discounted cash flow" method of valuation which values the property at the present worth of the payments to be received upon the sale of the properties over the anticipated life of the project.

25. To support its contention that the DISPUTED PARCELS should be valued as a single, integrated property in accordance with the discounted cash flow method, PETITIONER presented an appraisal prepared by COMPANY E, dated March 27, 2002, as supplemented by a cover letter dated April 9, 2002 (the "APPRAISAL B").

26. At the Equalization Hearing, the County maintained the position that (a) each of the DISPUTED PARCELS must be separately assessed, and (b) it is improper to use the discounted cash flow method, absorption method or other similar methods of valuation that take into account absorption time because these methods contravene the requirement of Utah Constitution Art. XIII, §2(1) that all property shall be taxed uniformly and equally.

27. After hearing all evidence, the hearing officer recommended valuation reductions to the assessed values of five of the DISPUTED PARCELS, but no reductions were recommended for the tax parcels now at issue. Those recommendations were approved and adopted by the Summit County Board of Equalization on January 22, 2003.

28. On February 20, 2003, PETITIONER filed this appeal with the Commission challenging the County's assessed values for 2001 and 2002 on 14 of the DISPUTED PARCELS (these 14 tax parcels are hereafter referred to as the "14 Appealed Tax Parcels").

29. Between December 2001 and January 2003, PETITIONER and the County participated in various informal hearings and mediation sessions concerning the 2001 valuation of the 14 Appealed Tax Parcels.

30. As part of the dispute resolution process, PETITIONER asserted that the density allocation was wrong, and provided new density allocation figures. PETITIONER also provided to APPRAISER A information concerning costs of infrastructure improvements. Some of this information allowed APPRAISER A to refine the factual assumptions in the APPRAISAL A, and the County instructed APPRAISER A to consider the effect of the information on the assessed values of the (X) Appealed Tax Parcels.

31. The APPRAISAL A were prepared to the standard of a "Summary Report" under USPAP and were not a "Self-Contained Report" under USPAP. Section 2.2(b) of USPAP indicates that "the essential difference between the Self-Contained Report and the Summary Appraisal Report is the level of detail". The fact that a Summary Report might later be upgraded to a Self-Contained Report does not mean that the Self-Contained Report is a different appraisal, but merely that a higher level of detail and analysis is included within the covers of the report.

32. As part of the preparation for this hearing, the County Assessor requested that APPRAISER A upgrade the APPRAISAL A from a "Summary Report" to a "Self-Contained Report" for the appealed tax parcels (the "APPRAISAL C"). In addition to upgrading the APPRAISAL A, the County also asked APPRAISER A to delete the valuations of the other 54 tax parcels that were not the subject of this appeal and to incorporate the factual information provided by PETITIONER.

33. The APPRAISAL C did reduce the values of the 14 Appealed Tax Parcels from the values in the original APPRAISAL A. The information that lead to material reductions in value is summarized as follows:

a. The values of a number of the appealed tax parcels were lowered based on the information concerning the cost of infrastructure improvements and construction timing provided to the County by PETITIONER.

b. The values of a number of the appealed tax parcels were lowered due to reallocation of building entitlements or reallocation of density between tax parcels within the same Project Site based on engineering and construction information provided to the County by PETITIONER.

34. The gross building areas used by both parties is not precise, but is an approximation, and they are the maximum gross building areas that would be allowable under the AGREEMENT A. The ultimate gross building areas to be built must ultimately be approved by PETITIONER MANAGEMENT ASSOCIATION and the (X). APPRAISER B testified that the actual gross building area may be less, because:

a. Economics and demand will drive the actual development decisions.

b. The commercial space allowed under the AGREEMENT A zoning is far in excess of what the market will support.

c. The main level commercial space must be constructed, even if there is no demand for such space.

35. On or about May 22, 2002, the County delivered the 2002 assessed valuation tax notices to PETITIONER for the TAX PARCELS. PETITIONER appealed the County's 2002 valuations as to the appealed tax parcels but did not appeal the assessed valuations of the other 54 tax parcels.

36. In February 2003, PETITIONER and the County, through their respective counsel, stipulated to the assessed values adopted by the Summit County Board of Equalization concerning the appealed tax parcels solely for the purpose of allowing the 2002 valuation of the appealed tax parcels to be joined with the appeal of the 2001 valuations. After the Stipulation by the parties, the Summit County Board of Equalization entered an order that these were the values for those years.

37. On May 31, 2003, APPRAISER A submitted the APPRAISAL C for the appealed tax parcels. Although the APPRAISAL C of the appealed tax parcels are bound in a single cover to avoid lengthy repetition in the reporting process, this report actually constitutes 14 separate appraisals, i.e., one for each of the appealed tax parcels.

38. PETITIONER submitted a second appraisal from COMPANY E, dated August 27, 2003, entitled "Complete Appraisal - Summary Report" (the "APPRAISAL D"). The APPRAISAL D values the appealed tax parcels as an integrated whole using a discounted cash flow method, and also provides an alternative parcel-by-parcel analysis. The APPRAISAL D was made to give consideration to factors that APPRAISER B had learned in the appeals process and in further discussions with the County. It is normal to have revised appraisals to consider additional or newly learned information, as is demonstrated by both appraisers revising their initial appraisals in this matter.

39. The values determined for the appealed tax parcels by the Summit County Board of Equalization, by the APPRAISAL C and the APPRAISAL D on a parcel-by-parcel basis for 2001 were as follows:

Item	Tax ID No.	Acre Size	Board of Equalization	Throndsen	Cook
			2001 Values	2001 Values	2001 Values
1	#####-1	3.80	$$$$$	$$$$$	$$$$$
2	#####-2	2.68	$$$$$	$$$$$	$$$$$
3	Intentionally omitted				
4	#####-3	21.84	$$$$$	$$$$$	$$$$$
5	#####-4	2.83	$$$$$	$$$$$	$$$$$
6	#####-5	0.74	$$$$$	$$$$$	$$$$$
7	#####-6	4.17	$$$$$	$$$$$	$$$$$
8	#####-7	0.89	$$$$$	$$$$$	$$$$$
9	#####-8	3.41	$$$$$	$$$$$	$$$$$
10	#####-9	6.99	$$$$$	$$$$$	$$$$$
11	#####-10	8.80	$$$$$	$$$$$	$$$$$
12	#####-11	6.27	$$$$$	$$$$$	$$$$$
13	#####-12	1.57	$$$$$	$$$$$	$$$$$

14	#####-13	1.00	$$$$$	$$$$$	$$$$$
15	#####-14	7.19	$$$$$	$$$$$	$$$$$
	TOTALS		$$$$$	$$$$$	$$$$$

40. APPRAISER B determined that the value of the 14 tax parcels collectively viewed as part of a master planned community, based on a discounted cash flow model, is $$$$$ ($$$$$).

41. APPRAISER B testified that the correct method to value the property would be to value it as part of a master planned community, and to use the discounted cash flow method. He also determined the values of each parcel to use in the event the Commission determined valuation as a master planned community was not appropriate. However, in his opinion, the parcel-by-parcel valuation was not appropriate.

42. The above values determined by APPRAISER A were based upon 24 comparable sales which occurred in the Summit County area, with most of the sales being in the area of the RESORT C, RESORT B or PETITIONERs. Five of those comparable sales were included for information purposes, but APPRAISER A gave very little weight to his sales numbers 8, 16, 17, 18 and 23.

43. Most of the 14 parcels are available for immediate development. However, 5 of the 14 parcels (parcel no's. 1, 4, 11, 12 and 13) do not yet have the full rights-of-way to develop the ROAD 1 which will provide paved roads and utilities to parcel no's. 1, 4 and 13. The road development costs are estimated to be $$$$$. Parcels 11 and 12 have ROAD 1ccess and utilities, but "they are still limited from immediate development pending resolution of the ROAD 1 right-of-way issue because property boundaries with Frieman must be rearranged to allow for unencumbered access along ROAD 2 for parcel 11, and to allow for the placement of building densities in the case of parcel 12." (Exhibit 19, Appraisal Report of APPRAISER A, page 62.) APPRAISER A estimated that as of January 1, 2001, the resolution of those issues was expected

to take two years. However, as of the date of the hearing in this matter, those issues were not yet resolved. i.e., the legal issues were not yet resolved and ROAD 1 was not yet constructed.

44. APPRAISER A based his appraisal on his opinion that there was "nothing to impede immediate pursuit of its entitlement, except for a two-year delay and $$$$$ in constriction [sic] costs for "ROAD 1", relative to parcels 1, 4 and 13; and a two-year holding delay for parcels 11 and 12." (Exhibit 19, page 63.) However, the Commission finds that as of January 1, 2001 and 2002, those two problems represented substantial impediments to the sale or development of 5 of the 14 parcels at issue in this proceeding.

45. APPRAISER A determined the value of each of the parcels based upon the comparable sales approach using twenty-four (24) comparable sales, although he gave very little, if any, weight to five (5) of those sales. Using those comparable sales, he reduced each sale to a "price per gross building area", which was the land price paid divided by the gross building area allowed for that parcel. He also separated the comparable sales into four (4) different categories based upon the general area of the sales, and he arrived at adjusted prices per gross square foot ranging between $$$$$ and $$$$$. He then attempted to match each parcel of the subject property to the price per gross square foot for the comparable sale that was most similar to the parcel at issue. The values determined were a low of $$$$$ per gross building square foot to a high of $$$$ per gross building square foot.

46. APPRAISER B prepared his Discounted Cash Flow (DCF) analysis by estimating a period of 20 years to be developed. He also estimated the retail prices to be received upon the sale and development of the projects. In estimating those retail prices, APPRAISER B made adjustments for legal access, infrastructure, amenities and entitlements, and development costs. He then used a discount yield rate of %%%%% to calculate the net present worth of the property.

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. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, the Petitioner normally 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), *Utah Power & Light Co. v. Utah State Tax Commission,* 530 P.2d. 332 (Utah 1979).

5. Utah law generally requires all taxable property to be assessed and taxed at its fair market value. "Fair market value" by Utah Code Ann. §59-2-102(12) as follows

> "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

DISCUSSION

Burden of Proof and Presumption of Correctness

The first issue we must address is whether the appraisal of APPRAISER A has the presumption of correctness. Petitioner argues that "because the County is arguing for values different from those established by the Board of Equalization, the County has lost the presumption of correctness that generally applies to property tax assessments". (Petitioner's Reply Hearing Memorandum.)

On the other hand, Respondent argues that "the County's values are entitled to a presumption of correctness". (Respondent's Hearing Memorandum.) In support of that position, Respondent argues that, "the assessed values advanced by the County are entitled to the presumption of correctness because: (1) the question of whether the County has lost the presumption of correctness must be determined separately for each tax parcel; (2) the county does not lose the "presumption of correctness" where the APPRAISAL C use the same appraisal methodology as the APPRAISAL A but modify the values of the appealed tax parcels to reflect factual information subsequently and belatedly provided to the County by PETITIONER; and (3) unlike the governmental authorities in the cases cited by PETITIONER, the County has not abandoned its original assessments or the APPRAISAL A, or failed to submit any evidence in support of its original assessments." (Petitioner's Hearing Memorandum at 13.)

The principle of giving the presumption of correctness to the value initially established by the government agency has been well-established for many years, and was enunciated by the Utah Supreme Court in Utah Power & Light v. Utah State Tax Commission, 590 P.2d 332 (Utah 1979). In that case, the Utah Supreme Court stated:

> "The fundamental proposition is that the purpose of such a proceeding is to determine what should be the fair, reasonable and proper valuation and assessment. It is not to be doubted that the Commission must have a sound evidentiary basis for its decision. Concomitantly, where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation."

The Utah Supreme Court further elaborated on that principle in Utah Railway Company v. Utah State Tax Commission, 5 P.3d 652 (Utah 2000), when the Court stated as follows:

> "[T]he Commission argues that the original valuation is entitled to a "presumption of correctness". We agree that such a presumption is necessarily implied by our holding in *Utah Power & Light Co*. That presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission.
>
> In this case, because the Division is in the best position to present the evidence supporting its valuation, and because we think it unfair to impose upon the taxpayer an obligation to ensure that the record includes a property valuation the taxpayer contests, we hold that the Division is the entity obligated to do so.
>
> . . . .
>
> Where a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Once that is done, the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment," and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation." *Utah Power & Light Co.*, 590 P.2d at 335.

Respondent's initial argument is that the presumption applies to each tax parcel separately and not to the total of the appealed tax parcels. In general, the Commission agrees with that statement. Because, as noted below, we find that each parcel must be valued separately, APPRAISER A's valuation of parcels 7, 8 and 10 clearly retain their presumption of correctness. With regard to the other parcels, the answer is less clear. The County argues persuasively that it would be poor public policy to discourage an assessor from reducing an assessment on the basis of new and better information provided by the taxpayer. On the other hand, it seems clear that any increase in value by an assessor, even if based on such information, should not carry the presumption of correctness. In this case, of course, the County either continues to support its Board of Equalization values or it argues for a reduced value.

We believe that a County that desires to increase the value, no matter the cause, should be subject to the same burden of proof that a taxpayer has. We believe that minor adjustments by a County, based on corrected information provided by the taxpayer, should be encouraged. Changes in valuation by the County based on different methodologies, or radically different application of the same methodology, however, should not retain the presumption of correctness. In this case, we have properties where the County's proposed value remained the same (no's. 7, 8 and 10), properties where the values differed slightly (e.g., no's. 9 and 14) and properties where the values changed dramatically (e.g., no's. 1, 12 and 13).

With the exception of no's. 7, 8 and 10, we find it unnecessary to determine whether the County's valuation retained the presumption of correctness. For reasons outlined below, we find that even if the valuations of all the parcels retained their presumption of correctness, that the Taxpayer successfully carried its burden of (1) demonstrating that those valuations were erroneous and (2) establishing a more accurate valuation.

B. What is the appropriate property to be valued?

The second issue that must be addressed is the correct property to be valued. There are significant differences between the appraisal approaches taken by the Petitioner and Respondent. The most significant difference is the view of each of the parties of what is being appraised and the correct methodology to appraise the property being appraised.

The approach of the County is that there are 14 separate independent parcels that must be assessed and valued on their historically designated metes and bounds property descriptions, i.e., each parcel must be valued on a parcel-by-parcel basis. The County claims that it is improper to assess the various parcels only as part of an assembled and integrated whole because it violates Utah law. The County argues that each parcel must be assigned a value for tax purposes so that valuation notices can be sent, appeals can be lodged, taxes can be assessed, and liens can attach.

The position of Petitioner is that because of the AGREEMENT A, the land may only be developed as an assembled, integrated whole in accordance with the terms and conditions of the AGREEMENT A. The Petitioner argues that the AGREEMENT A controls the development process, and the development of any individual parcel must be coordinated with the development of all other parcels which are controlled by the AGREEMENT A. Based upon that assumption, Petitioner argues that each parcel of property is not available for sale to independent developers until it has been properly coordinated with the development and sale of other parcels. Thus, APPRAISER B, in what he describes as his preferred valuation methodology, does not assign a value to any of the particular tax parcels involved in the appeal. Rather, he assigns a value to all fourteen parcels, collectively.

We agree that the County has an obligation to assess each of the various tax parcels in its jurisdiction. It cannot fulfill its statutory obligation by establishing a single assessed value for fourteen parcels collectively, even if they are currently owned by the same owner[2].

We also recognize that the highest and best use of the parcels in question is not to be sold "as is." We agree with Petitioner that those parcels will be reconfigured as needed when specific developers acquire property for specific projects that will conform to the (X) plan. The fact that the parcels are currently commonly owned, of course, will facilitate the necessary reconfigurations.

C. The Benchmark Decision.

The County also argues that valuing the property as a common, integrated development is prohibited by the decision of the Supreme Court of Utah in Board of Equalization of Salt Lake County v. Utah State Tax Commission, ex rel., Benchmark, Inc. (hereinafter referred to as "Benchmark"), 864 P.2d 882 (Utah 1993). For the reasons outlined below, we believe a parcel-by-parcel analysis is appropriate in this case. Accordingly, a discussion of Benchmark is unnecessary. The Commission notes, however, that we do not read Benchmark to prohibit the use of a discounted cash flow method, particularly where it does not run into equal protection problems.

D. Discounted Cash Flow Method

Based on the totality of evidence, we do not believe that the only transaction that could occur is one where the entire resort core would sell as a single unit. Rather, we find that the land is likely to be sold in individual parcels, subject to zoning and re-configuration. The fact that these entitlements are not in place does not mean that the only potential sale is for a single transaction, transferring all of the parcels to a single purchaser. While recognizing the problem

[2] We recognize that common ownership may be relevant for purposes of valuation. The concept of "assemblage value", for example, is well recognized. We merely hold that the law requires a separate valuation to attach to each tax parcel.

facing APPRAISER B – that there is no single identifiable, saleable land parcel – the statutory requirement exists for each land parcel to be valued separately. We believe that a determination based on allowable building density, is an appropriate way to value these parcels. We believe this methodology is superior to APPRAISER B's DCF methodology.

E. Comparable Sales Approach

Because we have rejected APPRAISER B's preferred methodology for the reasons outlined above, it is now incumbent on us to determine whether his alternative parcel-by-parcel analysis based on comparable sales, or APPRAISER A's valuation more accurately reflects fair market value.

APPRAISER A Appraisal

The basis for the appraisal of APPRAISER A is set forth above, and need not be restated here. APPRAISER B had been asked to review the appraisal of APPRAISER A, and disagreed with his conclusions for several reasons, which are as follows:

a. APPRAISER B reviewed the sales comparables used by APPRAISER A. Included among his critiques of those sales, are that sale no's. 8, 17 and 23 were not closed sales; sale no's. 1, 2, 3, 4 and 5 occurred between 1995 and 1997, so they were not current sales; sale no's. 11, 13, 14, 18 and 19 were sales for single-family housing units, and therefore are not comparable to the subject property; sale no's. 7 and 21 are in RESORT D, and therefore are very different in character, usage, and value of the area; sale no. 24 is in RESORT C, so there is no gross building area allocated or determined for that property; and sale no's. 15 and 22 are not in a ski resort. If those sales are eliminated, it leaves only six comparable sales from APPRAISER A's appraisal. APPRAISER B then expressed concerns for several of those six remaining sales, and testified that the sale of the COMPANY D property in PETITIONER core area is the best comparable sale, which resulted in a price per buildable square foot of $$$$$.

b. To complete the master planned community, numerous amenities must be provided which have not yet been constructed. Those amenities will require substantial additional costs to be expended by Petitioner. Those amenities will ultimately be a portion of the purchase price of other properties presently included among those being appealed in this proceeding. Those amenities, which are yet to be provided, include (PORTION REMOVED).

c. After APPRAISER B reviewed the comparable sales used by APPRAISER A in his appraisal, and made what he deemed to be reasonable adjustments to the six comparable sales which may be reasonably similar to the subject property, he arrived at adjusted values per buildable square foot between $$$$$ and $$$$$. Therefore, his opinion was that the values per buildable square foot used by APPRAISER A were excessive. Based upon his analysis, he believed that the properties had a value per square foot of buildable space between $$$$$ per square foot for (X) which was parcel #####-4 to $$$$$ per square foot for (X), parcel #####-3.

APPRAISER B also testified that valuing the parcels on an individual basis as was recommended by APPRAISER A results in only a hypothetical valuation for the following reasons:

a. The tax parcels have not been platted into finished sites. In contrast, sales available for comparison, as used by APPRAISER A, have been placed in their final platting.

b. Planning areas for zoning or density allowances do not follow specific property lines. The allocation of density is arbitrary and will not generally follow those property lines.

c. The density allocations show the maximum building area, but those maximums are conditional. Therefore, those maximums may not be built, and in certain cases should not be built.

d. There are on-going disputes over the access. Therefore, buyers would not close on those parcels affected by such disputes until any clouds on that access are lifted.

e. The infrastructure is incomplete, and the sales will not receive their maximum value unless they have adequate infrastructure.

f. The master developer still has significant remaining obligations within and without the core. Those obligations are not met when viewing the tax parcels as wholly independent.

g. PETITIONER is in a unified project, and consideration of the tax parcels independently is, in his opinion, not reality. The available sales in PETITIONER and other similar areas reflect controlled master planned communities.

h. Potential buyers will not purchase the individual parcels just to "land bank" those properties. Existing inventories preclude additional sales of similar products, and the sales reflect low to no direct competition.

i. Because many of the parcels cannot yet be built upon, the profile of a prospective buyer is that of a speculator who is willing to purchase the land for future development, whereas the profile of the prospective buyer for the comparables used by APPRAISER A is a builder who is ready to develop a particular project.

APPRAISER B's Parcel-by-Parcel Analysis

APPRAISER B's parcel-by-parcel appraisal used six of the same comparables used by APPRAISER A, including four in the resort core. He used all six of those comparables for all of the parcels in question. He declined to use most of the RESORT C sales and all of the RESORT D sales. We find APPRAISER B's comparables to be more consistently used and more comparable to the parcels in question and, accordingly, we rely primarily on those six comparables.

There are two significant differences in the parties' description of the six comparables. First, APPRAISER A apparently used a sales contract with options as the applicable sale for (X). APPRAISER B explained that only the first portion of the optioned property was actually purchased. There was a suggestion that the future options would not be exercised without some price adjustment. Whether or not those options would be exercised was, on the lien date, a matter of speculation. We find that the sales price and parcel size used by APPRAISER B for the September 2000, (X) sale is appropriate. Second, APPRAISER B testified that APPRAISER A used the wrong square footage number in analyzing the A-2 sale. We also accept APPRAISER B's testimony on this point.

We have also reviewed the most significant adjustments to these sales made by both appraisers. We will not attempt to detail each adjustment made by each appraiser. Some of the more significant differences will be noted. APPRAISER A used a 10% time adjustment per year. At the hearing, APPRAISER B effectively challenged that adjustment. APPRAISER A claimed that the (X) sale should be adjusted up by 65% for location on Parcel 11 and 33% for Parcel 15, an adjoining parcel. APPRAISER B made a 30% location adjustment for Parcel 11 and no adjustment for the adjoining parcel. We find APPRAISER B's adjustments to be more reasonable.

Although there appear to be significant differences in Access/Utilities adjustments, these differences are more apparent than real. For example, APPRAISER B made a 30% adjustment for Access/Utilities on Parcel 4. He asserted that utilities are not currently extended to the site. He also asserted that there is no current access and that High Mountain and ROAD 1s will have to be extended in the future. APPRAISER A agreed with these underlying facts. APPRAISER A actually discounted his value for two years (20%) and allows $1.2 Million for cost of road. Accordingly, APPRAISER B's adjustments are in line with APPRAISER A's.

Similarly, APPRAISER B made a 30% adjustment for Access/Utilities on Parcel 11. The utilities are partially in. The property has no current legal access for new development. ROAD 2 will have to be extended eventually before the property can be developed. Again, APPRAISER A essentially agreed with the underlying facts. He used a $40 value, but he discounted it by two years (20%) to apply a $32 value. Had he made the adjustment as "access" where APPRAISER B did, his adjustment would have been in line with APPRAISER B's.

APPRAISER B made a 20% adjustment for Access/Utilities on Parcel 12. The property has utilities. ROAD 2 is extended to the site. However, APPRAISER B noted that the extension of the road will continue "through this parcel" and, development cannot occur until siting of the road is finalized. Again, APPRAISER A essentially agreed with the underlying facts. Rather than using a $50 value, he discounted it by two years (20%) to apply a $40 value. Had he made the adjustment as "access," where APPRAISER B did, his adjustment would have been in line with APPRAISER B's.

One of the most significant adjustments is the 20% amenities adjustment. APPRAISER B explained the adjustment in both his appraisal and his testimony. We find this adjustment to be somewhat problematic. It is not clear from the record before us to what extent prospective purchasers will be required to contribute to amenities and to what extent the value of the properties will be enhanced once the amenities are in place. It appears that the COMPANY D sale, where part of the sales price was specifically allocated to amenities, was not necessarily typical. However, on the record before us, we find that APPRAISER B adequately explained and defended the amenities adjustment.

Accordingly, based on the evidence presented, we find that APPRAISER B's alternative parcel-by-parcel valuation more closely approximates the fair market value of the subject parcels than does APPRAISER A's.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject parcels, as of January 1, 2001 and January 1, 2002, is as follows:

Item	Tax ID No.	2001 Values
1	#####-1	280,500
2	#####-2	1,176,500
4	#####-3	1,005,000
5	#####-4	128,500
6	#####-5	466,000
7	#####-6	2,906,500
8	#####-7	974,000
9	#####-8	355,000
10	#####-9	3,166,000
11	#####-10	1,555,000
12	#####-11	1,315,000
13	#####-12	315,000
14	#####-13	1,698,500
15	#####-14	4,218,000
	TOTALS	19,559,500

It is so ordered.

In addition, to the extent that this order contains confidential "commercial information" pursuant to Utah Code Ann. §59-1-404. the parties are hereby ordered to refrain from disclosing such information outside this proceeding.

DATED this _____ day of _____, 2004.

_____
G. Blaine Davis
Administrative Law Judge

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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