

03-1458
Locally Assessed Property
Signed 02/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
v.)	Appeal No. 03-1458
)	Parcel No. Multiple – 9 (see attachment)
BOARD OF EQUALIZATION)	Tax Type: Property Tax/Locally Assessed
OF DAVIS COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	Judge: Chapman
Respondent.)	

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Assessor
 RESPONDENT REPRESENTATIVE 2, Davis County Assessor's Office
 RESPONDENT REPRESENTATIVE 3, Davis County Assessor's Office

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 May 6, 2004. The Commission took original

jurisdiction of this matter after the Davis County Board of Equalization (“County BOE”) failed to forward to the Commission a decision concerning the Petitioner’s original appeal to that body.

At issue is the fair market value of nine vacant residential building lots in the PHASE 2 SUBDIVISION (“Phase 2 Subdivision”) as of January 1, 2003. PETITIONER (“PETITIONER”) developed the Phase 2 Subdivision and still owned the lots at issue as of the lien date. PETITIONER proffered evidence of the price at which it has marketed each lot at issue since 2001 and stated that the lots were still listed for sale at these prices as of the lien date. In addition, PETITIONER proffered evidence of the prices at which several of the subject lots sold in 2004. All of the list and sale prices for the subject parcels are less than the assessed values that the County imposed on the respective lots in 2003. On the table below are listed the prices at which the lots were marketed and the values at which the County assessed them on January 1, 2003. Also included in this table are the subsequent prices at which a number of the subject lots actually sold and values at which the County appraiser, RESPONDENT REPRESENTATIVE 3, appraised the lots in September 2003.

Parcel No.	PETITIONER List Price (Since 2001)	County Assessed Value (1/1/2003)	Sold Price (2004)	County Appraisal Value (9/30/2003)
#####-1	\$\$\$\$\$	\$\$\$\$\$		\$\$\$\$\$
#####-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-4	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-5	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-6	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-7	\$\$\$\$\$	\$\$\$\$\$		\$\$\$\$\$

#####-8	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-9	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The Petitioner calls to the Commission’s attention that the definition of “fair market value,” as found in Utah Code Ann. §59-2-102(12), 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.” PETITIONER contends that the “fair market value” of the lots at issue would be no higher than the prices at which it has listed them for sale. PETITIONER also points out that because the lots have been listed for sale since 2001 at the prices indicated on its price sheet, it is unlikely a buyer would have purchased the lots at the higher, assessed values recommended by the County or at the even higher appraised values the County later derived. PETITIONER believes that the prices at which a number of the subject lots eventually sold in 2004 and a comparison of the prices at which other Phase 2 Subdivision lots were listed and sold supports its conclusion that the subject lots were overassessed for the 2003 tax year.

The County submits evidence showing that lots with similar sizes as those of the subject lots sell for prices consistent with the assessed values at issue. To support its assessed values, the County proffers RESPONDENT REPRESENTATIVE 3’s February 9, 2004 appraisal. RESPONDENT REPRESENTATIVE 3 began her appraisal with an explanation of the County’s mass appraisal techniques and how land tables were established to assess the subject properties. To examine the values the County determined by mass appraisal, RESPONDENT REPRESENTATIVE 3 offered: 1) an examination of actual overall listing/sales price versus overall assessed value for a

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large population of parcels; 2) an allocation analysis; and 3) an appraisal for each property estimating value as of September 30, 2003.

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 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).

DISCUSSION

To prevail, the Petitioner must, by a preponderance of the evidence, not only call into question the County's assessed value, but also provide a sound evidentiary basis for the value it proposes. The County has proffered evidence to show that its mass appraisal techniques were appropriate and that statistical measurements regarding a large population of properties can prove the effectiveness of its mass appraisal technique. However, in an **appeal** of a property's assessed value, the most persuasive evidence will generally focus on the individual property or properties under appeal and evidence pertaining to the individual property, if persuasive, generally overcomes the fact that an assessor has applied an appropriate mass appraisal methodology. In the hearing process, the evidence presented will be considered to determine whether the taxpayer has, by a preponderance of this evidence, called into question the value established by the assessing body and presented a sound evidentiary basis for the value it proposes.

The County asserts that the Petitioner has not marketed its Phase 2 Subdivision lots, including the subject lots, at "fair market value," based on its analysis of other sales. The Petitioner, however, provided evidence of the prices at which it has listed the properties in its Phase 2 Subdivision for sale since 2001 and the prices at which they have sold. Except for the unusually large lots, almost all lots in this phase have sold for \$\$\$\$\$ to \$\$\$\$\$. These sales tend to support PETITIONER'S argument that the County has assessed the subject parcels too high.

At issue is whether PETITIONER has marketed the subject parcels at "fair market value," that is, at "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 several years, the lots in Phase 2 Subdivision have generally sold for prices equal to or less than the prices at which they were marketed. There is no evidence to suggest, as of the lien date, that the subject lots will sell at prices higher than the list prices. Post-lien date sales of several of the subject parcels support this conclusion. In addition, there is no evidence that PETITIONER does not have relevant facts concerning its lots or their values or that PETITIONER is other than a “willing seller;” i.e., that PETITIONER is under some compulsion to sell that has led it to price its lots below their fair market values.

Furthermore, had the subject parcels been marketed for sale at prices significantly below their fair market values, as the County suggests and attempts to prove, the Commission finds it unlikely that it would have taken years to sell them. Although there appears to be a resale of one Phase 2 Subdivision lot for a price higher than its original list and sales price, the singular sale does not appear to set the market value or influence the price of other, previously unsold lots in Phase 2 Subdivision. To sustain the County’s assessed values would require the Commission to find that PETITIONER is not selling its lots at “fair market value.” There is no convincing evidence to show that PETITIONER is doing so.

While the County’s information provides support for its assessed values when the nine parcels at issue are considered as part of a much larger population of properties, statistical evidence showing the “overall” correctness of values for a population does not overcome evidence showing an individual parcel’s assessed value to be incorrect in an appeal of an

individual parcel.¹ For example, the County appraiser's first method to support the assessed values compares the overall listings/sales price of lots in three separate subdivision phases to the overall value at which all were assessed. The appraiser proves that the cumulative listing/sales price of these 100+ lots is roughly equivalent to their cumulative assessed value, which may have some applicability for mass appraisal purposes. However, when this evidence is considered on an individual basis, in order to determine the value of an individual parcel under appeal, the evidence the County proffered suggests that most lots in Phase 2 appear overassessed, while most lots in Phases 3 and Phase 4 appear underassessed. In an appeal, such information supports the Petitioner's position that its nine parcels are overassessed. Had the nine parcels at issue comprised an economic unit, perhaps such a study would have applicability. However, the lots are individual economic units separately offered for sale and are not one economic unit for assessment purposes.²

Nor does the Commission find the County's appraisals for each separate parcel (estimating value as of September 30, 2004) to overcome the evidence provided by the

1 The appeals of nine separate appeals have been combined in this matter for efficiency, given the commonality of ownership and evidence relevant to each parcels. Nevertheless, the evidence should be applied to each parcel separately to determine if that parcel is valued at its "fair market value."

2 The County is concerned that considering each parcel separately will set a "precedent" where a taxpayer may appeal its overassessed parcels without the Commission considering if its other properties are underassessed. However, considering each separate property, or separate economic unit, under appeal is not a new invention or a precedent, as the County suggests. For example, if a person owns three separate rental houses and, upon receiving notices, discovers one house to be underassessed by \$5,000, one overassessed by \$5,000 and one assessed at fair market value, the cumulative assessment equals the cumulative fair market value. However, Utah law provides the taxpayer the right to appeal all, none, or any one of the parcels. For separate economic units, Utah law does not provide that an overassessed parcel may be reduced only if the Petitioner's other separate parcels are not underassessed.

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Petitioner. The appraisals make no mention of the actual marketing efforts that have occurred for each lot and addressed why these efforts are insufficient to be considered arm's length, fair market value sales. In addition, it is not uncommon for lots in one "phase" of a subdivision to sell for different values than that of lots in another phase or lots in other subdivisions or cities. The existence of such differences alone does not prove that developers are selling lots in some subdivisions below fair market value and lots in other subdivisions above fair market value. Yet, the appraiser uses sales of lots in other cities, even though there had been many sales of lots in Phase 2 Subdivision in the year or two surrounding the lien date.

Also, the adjustments made in the appraisals do not appear to be supported by the actual sales in Phase 2 subdivision. For example, the appraiser used an \$\$\$\$ adjustment to account for the influence of power lines on certain lots. However, the Petitioner stated that it discounted the list prices of two subject parcels, Lots 203 and 205, only \$\$\$\$ because of the power line influence. In addition, the appraiser proffered testimony that when adjusting her comparable sales for size difference, she adjusted each .01-acre difference at \$\$\$\$ until reaching .50 acres. After .50 acres, each .01-acre difference was adjusted \$\$\$\$\$. However, there is no evidence to show how these very specific adjustments were developed and whether these adjustments apply to the subject parcels or other parcels in Phase 2 Subdivision.

For the reasons discussed above, the price at which the Petitioner marketed each of the nine subject parcels for several years prior to the lien date appears to reflect the high end of each parcel's fair market value. However, the Commission also finds that this "high-end"

value is also the most reasonable evidence of each parcel's fair market values as of the lien date. An examination of the actual sales in Phase 2 Subdivision shows that most lots sold at or slightly below their list prices. While two of the subject parcels are discounted prior to their 2004 sales, there is no evidence to show that their list prices were reduced as of the lien date. Without such information, the most likely sales price, or fair market value, for these lots as of January 1, 2003, would be their list prices, as well. Accordingly, the Commission finds that the fair market value of each of the nine parcels at issue is that price at which each was listed for sale on the Price List proffered by the Petitioner.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that, for purposes of 2003 property taxes, the fair market value of the nine parcels at issue should be reduced to the following values:

Parcel No.	2003 Fair Market Value
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$
#####-5	\$\$\$\$\$
#####-6	\$\$\$\$\$
#####-7	\$\$\$\$\$
#####-8	\$\$\$\$\$
#####-9	\$\$\$\$\$

The Davis County Auditor is ordered to adjust its records in accordance with this decision.

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This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed 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 _____, 2005.

Kerry R. Chapman
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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ATTACHMENT

The Parcels under appeal in this matter are:

- #####-1
- #####-2
- #####-3
- #####-4
- #####-5
- #####-6
- #####-7
- #####-8
- #####-9