

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 17, 2005. 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 2003, with a lien date of January 1, 2003.
3. The subject property is a series of developed recreational lots located in Duchesne County, commonly referred to as the PETITIONER.
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 the value of \$\$\$\$\$ for each of the lots. Most of those lots are approximately 2.5 acres of land.
6. This would equal an assessed value of approximately \$\$\$\$\$ per acre.
7. Petitioner has developed a subdivision located a few miles east of CITY, Duchesne County, State of Utah, consisting of ##### different parcels. As of the lien date, most of those lots are undeveloped parcels of land which had not been sold and which are under appeal in this proceeding.
8. Petitioner represented that it 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 building lots and a cabin originally started at \$\$\$\$\$, and going up from that price depending on the size of the cabin and its amenities.

9. At the time a package is purchased, the contract contains a statement which represents that 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 a cabin but if they never construct a cabin they will have paid \$\$\$\$\$ for the land. Purchasers of the cabin package do not need to decide which cabin to build or the add-ons, until they are ready for construction to begin.

10. Petitioner represented that the amount of \$\$\$\$\$ includes almost all of its profit anticipated on the construction of the building. 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.

11. Petitioner presented an appraisal prepared by PETITIONER REPRESENTATIVE 4, MAI, with the appraisal firm of COMPANY C. The appraisal was prepared on a single lot, no. 84, and the parties agreed that most of the lots within the subdivision would have a value approximately the same as all of the other lots. Therefore, PETITIONER REPRESENTATIVE 4 prepared his appraisal upon a single lot, with the understanding that the value determined for the one lot would be applied to all other lots.

12. PETITIONER REPRESENTATIVE 4 prepared his appraisal based only upon a

sales comparison approach, because this was a land valuation. Therefore, there was no income with which to calculate an income approach, and a cost approach was not appropriate because there were no improvements on the land.

13. Petitioner presented eight comparable land sales of lots within Duchesne County. However, one of the sales, shown as sale no. 2, did not represent one individual sale, but instead represented an average of ten separate lot sales within the SUBDIVISION. Those lots within the SUBDIVISION ranged in size from five acres to 10 acres, and sold for prices between \$\$\$\$\$ to \$\$\$\$\$.

14. PETITIONER REPRESENTATIVE 4 attempted to equalize all of the sales by reducing them to a price per acre. Based upon that analysis, his price per acre for the comparable sales was a low of \$\$\$\$\$ to a high of \$\$\$\$\$. After making the adjustments which he deemed appropriate, PETITIONER REPRESENTATIVE 4 determined that the comparable sales would indicate a value for the subject property of between \$\$\$\$\$ per acre and \$\$\$\$\$ per acre. The overall average was \$\$\$\$\$ per acre. Therefore, based upon those sales, PETITIONER REPRESENTATIVE 4 estimated that the value of the subject property was \$\$\$\$\$ per acre, and based upon that amount, lot no. 84, which was 2.51 acres, had an estimated value of \$\$\$\$\$. PETITIONER REPRESENTATIVE 4 rounded that amount to \$\$\$\$\$ as the value for lot 84 within the subject property. He testified the other lots would all have a similar value of \$\$\$\$\$ per acre.

15. Respondent presented an appraisal prepared by RESPONDENT REPRESENTATIVE 4, a licensed appraiser in the State of Utah. RESPONDENT

REPRESENTATIVE 4 tried to gather all of the sales within the county area that he could locate, and ultimately found a total of 46 sales ranging in size from five acres to slightly more than 10 acres, but none of the comparable sales was as small as 2.5 acres. Those comparable sales had significant differences in price per acre, depending upon the amenities, location, views, and other locational factors. RESPONDENT REPRESENTATIVE 4 did not use eight of those sales, but used the remaining sales to try to perform a linear regression analysis. He testified that he was trying to show that selling price had a relationship to the size of the lot.

16. The smallest comparable sale used by Petitioner was five acres. The subject properties are all approximately 2.5 acres. Based upon his linear regression analysis, RESPONDENT REPRESENTATIVE 4 estimated that the values for the lots within the subject property should have a value based upon the size of the lot, and that those sizes and values should be as follows:

<u>Size</u>	<u>Estimated Market Value (per acre)</u>
2.5 - 2.99 Acres:	\$\$\$\$\$
3.0 - 3.99 Acres:	\$\$\$\$\$
4.0 - 4.99 Acres:	\$\$\$\$\$
5.0 - 5.99 Acres:	\$\$\$\$\$
6.0 - 6.99 Acres:	\$\$\$\$\$
7.0 - 7.99 Acres:	\$\$\$\$\$
8.0 - 8.99 Acres:	\$\$\$\$\$
9.0 - 9.99 Acres:	\$\$\$\$\$
10.0 – 10.99 Acres:	\$\$\$\$\$

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11.0 – 11.99 Acres: \$\$\$\$\$

12.0 – 12.99 Acres: \$\$\$\$\$

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 AND CONCLUSIONS OF LAW

The Commission is concerned with the methodology used by Respondent's appraiser

in attempting to determine the value of the subject property. RESPONDENT REPRESENTATIVE 4 testified that the primary justification for his model was to show that there is a relationship between the size of the property and its value, and specifically that value per acre decreases as total size increases. However, this is a well recognized fact in the real estate market, and Petitioner's appraiser had previously testified to that relationship. What Respondent's appraiser did not do was to establish that size was the only, or even the primary determinate of land value. Nevertheless, his model relied only upon the single variable, size, to measure the value of the land. Therefore, the Commission finds that the appraisal of RESPONDENT REPRESENTATIVE 4 did not consider other important factors such as vegetation, slope of the land, elevations, views, the availability of water, and other important factors in land values.

RESPONDENT REPRESENTATIVE 4 also did not present any testimony or provide evidence as to whether the subject property was average, superior, or inferior to any of the comparable properties or the areas in which those properties were located. Instead, RESPONDENT REPRESENTATIVE 4 attempted to establish his values based upon statistical analysis rather than upon an analysis of different parcels of land. RESPONDENT REPRESENTATIVE 4 also used sample sales of only five acres or more, whereas the subject properties are all in the range of 2.5 to 3 acres. Using those five-acre sales, the Commission is faced with a range of sales prices of \$\$\$\$\$ to \$\$\$\$\$ (including those sales omitted by RESPONDENT REPRESENTATIVE 4 in his analysis), a range of prices based on a logarithmic analysis of \$\$\$\$\$ to \$\$\$\$\$, and a linear regression point of \$\$\$\$\$ per acre for five acres with a confidence interval of \$\$\$\$\$ to \$\$\$\$\$. All of the within this

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range values are equally accurate as a statistical probability. Although RESPONDENT REPRESENTATIVE 4 chose a value roughly in the middle of these figures, it is not persuasive that the statistical analysis is correct without other corroborating evidence. RESPONDENT REPRESENTATIVE 4 stated in his appraisal that the average sales price per acre for five-acre lots was \$\$\$\$\$.

In short, Respondent's appraisal was derived essentially from an average sales price per acre, based only on size and without any consideration for location or other critical factors. Furthermore, the regression analysis itself was shown to have no statistical reliability.

The Commission recognizes that the appraisal problem of finding values for predominately 2.5 acre parcels when most of the comparable sales are in the range of five and 10 acre parcels, is very difficult. However, that problem emphasizes the need to analyze the comparable sales by more than just size alone in order to estimate the fair market value of the property.

Based upon the totality of the evidence, the Commission believes that amenities such as view, vegetation, and water, are at least as important as size, if not more so. The Commission finds that the subject properties are generally inferior to the comparable sales provided by both parties, because the property has very little vegetation, and very few of the lots in the subject property have nice views. Therefore, the value of the lots in the PETITIONER area would be less than \$\$\$\$\$ per acre for a 10 acre lot, and less than \$\$\$\$\$ per acre for a 2.5 acre lot.

The Commission also concludes that the range of values established by RESPONDENT REPRESENTATIVE 4 results in an impractical and unrealistic valuation for the

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properties. For instance, on page 88 of Respondent's appraisal, the first parcel, no. #####-1, is a four-acre parcel of land that would receive a value of \$\$\$\$\$. Parcel No. #####-2 is a 2.99 acre parcel of land, and RESPONDENT REPRESENTATIVE 4's proposed valuation method would result in a value of \$\$\$\$\$. This means that a four-acre parcel would have a value of only \$\$\$\$\$ more for an additional 1.01 acres of land. If size is such an important factor, there should be a more significant difference for land that is 33% larger. Therefore, RESPONDENT REPRESENTATIVE 4's proposal results in an unrealistic valuation.

In reviewing Petitioner's appraisal, PETITIONER REPRESENTATIVE 4 did make efforts to adjust for differences on sales including more than just size. He also attempted to analyze the access to the properties, surrounding detrimental land uses, seclusion, view, vegetation, recreational amenities, and utility services. The appraisal prepared by PETITIONER REPRESENTATIVE 4 appears to make a reasonable estimate of the fair market value of the subject property. Petitioner's appraisal did include in his analysis a sale shown as no. 1 which was within the PETITIONER area. The Commission finds that sale no. 1 and sale no. 9 in the appraisal prepared by PETITIONER REPRESENTATIVE 4 are the most similar sales and most reliable indicators of value among all of the sales presented by either Petitioner's representative or Respondent's representative.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject properties is \$\$\$\$\$ per acre, and that the value for each of the lots as of the lien date should be calculated and based upon \$\$\$\$\$ per acre. It is so ordered.

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DATED this _____ day of _____, 2005.

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 _____, 2005.

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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