

04-1234
Locally Assessed Property Tax
Signed 04/22/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	Initial Hearing Decision and Order	
)		
Petitioner,)	Appeal No.	04-1234
)		
v.)	Parcel. No.	MULTIPLE - 25
)		
Board of Equalization of Rich)	Tax Type	Property Tax
County, Utah,)		
)	Tax Year	2003
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 order, 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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER, Property Owner (appeared by phone)
For Respondent: RESPONDENT REPRESENTATIVE, County Assessor

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 March 30, 2005. The issue in this proceeding is the fair market value of the subject property as of January 1, 2004. The subject property covers 25 lots out of 28 lots in the first phase of a Planned Unit Development (PUD) known as (X). The lots are located in CITY, Utah. Each lot is approximately 50 x 75 feet, or 3750 sq. ft., or about .09 acres. According to the Taxpayer the lots are about 0.25 acres if the common area is included. As part of a PUD the lots will not be sold as individual vacant land, but will be included as part a total residential package that will include land, building and access to common areas. As of the lien date, the first phase was partially completed, with some additional roadwork, site improvements, and utilities remaining to be added. No residential units had been

constructed, although three of the 28 units have been sold (pre-sold). These three units are not part of this proceeding. The Rich County Assessor had originally assessed each unit at \$\$\$\$ each. The Board of Equalization (BOE) subsequently adjusted those values to \$\$\$\$ per lot. Petitioner is requesting a valuation of \$\$\$\$ per unit.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(11).)

(1) 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 commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

(4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.
(Utah Code Ann. Sec. 59-2-1006.)

To prevail in a real property tax dispute, 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

Petitioner presented a fee appraisal, apparently prepared for financing purposes, which estimated the market value of the subject property to be \$\$\$\$ per lot. This is the basis for the Taxpayer’s petition.

The Assessor’s argument was based on two points. First, RESPONDENT REPRESENTATIVE identified three PUD sales for improved property or vacant land with improvements to be built. The sales ranged from \$\$\$\$ to \$\$\$\$\$. From these prices the Assessor applied a 25% land to building ratio to derive estimated residual land values ranging from \$\$\$\$ to \$\$\$\$\$.

The Assessor's second point is that the \$\$\$\$ value for the lots was specified in the appraisal report to be for a "lump sum value." RESPONDENT REPRESENTATIVE argued that the Utah Supreme Court in its *Benchmark* decision specifically prohibited this approach.

During the course of the hearing it was pointed out that the Petitioner's appraisal report also states that the residual value for the lots would be \$\$\$\$ based on proposed selling prices ranging from \$\$\$\$ – \$\$\$\$\$. PETITIONER testified that the \$\$\$\$ figure is for an improved lot, and that this amount does not allow for an adjustment for the land development costs required to complete the project.

Upon reviewing the appraisal, the Commission notes that it was for the value of a total of 73 lots, most of which were not platted or segregated as of the lien date. It is clear from the report that the estimated value of each individual lot is \$\$\$\$\$, assuming a completed development. The report also states, as was noted in part by the Assessor, "[a]s a lump sum value for all the lots in the development the price would be discounted." We find from this that the Taxpayer has not provided an estimate for the subject lots either "as is" or as proposed, whether discounted or not. Thus we find little relevance for this appraisal.

We note further that the Court addressed the question of a bulk sale discount. *Board of Equalization v. Utah State Tax Comm'n ex rel. Benchmark* 864 P.2d 882 (Utah, 1993). Although in that case, the issue was specifically an absorption discount, the court specifically noted that "[t]he method contemplates a "hypothetical sale in bulk from one developer to another." In its decision the Court stated ". . . an absorption discount violates sections 2 and 3 of article XIII of the Utah Constitution" and that ". . . it is inconsistent with Utah's statutory scheme of ad valorem taxation." The Commission finds that the lump sum discount contemplated in the Taxpayer's appraisal is equivalent to the method prohibited by the Court, and is therefore inappropriate to apply to the assessed value of the individual lots under appeal.

In summary, the Taxpayer has not provided a reasonable estimate of the fair market value of the individual lots in an "as is" condition as required by law. In contrast, the value used by the Assessor allows for a sufficient discount for any remaining development costs.

DECISION AND ORDER

The Commission finds that the Petitioner has not shown compelling errors in the Respondent's appraisal and has not established a better value for the property. On the evidence and testimony presented, the Commission finds the fair market value of the subject property to be \$\$\$\$ per parcel as of January 1, 2004. The decision of the Rich County Board of Equalization is sustained.

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 _____, 2004.

BY ORDER OF THE COMMISSION:

Marc B. Johnson
Commissioner

The undersigned Commissioners have reviewed this matter and concur in this decision.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

NOTICE OF APPEAL RIGHTS: This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become final unless a party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. The written request must include the appeal number and the above captioned case name, and it must be delivered to the Tax Commission Appeals Unit, 210 North 1950 West, Salt Lake City, Utah 84134. Failure to timely request a Formal Hearing will preclude any further appeal rights in this matter.

ADDENDUM

PARCELS:

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