

08-0564
Locally Assessed Property
Signed 10/08/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

SALT LAKE COUNTY BOARD OF
EQUALIZATION

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-0564

Parcel No. #####-1, #####-2, #####-3,
#####-4, #####-5, #####-6,
#####-7, #####-8, #####-9,
#####-10, #####-11, #####-12,
#####-13, and #####-14

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser for Salt Lake
County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on September 3, 2008. Taxpayer is appealing the value of the subject parcels as established by the Salt Lake County Board of Equalization. The lien date at issue in this matter is January 1, 2007.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, “fair market value” is defined in 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.

Utah Code Ann. §59-12-102(12) (2007).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

At issue is the valuation of fourteen un-built condominium sites located in the COMPLEX 1. They are parcel nos. #####-1, #####-2, #####-3, #####-4, #####-5, #####-6, #####-7, #####-8, #####-9, #####-10, #####-11, #####-12, #####-13, and #####-14. The same conditions and requirements for use apply to each of the parcels. The value derived represents the value of each parcel individually, not collectively. The County Assessor's Office valued each parcel at \$\$\$\$ for the January 1, 2007 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. The Taxpayer is requesting that the value of each property be reduced to \$\$\$\$\$.

The COMPLEX 1 was platted for 68 condominium units, though only 54 have been constructed. In 1992, the Taxpayer purchased the parcels with the intention of developing the remaining 14 condominiums. Taxpayer's representative stated that there are several issues that affect the value of the parcels that the County failed to take into account.

The Taxpayer's representative testified that the properties have been the subject of litigation for approximately sixteen years. The litigation is complex, and multiple issues are involved; including whether the Taxpayer is responsible for HOA fees if there is not a built condominium and whether an un-built condominium constitutes a "unit" or if an un-built condominium is considered "convertible land". It is the Taxpayer's contention that until this issue is resolved, the properties cannot be built on.

In addition, Taxpayer's representative stated that if the litigation is resolved in the Taxpayer's favor, there are still several hurdles to the construction of condominium units. Taxpayer's representative stated that the HOA bylaws restrict construction of new units to the same building style and footprint as the existing units, and that this conflicts with current building codes and market preferences. In order to build on the parcels, the Taxpayer needs the approval of 75% of the homeowner's association ("HOA"). The Taxpayer's representative testified that he was told by the president of the HOA that they would not approve the construction because it would decrease the common area and open space in the complex. Assuming the Taxpayer could get HOA approval, the construction of condominium units would need to be approved by the city. The Taxpayer's representative stated that they have had four discussions with CITY, most recently last year. In order for the city to approve the construction of the condominium units all building codes would need to be met, the construction cannot increase the population density or decrease the amount of open space. But he stated he could not submit the construction plans or apply for building permits without obtaining HOA approval first.

The Taxpayer believes that the value of the subject parcels ranges from \$\$\$\$\$ to \$\$\$\$\$ each. At the hearing, the Taxpayer's representative requested that the value of each un-built unit be reduced to \$\$\$\$\$. In support of his requested value the Taxpayer submitted information using the cost approach to determine the value of the parcels. The Taxpayer applied this approach using county information, the construction of a new unit without design changes, and the construction of a new unit with design changes. The Taxpayer used an extraction technique to arrive at a land value range of \$\$\$\$\$ to \$\$\$\$\$ under the cost approach. The Taxpayer supported his value range using the income approach, determining a land value of \$\$\$\$\$; as well as the market approach, determining a land value of \$\$\$\$\$.

The County's representative presented an appraisal utilizing the market approach and using three comparable properties. The appraiser determined the value of the subject parcels to be \$\$\$\$\$ each, but asked that the appraisal be used only to support the Board of Equalization's value of \$\$\$\$\$. The County's appraiser used comparables from planned unit developments (P.U.D.), which he stated that the ownership interest is in the square footage.

The County's appraisal used two P.U.D. parcels in the COMPLEX 2. This complex is located 1.2 miles northwest of the subject parcels. The parcels sold for \$\$\$\$\$ on April 26, 2005. The appraiser made an adjustment of 1% per month from the date of sale to account for appreciation in the market, reduced the value by \$\$\$\$\$ per square foot, made a \$\$\$\$\$ adjustment for amenities, and a reduction of 20% for the obsolescence of the subject parcels. The County's

representative explained that this adjustment was applied because originally the units in the subject complex did not include space for a garage or carport. The owners were later granted a space to build either a garage or carport, but the map of the complex was never changed to show that the property owners were in possession of the extra space. The adjusted sales price of the COMPLEX 2 parcels was \$\$\$\$\$.

The County's third comparable was a P.U.D. parcel located in the COMPLEX 3. This complex is located 2.25 miles southwest of the subject parcels. The parcel sold for \$\$\$\$\$ on May 5, 2005. The appraiser made an adjustment of 1% per month from the date of sale to account for appreciation in the market, a \$\$\$\$\$ adjustment for location, and a 20% reduction for the obsolescence of the subject parcels. The adjusted sales price of the COMPLEX 3 parcel was \$\$\$\$\$.

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. The Commission finds that the Taxpayer's testimony regarding the impact of litigation and needed approvals to construct condominium units on the subject parcels is sufficient to call into question the value established by the Board of Equalization. The Taxpayer submitted a cost approach that determined a value range of between \$\$\$\$\$ and \$\$\$\$\$ for each parcel. Taxpayer supported his proposed value range with both income approach and market approach analyses.

The County's representative offered no rebuttal to the Taxpayer's cost approach. Rather, the County deviated from the approach utilized by the Board of Equalization in determining the value of the subject parcels, and submitted an appraisal which used the market approach. The County's appraisal used P.U.D. lots as its "comparable" properties, and had to make significant gross adjustments, ranging from 73.8% to 119.8%, to arrive at a value for the subject property. Due to the complex issues related to the subject parcels, and the lack of any truly comparable properties, the Commission is of the opinion that the market approach utilized by the County was improper under the circumstance and does not support the Board of Equalization value.

While the Commission is somewhat troubled that the Taxpayer did not provide any documentation that would verify the amounts used in his calculations, it finds that the Taxpayer's methodology was reasonable. Absent any rebuttal information from the County on this issue, the Commission finds that the Taxpayer has met his burden of proof to establish that the valuation by the Board of Equalization was incorrect and provided an evidentiary basis to support his requested value of \$\$\$\$\$ for each parcel.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject parcels, as of the January 1, 2007, lien date is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 _____, 2008.

Jan Marshall
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner