

08-2225
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED 12-17-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, vs. RURAL COUNTY BOARD OF EQUALIZATION Respondent.	INITIAL HEARING ORDER Appeal No. 08-2225 Parcel No. ##### - 1 / ##### - 2 Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: M. Johnson
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Presiding:
 Marc B. Johnson, Commissioner

Appearances:
 For Petitioner: PETITIONER 1, Owner, *pro se*, *appeared by phone*
 For Respondent: RESPONDENT REP 1, RURAL COUNTY Assessor
 RESPONDENT REP 2, RURAL COUNTY Chief Deputy Assessor

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the RURAL COUNTY Board of Equalization (“the County” or “BOE”). This matter was heard in an Initial Hearing on June 18, 2009. The RURAL COUNTY Assessor’s Office assessed Parcel No. ##### - 1 (“##### - 1”) at \$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization sustained this value. The County is requesting that the Commission sustain the value, also. The Taxpayer asserts that the value is approximately \$\$\$\$.

For this hearing, the County provided the same evidence that was used in Appeal 08-2263.

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(12).)

(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. (Utah Code Ann. Sec. 59-2-1006(1).)

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

The subject property, ##### - 1, is a 9.64-acre, unimproved residential lot located in the DEVELOPMENT, near CITY, Utah, situated at the base of the north side of (X), a plateau. Other properties in the same development are situated on the mesa. These properties appear, based on limited submissions by the parties, to typically range in size from slightly less than ten acres to twenty acres. Each parcel has a designated building envelope for improvements; the remaining acreage cannot be disturbed according to Covenants, Conditions, and Restrictions (CC&R's) set in place. Based on evidence submitted by the Taxpayer, the building envelopes range from 14,463 sq. ft. (the subject property) to 43,122 sq. ft.

The Taxpayer purchased ##### - 1 in 2004 for \$\$\$\$\$. He believes the current value is \$\$\$\$\$ based on listings and sales of nearby properties during the 2008-2009 years. He believes ##### - 1 was never worth \$\$\$\$\$. He also testified that since December 2008, he has listed ##### - 1 for sale and as of the hearing date, the listing price was \$\$\$\$\$.

He also testified that on June 10, 2009, a parcel sold for \$\$\$\$\$.

The Taxpayer asserts that the County overvalued ##### - 1, first, by using the highest price per acre of its own range of values based on its nine comparable sales and, second, by giving no consideration for necessary adjustments. The Taxpayer argued that the County failed to account for ##### - 1's location at the base of the mesa, its more limited view, and its smaller building envelope. The Taxpayer states that the County's comparable sales are on top of the mesa and 14,000 square feet larger than ##### - 1, but the County made no adjustments. The Taxpayer explained that the view from on top of the mesa is worth more than the view from its base because the lots on top look down on CITY.

The County explained that it valued ##### - 1 at \$\$\$\$\$ per acre as required by the Property Tax Division (“Division”). The County further explained that the Division completed an “Assessment/Sales Ratio Study” (“sales ratio study”) based on sales occurring between 2004 and 2007 and ordered the County to raise the land values. In response, the County raised the values for the CITY area to \$\$\$\$\$ per acre as directed by the Division. Additionally, the County stated that the \$\$\$\$\$ per acre value was supported by the sale of Parcel No. ##### - 2, which sold on June 1, 2007 for \$\$\$\$\$ for 9.60 acres, or \$\$\$\$\$ per acre.

At the hearing, the County provided a table listing nine comparable sales in the area, occurring from September, 2004 to June, 2007 at prices from \$\$\$\$\$ to \$\$\$\$\$ for lot sizes from 9.09 to 20.00 acres. The table included three sales for 2007, which the Commission deems most relevant, as follows:

<u>Serial</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Lot Size</u>
##### - 3	5/1/2007	\$\$\$\$\$	9.09
##### - 4	3/20/2007	\$\$\$\$\$	20.00
##### - 5	6/1/2007	\$\$\$\$\$	9.60

The table had no information about the comparable’s locations, views, or other characteristics, building envelope size, etc. The sales were the basis of the sales ratio study performed by the Division. The price per acre for each of the lots was \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ respectively, with an average of \$\$\$\$\$ per acre. In addition to the three 2007 sales, four sales took place in 2004 and the other two occurred in 2006.¹

The County agreed that ##### - 1 was further down the plateau, but argued that adjustments were unnecessary because its smaller envelope size appeared to increase its view, and any location adjustment was offset by a shorter drive. The County also argued that the market has dropped since the January 1, 2008 lien date.

The County addressed the Taxpayer’s comparable sale. Although the assessor could not confirm the June 10 sale identified by the Taxpayer, he was aware of an unconfirmed closing for Parcel ##### - 6 for \$\$\$\$\$. Parcel ##### - 6 is located on the mesa, has views of distant mountains, includes approximately 10 acres, is subject to the development’s CC&Rs, and has a larger building envelope than ##### - 1. It was listed for \$\$\$\$\$. The County provided additional information showing that ##### - 7 is currently listed for \$\$\$\$\$. Parcel ##### - 7 is located at the base of the mesa, has views of the mesa, includes approximately 20 acres, and is subject to the development’s CC&Rs.

¹ Data from the table for all sales indicates a total average price per acre of \$\$\$\$\$, for all sales; \$\$\$\$\$ for 2006; and \$\$\$\$\$ for both 2006 and 2007. We note however, that handwritten notes on the sales ratio study, as well as data listed on another table provided by the assessor indicate a unit price of \$\$\$\$\$ for Parcel ##### - 8. This contradicts the indicated sale price of \$\$\$\$\$ for 10.02 acres.

The assessor submitted two “Tax Roll Master Record(s)” for two parcels. These records were for Serial #'s ##### - 9 (“Parcel ##### - 9”) and ##### - 10 (“Parcel ##### - 10”). The records are for 2009, but show the 2008 values. Parcel B indicates a value of \$\$\$\$ for 77.14 acres (\$\$\$\$ per acre), which was broken down into 10 acres at \$\$\$\$ (\$\$\$\$ per acre) and 67.14 acres at \$\$\$\$ (\$\$\$\$ per acre). This document had a handwritten note: “June 2009 Sale.” The Parcel ##### - 9 record showed 19.26 acres assessed at \$\$\$\$ (\$\$\$\$ per acre), which was broken down to 10 acres at \$\$\$\$ (\$\$\$\$ per acre) and 9.26 acres at \$\$\$\$ (\$\$\$\$ per acre).

Finally, the County argued that the view from the bottom of the Mesa is at least equal to the view from the top.

In making a value determination, we have several observations and concerns, beginning with the assessor’s analysis. To start with, the County’s table of comparable properties lacked information on where they were located, their views, and other characteristics. Without these characteristics, one cannot determine how comparable these properties truly are and what adjustments are necessary. Furthermore, the County did not explain why the highest sales price per acre occurring in 2007 should be applied to value ##### - 1 along with the rest of the development rather than considering the other sales. Absent further evidence, the explanation that the County adjusted all properties in the CITY area, according to the State’s ratio study does not show what the specific market value is for ##### - 1. Nor does the sales ratio study support \$\$\$\$ per acre for the general value of the development as a whole.

However, the Taxpayer’s comparable sale of Parcel (X) on June 10, 2009, and the listing of ##### - 1 on December 2008 are also not evidence of market value for the subject property as of the lien date January 1, 2008. The sale and listings all occurred after the lien date and are too distant in time to make an appropriate determination of value.

Nonetheless, based on the evidence presented, the Commission finds that there is a sufficient evidentiary basis for changing the market value for ##### - 1. Even if the 2007 sale for Parcel ##### - 2, at \$\$\$\$ per acre for 20 acres, is thrown out, the average sales price per acre is \$\$\$\$ for that year. The Taxpayer’s value estimate of \$\$\$\$ is lower than the average, and equates to just under \$\$\$\$ per acre. Although this is lower than the average of the more recent selling prices found in the sales ration study, we find the Taxpayer’s argument of the effect of a smaller building envelope to be persuasive. Furthermore, although we recognize that the Taxpayer’s argument of the effect on value by a view from the top of the Mesa is not completely supported, we are concerned that the highest unit sale price is for just such a lot. Accordingly we find \$\$\$\$ to be the best supported estimate of fair market value.

We note further that we are concerned with a possible equity problem in the area. The two property records submitted at the hearing indicate assessments for property in the immediate area that are far below the subject and other properties.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission overturns the BOE value and finds that the value of Parcel No. ##### - 1 / ##### - 2 as of January 1, 2008 is \$\$\$\$\$. The County Auditor is directed to adjust the assessment records accordingly. 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.

BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this ____ day of _____, 2009.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner