

08-2363
LOCALLY ASSESSED PROPERTY
SIGNED 04-27-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 08-2363 Parcel Nos. 45 Parcels (See Attachment 1) Tax Type: Property Tax / Locally Assessed Tax Year: 2008 Judge: Chapman
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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 REP, Property Owner
For Respondent: RESPONDENT REP 1, COUNTY Assessor
RESPONDENT REP 2, COUNTY Assessor's Office
RESPONDENT REP 3, 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 April 21, 2009.

At issue is the fair market value of (X) subject properties as of the January 1, 2008 lien date.

All of the subject properties are vacant lots located in the (X) PUD in Logan, Utah. The COUNTY Board

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of Equalization (“County BOE”) sustained the \$\$\$\$ value at which each of the subject properties were assessed for the 2008 tax year. The property owner asks the Commission to reduce the value of each lot to \$\$\$\$\$. The County asks the Commission to sustain the current value of \$\$\$\$ per lot.

APPLICABLE LAW

Utah Code Ann. §59-2-102(12) defines “fair market value” for assessment purposes, as follows:

(12) “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.

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

- (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. . . .
- (2) The auditor shall:
 - (a) file one notice with the commission;
 - (b) certify and transmit to the commission:
 - (i) the minutes of the proceedings of the county board of equalization for the matter appealed;
 - (ii) all documentary evidence received in that proceeding; and
 - (iii) a transcript of any testimony taken at that proceeding that was preserved; and
 - (c) if the appeal is from a hearing where an exemption was granted or denied, certify and transmit to the commission the written decision of the board of equalization as required by Section 59-2-1102.
- (3) In reviewing the county board's decision, the Commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.

(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.

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Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *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

The (X) PUD ("PUD") is in the process of being completed. When finished, it is anticipated that (X) townhomes will have been built. Currently, (X) townhomes have been completed. The (X) subject properties at issue are vacant lots in the PUD that have been platted but, as of the lien date, not yet built on.

Property Owner's Information. For the 2007 tax year, platted, vacant lots in the PUD were assessed at \$\$\$\$\$. For the 2008 tax year, the County assessed such lots at \$\$\$\$\$. The property owner does not believe that the values of such lots have increased from \$\$\$\$\$ to \$\$\$\$\$ in one year. For these reasons, he asks the Commission to reduce each of the subject lots' values to \$\$\$\$\$.

To support his request, he states that his “costs” for each lot total approximately \$\$\$\$\$. This includes his costs to purchase the land and to install infrastructure. However, it does not include entrepreneurial profits. This information shows that the value of each lot at issue is in excess of \$\$\$\$\$ and does not indicate that the current value of \$\$\$\$\$ per lot is incorrect. The Commission also disagrees with the property owner’s argument that the vacant lots have no value until a townhome is completed and the unit is sold.

In addition, the property owner proffers an appraisal of a townhome in the PUD, which the appraiser, APPRAISER A, estimated to have a \$\$\$\$\$, based on “similar vacant sales or from the allocation method where vacant lot sales are not available.” Both parties agree that townhome lots rarely sell alone and that the \$\$\$\$\$ value estimated by APPRAISER A is not based on comparable townhome lot sales. For further clarification, the property owner obtained a November 10, 2008 letter from APPRAISER A, in which he stated that he used an allocation method to value the lot in the appraisal described above. Specifically, he explained that “[t]he allocation method takes the cost approach and figures the cost of the improvement, then measures them against the market value of the total property. One is able to figure the value attributable to the land based on this method.” APPRAISER A found the typical land to value ratio to be 10 – 15% for townhomes. When these percentages are applied to the \$\$\$\$\$ market value of the townhome he appraised, the lot’s value would fall between \$\$\$\$\$ and \$\$\$\$\$. The current value of \$\$\$\$\$ per lot is near the upper end of this range. This evidence alone does not convince the Commission that the current value of each subject lot is incorrect.

County’s Information. The County proffers that the local bank told the Assessor’s Office that vacant lots in the subject PUD have been appraised at \$\$\$\$\$ per lot for loan purposes. The property owner admits that the vacant lots have been appraised, but does not recall the amounts at which they were appraised.

The County also proffers that it has developed a linear regression analysis to determine the value of each factor that contributes value to a townhome in the PUD. The County submitted the prices at

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which three townhomes sold and the values determined for these same townhomes with its linear regression analysis. The difference between the sales prices and linear regression analysis values is less than 10% in all cases. The County further proffered that this analysis showed a lot in the PUD to have a value of \$\$\$\$\$.

In addition, the County determined a value for lots in the PUD by estimating the Marshall & Swift value for improvements and subtracting this amount from the market value of a townhome. Using this methodology, the County “extracted” a lot value in excess of \$\$\$\$\$.

Analysis. The property owner, not the County, has the burden of proof in this matter. The property owner’s evidence is insufficient to show that the current value of \$\$\$\$\$ for each subject lot is incorrect. The County’s evidence does not show the current value of \$\$\$\$\$ per lot to be incorrect either. Based on the evidence submitted at the Initial Hearing, the Commission denies the property owner’s appeal.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the property owner’s appeal. The Commission sustains the value established by the County BOE for each of the subject properties. It is so ordered.

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 taxpayer’s name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2009.

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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Attachment 1

Parcel Numbers of 45 Properties under Appeal

1:	#####- 1	24:	#####- 24
2:	#####- 2	25:	#####- 25
3:	#####- 3	26:	#####- 26
4:	#####- 4	27:	#####- 27
5:	#####- 5	28:	#####- 28
6:	#####- 6	29:	#####- 29
7:	#####- 7	30:	#####- 30
8:	#####- 8	31:	#####- 31
9:	#####- 9	32:	#####- 32
10:	#####- 10	33:	#####- 33
11:	#####- 11	34:	#####- 34
12:	#####- 12	35:	#####- 35
13:	#####- 13	36:	#####- 36
14:	#####- 14	37:	#####- 37
15:	#####- 15	38:	#####- 38
16:	#####- 16	39:	#####- 39
17:	#####- 17	40:	#####- 40
18:	#####- 18	41:	#####- 41
19:	#####- 19	42:	#####- 42
20:	#####- 20	43:	#####- 43
21:	#####- 21	44:	#####- 44
22:	#####- 22	45:	#####- 45
23:	#####- 23		