

08-2532
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED 11-18-2009
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-2532</p> <p>Parcel No's. ##### - 1; ##### - 2; ##### - 3; ##### - 4; ##### - 5; ##### - 6; ##### - 7; ##### - 8; ##### - 9; ##### - 10; ##### - 11; ##### - 12; ##### - 13; ##### - 14; ##### - 15; ##### - 16; and ##### - 17</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: M. Johnson</p>
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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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REP, representative, *appeared by phone*
For Respondent: RESPONDENT REP, RURAL County Deputy Assessor
RESPONDENT REP, RURAL County 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. Following are, the original assessed the parcels as of the January 1, 2008 lien date, the Board of Equalization adjusted values, and the Taxpayer’s requested values:

<u>Parcel No.</u>	<u>Assessed Values</u>	<u>BOE Values</u>	<u>Taxpayer’s Values</u>
##### - 1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 4	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 5	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 6	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 7	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 8	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 9	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 11	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 12	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 13	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 14	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 15	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 16	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### - 17	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

At the hearing, the county assessor’s office (“Assessor”), representing the County, requested that the Commission sustain the BOE values.

APPLICABLE LAW

Utah Code Ann. § 59-2-103(1) provides for the assessment of property, as follows:

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.

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.

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.

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 properties include 16 building lots and 1 road lot, collectively comprising a residential subdivision under development named the SUBDIVISION (“Subdivision”) located in CITY, Kanab County, Utah. The Subdivision was subdivided and roads were built before the lien date.

The Taxpayer, represented by the manager of the Subdivision development, makes several arguments as to why the subject properties are overvalued. Much of his testimony was provided in written form with his appeal. He argues first that the BOE did not take into account that the subject properties are part of an incomplete subdivision. He also testified that lots cannot

be sold separately until the county accepts the roads and other improvements. According to the Taxpayer, the lots can only be sold to a developer as of the lien date. Furthermore, there is an easement problem which makes the lots unbuildable until that problem is resolved. Finally, he testified that the lots are not cleaned of deadfall and brush. According to the Taxpayer, his invested cost of approximately \$\$\$\$\$ per acre should be the amount for the assessments of Lots ##### - 1 to ##### - 16, and that a \$\$\$\$ value is appropriate for Lot ##### - 17 which includes the land to be dedicated for a public road.

At the hearing, the Taxpayer explained that although the Subdivision was subdivided and roads were completed last summer, there is an easement problem that prohibits the subject properties from being sold. He further clarified that the easement problem created a requirement for a \$\$\$\$ completion bond. He asserts that regardless of this situation, the County assessed the subject properties as ready to sell. He also asserts that the County failed to take into account that the subject properties have dead trees or “dead fall” and brush, all of which needs to be cleared before the lots can be sold.

In response to comparable sales submitted by the County, the Taxpayer argues that the Assessor’s sales are near SUBDIVISION 2 which is a different market area than the subject subdivision. He also testified that he has received no offers on the lots.

The Taxpayer asserts, as an example, that the County overvalued Lot ##### - 1, which is 3.78 acres, because the County failed to recognize that it is a single building lot. The Taxpayer argued that a one-acre lot is not proportionately more valuable than a 0.5-acre lot, and as a result, the County has overvalued the excess acreage above the 0.5-acre base lots.

The Taxpayer stated that a realtor from (X) put up a “for sale” sign with no price listed. The Taxpayer further explained that the realtor had indicated that the subject properties probably could not sell without first resolving the easement problem. The Taxpayer testified that RURAL County¹ has an easement on land between the subject properties and another subdivision and that a fence is in the easement. Complicating this is that the entrance to the road for the subdivision is too close to the fence. As a result, RURAL County has required the Taxpayer to post a completion bond in the amount of \$\$\$\$\$. The Taxpayer believes that the County should resolve this problem. The Taxpayer further explained that the dirt road affected by the easement was on a dirt road going only to the Subdivision

¹ We refer to “RURAL County” as the county proper, in contrast to the Assessor or BOE.

The Taxpayer testified that surrounding properties, with roads and utilities in place, are selling for between \$\$\$\$\$ for 20 acres to \$\$\$\$\$ for 5 acres, but did not identify any information on the specific details of the transactions.

The Taxpayer argued that the valuations should reflect the fact the only buyer of the Subdivision properties would be another developer because the Subdivision is incomplete.

In response, the Assessor stated that a number of lots of the Subdivision have already been sold by a realtor, and are reserved for the owner and his brothers. The Assessor also pointed out that the “for sale” sign is the only listing for the subject properties. The Assessor stated that it relied on comparable sales of vacant land from SUBDIVISION 2, which is a superior subdivision, similar to the subject subdivision. Both are located on a mountain, according to the Assessor.

The Assessor provided a table titled “Vacant Land Sales” which ranged in sales dates from January 18, 2006 to November 13, 2007, for lots ranging in size from 0.40 to 0.69 acres, and sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. None of these sales reflected, or were adjusted, to account for the differences between the characteristics, primarily size and condition, of the comparable sales and the subject properties.

Although there was no analysis to reflect the impact of the completion bond, the Assessor testified that the Assessor’s office had contacted the Planning and Zoning Administrator, and learned that the Subdivision was approved by RURAL County on December 6, with a \$\$\$\$\$ bond being held until the easement is resolved. An unsigned written document presented by the county, stated the subdivision was approved on December 4, 2006, “and was valued accordingly January 1, 2007.” The County explained that the Taxpayer originally was required to file a \$\$\$\$\$ bond, which was reduced in 2008 to \$\$\$\$\$ for improvements. The County stated that the Taxpayer can sell individual lots. The Taxpayer responded that the realtor stated that RURAL County would issue no building permit until the easement is clear. The County provided that its assessments generally did not consider the issue of building permits.

The County explained that it assessed the subject properties at \$\$\$\$\$ to \$\$\$\$\$ for a 0.5-acre base lot plus \$\$\$\$\$ per acre for the overage or land in excess of 0.5 acres.

The County argues that the assessment it put on the subject property was based on land in the same condition. In response, the Taxpayer’s representative asserted that he also has a lot in SUBDIVISION 2 and he observed that the SUBDIVISION lots are much clearer than the subject properties.

The Commission finds that neither party has established support for their respective valuations. We are not persuaded that the Taxpayer's use of invested development costs is a valid measure of market value. A more appropriate method would be to determine the market value of the lots in a marketable condition, and then make adjustments for clearing out the dead fall and the effect of the easement. In this case, there has been no clear showing of whether an adjustment is appropriate for the deadfall, nor was there an estimate for the amount of such an adjustment. Similarly, there is no conclusive evidence showing that the overage has been overvalued.

On the other hand, the assessor did not support the assessed value of the property. The assessor provided a list of sales ranging from \$\$\$\$\$ to \$\$\$\$\$ for lots ranging in size from 0.43 acres to 0.69 acres. The subject lots were all over 1 acre to 3.78 acres, and assessed at \$\$\$\$\$ to \$\$\$\$\$. The evidence only shows, that the subject lots are larger, and possibly more valuable than the comparable lots. What the County has also failed to do is to account for the effect of the easement and the value of the road.

The Commission finds the subject property should be adjusted to reflect that the Subdivision requires a \$\$\$\$\$ bond until an easement problem is resolved. The subject properties are to be reduced for the allocation of the bond amount by the subject properties acreage. Additionally, we find that Parcel No. ##### - 17 has a \$\$\$\$\$ market value because the land must be dedicated to roads. It is similar to common areas in condominiums. Were that parcel to be sold, it would have an adverse effect on the other lots. In the alternative, were the Commission to leave the assessed value in place, we would find that the value would have to be apportioned and deducted from the remaining lots.

The allocation of \$\$\$\$\$ to Lots based on acreage is as follows:

<u>Parcel No.</u>	<u>Acreage</u>	<u>Bond Allocation</u>
##### - 1	3.78	\$\$\$\$\$
##### - 2	2.41	\$\$\$\$\$
##### - 3	1.36	\$\$\$\$\$
##### - 4	1.47	\$\$\$\$\$
##### - 5	1.41	\$\$\$\$\$
##### - 6	1.12	\$\$\$\$\$
##### - 7	1.37	\$\$\$\$\$
##### - 8	1.00	\$\$\$\$\$
##### - 9	1.03	\$\$\$\$\$
##### - 10	1.00	\$\$\$\$\$

##### - 11	1.00	\$\$\$\$
##### - 12	1.05	\$\$\$\$
##### - 13	1.00	\$\$\$\$
##### - 14	1.00	\$\$\$\$
##### - 15	1.00	\$\$\$\$
##### - 16	1.00	<u>\$\$\$\$</u>
##### - 17	No allocation	
Total		<u>\$\$\$\$</u>

The Commission finds that no other adjustments are appropriate.

In Summary, for the subject properties, the Commission finds that the Taxpayer has provided sufficient evidence to call into question the value set by the Board of Equalization because the County has not taken into account the easement problem relating to the \$\$\$\$ bond. Furthermore, there is an evidentiary basis in support of reducing the BOE Values for the \$\$\$\$ bond as of the January 1, 2008 lien date. Accordingly, the Commission finds that the subject parcels are to be reduced according to their acreage for the \$\$\$\$ bond, as follows:

<u>Parcel No.</u>	<u>BOE Values</u>	<u>Bond Allocation</u>	<u>Adjusted Values</u>
##### - 1	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 2	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 3	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 4	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 5	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 6	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 7	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 8	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 9	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 10	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 11	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 12	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 13	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 14	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 15	\$\$\$\$	\$\$\$\$	\$\$\$\$
##### - 16	\$\$\$\$	\$\$\$\$	\$\$\$\$
Totals	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the values of subject properties as of the January 1, 2008 lien date are as follows:

<u>Parcel No.</u>	<u>Adjusted Values</u>
##### - 1	\$\$\$\$\$
##### - 2	\$\$\$\$\$
##### - 3	\$\$\$\$\$
##### - 4	\$\$\$\$\$
##### - 5	\$\$\$\$\$
##### - 6	\$\$\$\$\$
##### - 7	\$\$\$\$\$
##### - 8	\$\$\$\$\$
##### - 9	\$\$\$\$\$
##### - 10	\$\$\$\$\$
##### - 11	\$\$\$\$\$
##### - 12	\$\$\$\$\$
##### - 13	\$\$\$\$\$
##### - 14	\$\$\$\$\$
##### - 15	\$\$\$\$\$
##### - 16	\$\$\$\$\$
##### - 17	<u>\$\$\$\$\$</u>
Totals	<u>\$\$\$\$\$</u>

The County Auditor is directed 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.

Marc B. Johnson
Commissioner

Appeal No. 08-2532

BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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