

09-1101  
LOCALLY ASSESSED PROPERTY  
SIGNED 02-01-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SUMMIT COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 09-1101</p> <p>Parcel No. ##### - 1</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: Jensen</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 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.**

**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP, Taxpayer  
For Respondent: RESPONDENT REP 1, for Summit County  
RESPONDENT REP 2, for Summit County

STATEMENT OF THE CASE

The above-named Petitioner (the “Taxpayer”) brings this appeal from the decision of the Board of Equalization of Summit County (the “County”). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on October 6, 2009. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2008. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of

equalization sustained the value. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization be sustained.

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).)

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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 . . . .”

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 requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization 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 subject property is parcel no.##### - 1, located at ADDRESS, in CITY, Utah. It consists of a condominium unit in the CONDOMINIUM. The condominium unit has 1,437 square feet. The condominium project at the CONDOMINIUM was constructed in 2003 and allows for the sale of fractional ownership in which more than one owner may own a single unit.

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Taxpayer provided a discussion of the manner in which condominium project at the CONDOMINIUM was marketed as well as a comparison of CONDOMINIUM unit prices to the sales prices of similar units that were not marketed as

fractional share ownership projects. In support of this argument, the Taxpayer relied on data presented by the County regarding 2007 sales of condominium units in the area of the subject property:

<u>Date of Sale</u>	<u>Condominium Project</u>	<u>Square Feet in Unit</u>	<u>Sales Price</u>
02/20/07	##### - 2	1,500	\$\$\$\$\$
03/01/07	##### - 3	1,409	\$\$\$\$\$
05/24/07	##### - 4	1,403	\$\$\$\$\$
05/25/07	##### - 5	1,484	\$\$\$\$\$
06/09/07	##### - 6	1,315	\$\$\$\$\$
06/14/07	##### - 7	1,407	\$\$\$\$\$
07/03/07	##### - 8	1,436	\$\$\$\$\$
07/03/07	##### - 9	1,505	\$\$\$\$\$
07/03/07	##### - 10	1,573	\$\$\$\$\$
07/30/07	##### - 11	1,409	\$\$\$\$\$
08/03/07	##### - 12	1,397	\$\$\$\$\$
09/10/07	##### - 13	1,573	\$\$\$\$\$
10/15/07	##### - 14	1,263	\$\$\$\$\$
11/13/07	##### - 15	1,210	\$\$\$\$\$
11/13/07	##### - 16	1,315	\$\$\$\$\$
12/29/07	##### - 17	1,548	\$\$\$\$\$

The Taxpayer argued that these selling prices show that units in the CONDOMINIUM, indicated by the RSLC designation in the above list, sell for substantially more than competing units in other developments. The Taxpayer maintains that the reason the CONDOMINIUM units sell for more is because of the way they are marketed as fractional-share units. This feature, the Taxpayer argued, is a business plan that is marketed with the units that is not part of the real property. The Taxpayer indicated that removing the business plan aspect of the subject property would lower its value from \$\$\$\$\$ as assessed by the County to \$\$\$\$\$.

The County presented its data to support the board of equalization value of \$\$\$\$\$ for the subject property. The County uses the data presented to show sales in excess of \$\$\$\$\$ in the same project as the subject property including the sale of the subject property itself on July 3, 2007 for \$\$\$\$\$.

Reviewing the data presented, the Commission notes that there are two problems with the Taxpayer's argument. First, the Taxpayer has not provided any legal support for the position that the manner in which a property was marketed is separated from the property itself. Rather, the business model discussed seems to be a property attribute that is inseparable from the real property rather than a feature that is subject to a sale independent from the real property. Second, even if the Taxpayer provided a legal basis for the position that the Commission should disregard

part the selling price of some properties, there are no facts to show what, if any, value is attributed to the manner in which CONDOMINIUM properties are marketed. From the evidence presented, it is equally likely that any premium for CONDOMINIUM properties would be attributable to more traditional property valuation factors such as location, age, aesthetics, amenities, or type and quality of construction. For this reason, the Taxpayer's presentation is insufficient to overcome the burden of proof required to show error in the valuation set by the board of equalization.

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Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2008 is \$\$\$\$\$. 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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner