

11-1977 and 11-1978
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2010
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
COMMISSIONER D. DIXON DISSENTS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioners,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal Nos. 11-1977, 11-1978 Parcel Nos. #####-1, #####-2 Tax Type: Property Tax/Locally Assessed Tax Years: 2010</p> <p>Judge: Phan</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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:

D'Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Attorney
REPRESENTATIVE-3 FOR TAXPAYER, Real Estate Director, TAXPAYER

For Respondent: RESPONDENT-1, Deputy Salt Lake District Attorney
RESPONDENT-2, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et seq., on February 5, 2013. As provided at the hearing, the parties submitted

Post-Hearing Briefs, and then as discussed with parties after the hearing, Reply Briefs. Although subsequently a Motion to Strike was filed regarding the post-hearing submissions, the post-hearing submissions were considered to the extent of the legal argument and analysis contained therein, but not to establish any finding of fact. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Utah State Tax Commission on Petitioners' (which are interrelated business entities collectively referred to herein as the TAXPAYER) timely appeal of the decision of the Salt Lake County Board of Equalization regarding the subject parcels for the 2010 tax year.

2. As of the lien date January 1, 2010, the Salt Lake County Assessor had originally valued parcel #####-1 ("CITY-1 Parcel") at \$\$\$\$\$. The County Board of Equalization ("County") sustained the value. This value equates to \$\$\$\$\$ per square foot. At the hearing the Taxpayer requested a reduction to \$\$\$\$\$, which equates to \$\$\$\$\$ per square foot. At the hearing the County asked that the value remain as set by the County Board.

3. Parcel #####-2 ("CITY-2 Parcel") had originally been valued by the Salt Lake County Assessor at \$\$\$\$\$ and the County sustained the value. This equates to \$\$\$\$\$ per square foot. At the hearing the Taxpayer requested a reduction to \$\$\$\$\$, which is \$\$\$\$\$ per square foot. The County offered an appraisal at the hearing for this property and recommended a reduction to the appraisal value of \$\$\$\$\$ which is \$\$\$\$\$ per square foot.

4. The CITY-1 Parcel is located at ADDRESS-1, CITY-1, Utah. This is ##### acres of vacant land that is irregular in shape. It is currently zoned O-P for professional offices.

5. The CITY-1 Parcel has no access onto a public road. It does have frontage along HIGHWAY, but there is no access to this property from HIGHWAY and neither party argued that access directly to the subject from the Highway was a possibility. A canal runs along the back side of this parcel and separates the parcel from a residential neighborhood. There would be no access to this parcel from the neighborhood side. This property is located behind the TAXPAYER, CITY-1 FACILITY and a STORE where the improvements both front on STREET-1. The TAXPAYER, CITY-1 FACILITY property and STORE have a cross easement between these two properties which they use as a roadway to access their respective properties from STREET-1. TAXPAYER owns about half of the land under the roadway and STORE the other half. The subject property can be accessed from this same private roadway and that is the only access at this time. However it

was undisputed at the hearing that this parcel does not, and did not as of the lien date, have a legal easement or right-of-way to use the access road across the adjacent TAXPAYER and STORE properties. TAXPAYER owns both the FACILITY and this subject parcel so access is currently not an issue for TAXPAYER. However, if this parcel were sold by TAXPAYER, before this property could be used or developed, a legal right to use the cross easement would need to be acquired.¹

6. The witness for TAXPAYER, REPRESENTATIVE-3 FOR TAXPAYER, testified that when TAXPAYER buys land in an area they are looking to meet the needs of the area for fifty years. TAXPAYER will acquire more land than it currently needs so that it has the land to expand later. Both the CITY-1 and CITY-2 Parcels at issue in this hearing are parcels in excess of TAXPAYER'S current needs for those locations, but were acquired and are being held by TAXPAYER for future development of the FACILITIES that are adjacent to these parcels.

7. The CITY-1 property is currently used for agriculture purpose and is valued as Greenbelt under the Farmland Assessment Act.

8. The CITY-2 parcel is located at ADDRESS-2, CITY-2, Utah. This is a parcel of vacant land that is ##### acres in size. This property also has no access onto a public roadway. It is located adjacent to HIGHWAY, but has no access to the highway and neither party argued that access to the highway was a possibility. This parcel is adjacent to the CITY-2, TAXPAYER FACILITY-2 and has the same owner as the FACILITY-2. There is a private roadway that encircles the TAXPAYER FACILITY-2 and is located on the TAXPAYER FACILITY-2 land. To get to the CITY-2 Parcel you could use the private roadway and it would get partway to the CITY-2 Parcel, but then you would have to cross over a portion of the adjacent TAXPAYER FACILITY-2 land where there is currently no roadway. Because TAXPAYER owns both the subject property and the TAXPAYER FACILITY-2 property, access is currently not an issue. On the three other sides of the CITY-2 Parcel are an elementary school, land owned by BUSINESS-1 which is starting a subdivision, and HIGHWAY.

9. The Taxpayers' requested value for each parcel is based on an appraisal that had been prepared by NAME-1, MAI, CCIM, MRICS, and NAME-2, Certified General Real Estate Appraiser, of BUSINESS-2. For the CITY-1 parcel they had concluded that the market value as of January 1, 2010 was

¹ See Petitioner's Exhibit 1, & Testimony of REPRESENTATIVE-3 FOR TAXPAYER

Appeal Nos. 11-1977 & 11-1978

\$\$\$\$\$ or \$\$\$\$\$ per square foot.² In the appraisal they provided six comparable sales as follows:

Location	Sale Date	Price	Size in Square Ft/ Acres	Price Per Square foot	Zoning
ADDRESS-3 CITY-3	DATE-1	\$\$\$\$\$	##### #####	\$\$\$\$\$	Mixed Use
ADDRESS-4 CITY-3	DATE-2	\$\$\$\$\$	##### #####	\$\$\$\$\$	Mixed Use
ADDRESS-5 CITY-3	DATE-3	\$\$\$\$\$	##### #####	\$\$\$\$\$	Regional
ADDRESS-6 CITY-2	DATE-4	\$\$\$\$\$	##### #####	\$\$\$\$\$	Regional
ADDRESS-7 CITY-2	DATE-5	\$\$\$\$\$	##### #####	\$\$\$\$\$	Regional
ADDRESS-8 CITY-2	DATE-6	\$\$\$\$\$	##### #####	\$\$\$\$\$	Professional

10. It was the BUSINESS-2 appraisers’ contention in the appraisal that the subject had inferior functional utility to the comparables. For all but one of the comparables this adjustment had been 25%. For the comparable located at ADDRESS-6, CITY-2 the adjustment was 15% and the explanation provided was that this parcel had a right of way easement, but not improved access.³ The BUSINESS-2 appraisers were not present to testify regarding their appraisal, however, the explanation offered in the appraisal was “Properties with irregular shapes or other limiting factors are less functional and typically sell at a discount compared to fully functional parcels. As previously noted, the subject is an irregular shaped parcel with limited access to the site. The subject site is essentially undevelopable without public access. This is inferior to all of the sales and downward adjustments are necessary.”⁴ The appraisers go on to provide seven sales of properties sold with limited access and an analysis of how this supported a discount of market value for the subject’s lack of access. The appraisers concluded, “The subject has an access road to the site, but easements would still need to be

² Petitioner’s Exhibit 1.

³ Petitioner’s Exhibit 1, pg. 48.

acquired. Overall, a 25% downward adjustment is concluded for the lack of public access, and rear parcel location.”⁵ It appears then, that part of this adjustment is for the lack of access and part is because the subject is a rear parcel or backage.

11. Although the six comparables had sold for prices per square foot ranging from \$\$\$\$ to \$\$\$\$\$, after making various appraisal adjustments, including for functional utility, it was the BUSINESS-2 appraisers’ conclusion that the adjusted price range for the subject from these sales was from \$\$\$\$ per square foot to \$\$\$\$\$. From this a value of \$\$\$\$ per square foot was concluded and that indicated a value for the CITY-1 Parcel of \$\$\$\$.

12. The County did not submit an appraisal of the CITY-1 property at the Formal Hearing and did not request a change in value from that set by the County Board of Equalization at \$\$\$\$\$. The primary issue that the County had with the BUSINESS-2 appraisal was the portion of the adjustment for functional utility that had been made for the lack of access. The County did not contest that some adjustment should be made because the parcel was in a backage location. The County had previously prepared an appraisal for this property that indicated a value of \$\$\$\$ or \$\$\$\$ per square foot and the Taxpayer offered the appraisal as an exhibit at the hearing.⁶ In its value for this parcel the County did not assess this CITY-1 Parcel as an economic unit with the adjoining parcel that is currently used by the TAXPAYER’S CITY-1 FACILITY. Instead the County assessed this as a separate, independent parcel.

13. For the CITY-2 Parcel the Taxpayer also submitted an appraisal that had been prepared by the same appraisers from BUSINESS-2. In this appraisal they concluded a value for the CITY-2 parcel of \$\$\$\$ or \$\$\$\$ per square foot. The comparables relied on by the BUSINESS-2 appraisers were the same land sales as in their CITY-1 Parcel appraisal. However, for the CITY-2 Parcel the functional obsolesce adjustment made by the appraisers was 30% rather than the 25% for the CITY-1 property. The one difference noted between the CITY-1 parcel and the CITY-2 parcel in the Taxpayer’s appraisal was that the CITY-1 parcel did have an access road to the site, it just did not have an easement to use the access road.⁷ For the CITY-2 Parcel, there was no access road to the site and no easement. The BUSINESS-2 appraisal did provide the same comparables

4 Petitioner’s Exhibit 1, pg. 47.

5 Petitioner’s Exhibit 1, pg. 48.

6 Petitioner’s Exhibit 3, pg. 48.

7 Petitioner’s Exhibit 1, pg. 48.

and analysis that supported its adjustment for access as in the appraisal for the CITY-1 parcel.⁸ The Taxpayer’s CITY-2 appraisal does not state the 30% functional utility adjustment is for both the lack of access and because it is a backage parcel, as was clear in the CITY-1 appraisal. However, it appears that the 30% adjustment was for both factors because the adjustment was not broken out between backage and access.

14. The comparables relied on by the BUSINESS-2 appraisers had sold for prices per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$. After the various appraisal adjustments, including the 30% adjustment for functional utility, it was their conclusion that the adjusted price range from these sales was from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot and they concluded \$\$\$\$\$ per square foot for this property which equals, rounded, the value of \$\$\$\$\$ set out in this appraisal.

15. The County submitted an appraisal of the CITY-2 Parcel, which had been prepared by RESPONDENT-2, Certified General Appraiser. The County did not appraise the CITY-2 Parcel as if it were part of the economic unit with the CITY-2 TAXPAYER FACILITY-2. A number of separate parcels were used together as an economic unit for the adjacent TAXPAYER FACILITY-2. Pursuant to the testimony, TAXPAYER had purchased the CITY-2 Parcel to meet the needs of future development. It currently is excess land held by TAXPAYER for future development of the adjacent FACILITY-2. Rather than valuing this parcel as a unit with the adjacent TAXPAYER property, RESPONDENT-2 had valued this parcel as an independent parcel from the FACILITY-2 unit and as if it had its own access to the public street. It was RESPONDENT-2 conclusion that as of January 1, 2010, the value of this parcel was \$\$\$\$\$ which was \$\$\$\$\$ per square foot. He considered six comparable sales in developing his value for this property, three of which were also used in the BUSINESS-2 appraisal and three were different comparables. The County’s comparables are as follows:

Location	Sale Date	Price	Size in Square Ft/ Acres	Price Per Square foot	Zoning
ADDRESS-3 CITY-3	DATE-1	\$\$\$\$\$	##### #####	\$\$\$\$\$	(Y)
ADDRESS-4 CITY-3	DATE-2	\$\$\$\$\$	##### #####	\$\$\$\$\$	(Y)
ADDRESS-9	DATE-3	\$\$\$\$\$	##### #####	\$\$\$\$\$	(Y-1)

⁸ Petitioner’s Exhibit 2, pg. 45-46.

Appeal Nos. 11-1977 & 11-1978

ADDRESS-10	DATE-8	\$\$\$\$	#####	\$\$\$\$	(Y)
ADDRESS-11	DATE-9	\$\$\$\$	#####	\$\$\$\$	(Y-2)
			#####		
ADDRESS-6	DATE-3	\$\$\$\$	#####	\$\$\$\$	(Y-3)
CITY-2			#####		

16. The County appraiser did consider the subject parcel to be backage and made a street orientation adjustment to account for the lack of visibility or exposure due to the parcel being located behind other properties. However, he did not make an adjustment for lack of access to the property. Essentially he valued the parcel as a backage piece that had legal access or a right-of-way to a public road. The amount of the County appraiser’s adjustment varied from 0 to 15% depending on the street orientation of the comparable properties. The County’s concluded range for the subject parcels after making appraisal adjustments was from \$\$\$\$\$ to \$\$\$\$\$ per square foot and his concluded value was \$\$\$\$\$ per square foot.

17. Although the County had made a backage adjustment, unlike the appraisers in the BUSINESS-2 appraisals, the County did not make an adjustment to account for the lack of access to a public roadway. If TAXPAYER sold the subject parcels to a third party, the third party would not have access to these parcels unless the buyer acquired or arranged for an easement or right-of-way across adjacent parcels. For the CITY-2 Parcel the access would not necessarily have to come through the adjoining TAXPAYER properties. If the buyer was able to reach an agreement with the SCHOOL or BUSINESS-1, access to this parcel could come through either of those properties.

18. It was the County’s contention that an adjustment for access was not necessary for either the CITY-2 or CITY-1 Parcels because these parcels had the same owner, TAXPAYER, as the adjoining parcels and the adjoining parcel had frontage and access to a public road. The County argued that TAXPAYER would maximize the value it would receive for the subject parcels by selling them with an easement or other right-of-way so that they would legally have access across the adjoining properties to the public road.

19. The County argued at the hearing and in its posthearing briefing that if TAXPAYER were going to sell either of the parcels at issue, TAXPAYER would maximize the value by providing access to the buyer. The County also argued that the Commission should take into consideration that fact that TAXPAYER owned the subject parcels as well as the adjacent parcels that had road access. The County did not calculate an

adjustment for access in its appraisal or provide a dollar basis for an amount of adjustment, as it argued that none should be made. The BUSINESS-2 appraisers did provide comparables and an analysis to determine an adjustment for the access. For the CITY-1 property it was 25% because an access road had been built to the property, but there was no easement. The adjustment conclusion for the CITY-2 Parcel was a little higher at 30%. The difference between the County's allowing 0% for access and the 25% or 30% adjustment in the BUSINESS-2 appraisals is not as large as it seems because it appears that included in the BUSINESS-2 appraisal adjustments was a backage or rear parcel adjustment.⁹ The County had made in its CITY-2 appraisal an adjustment for street orientation for the fact that the CITY-2 Parcel was backage. This adjustment was as much as 15%.¹⁰ The County had acknowledged that this was a factor to consider, although the County would not make the additional access adjustment. The difference in the value conclusions for the CITY-2 parcel based on the appraisals is that the County's appraisal gave a 15% adjustment for being a backage parcel while the BUSINESS-2 appraisal gave a 30% functional utility adjustment for both backage and access.

20. Upon review of the law and the evidence submitted at the hearing, the Commission concludes with the County that no access adjustment should be made to these parcels for the lien date January 1, 2010.

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 provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

“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 Sec. 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

⁹ Petitioner's Exhibit 1, pg. 48.

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 value plus or minus 5% from the assessed value of comparable properties. (Utah Code Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. Property tax is based on its “fair market value” pursuant to Utah Code Sec. 59-2-103. “Fair market value” is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102.

2. To prevail in a real property tax dispute, a party must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary bases upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). Regarding the CITY-2 property, evidence from both parties indicated error in the value set by the County Board of Equalization as both parties are recommending a lower value. The original assessment, which was sustained by the County Board of Equalization had been \$\$\$\$\$. The appraisal submitted by the Taxpayer indicated a value of \$\$\$\$\$ and by the County at the hearing of \$\$\$\$\$. For the CITY-1 property the County recommended that the value remain as set by the County Board and the Taxpayer submitted an appraisal indicating a lower value

3. The difference in value between the parties appears to be primarily from the parties’ disparate treatment of the lack of public road access. The Taxpayer argued an adjustment was necessary to account for the fact that neither of the subject parcels had public street access or legal access through an easement or other right-of-way across an adjacent parcel. The Taxpayer maintains that legal access would need to be obtained before a purchaser could develop these lots. It was undisputed that as of the lien date there was no easement or right-of-way for the subject parcels. The County argued that no adjustment for the lack of access was needed as it should be assumed the properties would be sold with access. The County also argued as they currently stand these properties are not landlocked because there is access across adjoining parcels under the same ownership.¹¹ After reviewing the arguments of the parties on this point, the Commission concludes that the

10 Respondent’s Exhibit 1, pg. 8.

11 The County cites to *Tax Commission Initial Hearing Order, Appeal No. 09-1157*, issued September 3, 2009. As noted by the County, Post Hearing Brief, pg 9., Appeal No. 09-1157 addressed the valuation of a parcel that did not

County has presented the correct position regarding the valuation of these properties. As these properties sit, they have access across the adjoining properties under the same ownership.

DISCUSSION

The Commission must value this property at its highest and best use. The highest and best use of the property, according to the Taxpayer's appraiser, is to hold the property for future commercial development. It is uncontroverted that the Taxpayer purchased the CITY-2 Parcel as part of an assemblage of property to build a FACILITY-3. Less information was provided regarding the history of the purchase of the CITY-1 Parcel. However, the Taxpayer's witness testified that it is their business practice to buy sufficient property to accommodate future development. This property is being held by the Taxpayer for just that purpose—a purpose wholly consistent with the appraiser's determination of highest and best use.

The Commission must also value the property as it existed on the lien date. On the lien date, the property was not landlocked. "Landlocked property" is property "belonging to one person and surrounded by land belonging to other persons, so that it cannot be approached except over their land." Black's Law Dictionary, (6th Ed. 1990). On the lien date, the surrounding land was owned by the same person.¹²

Finally, because this property is part of an assemblage, it has plottage value. "Sometimes highest and best use results from assembling two or more parcels of land under one ownership. If the combined parcels have a greater unit value than they did separately, plottage value is created." *The Appraisal of Real Estate*, pp. 211-212 (10th Ed. 1992.)

Valuation of this property as a landlocked parcel clearly results in a lower value than its value to the current owner. Any property owner could "subdivide" his or her parcel to create smaller parcels with little or no utility.¹³ This could seriously impact the taxable value throughout the state and would create equalization

have access to a public road, but would have had access through adjacent parcels owned by the same owner. As noted by the County, the Commission in that case stated that the property was not landlocked because it was surrounded by land belonging to the same person. However, the Commission did find in favor of the discounted value requested by the property owner in that case.

12 The Commission would now disagree with Tax Commission Initial Hearing Order, Appeal No. 09-1157, on making a negative adjustment to the valuation because of the lack of access. The Commission also notes that this decision is a different outcome from the Initial Hearing decisions issued in the subject appeals.

13 The Commission does not suggest that the Taxpayer did this in this case; the parcels presumably had the same legal descriptions when they were "assembled." Only some of the ownership history was presented at the hearing and we do not know whether these particular parcels were "landlocked" when they were acquired by the Taxpayer. The history of the parcels, however, is not relevant.

problems between owners of similar properties, just because some property owners chose to hold their backage property under a separate parcel number while the others did not.

The majority Commissioners believe the minority opinion recognizes these principles. We believe it agrees with them as an abstract matter. We also believe it shares our view of the relevant facts. Finally, we believe it shares our view as to the dangers to equalization inherent in the majority opinion. The minority decision seems to hold that these principles could be vindicated, the facts recognized, and the dangers avoided if the county had valued this parcel as “part of an economic unit.” Thus, the labels the county used result in a lower value for the subject than it would have if the county used other labels.

The majority Commissioners believe this puts too much freight on the labels used and exalts form over substance. Taxpayers generally, and this Taxpayer in particular, have the right to pick and choose which parcels to appeal. That is clearly their right. To require the County to appraise the entire assemblage as an economic unit and then apportion some part to the subject parcel should not be necessary. We are not sure if this is what the minority contemplates. If this is not what the minority contemplates, and the decision wants the County to recognize the common ownership of the land, the physical contiguity of the land, and that some parcels provide valuable access to other parcels, that is exactly what the County did.¹⁴ It just didn’t use the magic words.

The County’s so-called failure to value the property as an economic unit is particularly understandable in this context. Property that is being held for future expansion cannot receive the charitable exemption. The property must be in actual use. In *Corporation of the Episcopal Church in Utah v. Tax Commission*, 919 P.2d 556, 559 (Utah 1996), the Utah Supreme Court described an earlier case as follows: “In *Intermountain Health Care*, 725 P.2d 1357, we considered the taxability of property on which a hospital was being constructed. We held that *while the land clearly could not have been exempt prior to commencement of construction*, once construction began the property qualified for an exemption.” [Emphasis added.] It is not surprising, given this authority, that the County chose not to treat property held for future expansion as part of an existing FACILITY-1. It is, therefore, our conclusion that an adjustment should not be made for lack of access as has

¹⁴ The majority recognizes the concern that the County could propose a highest and best use that was inconsistent with the economic activity conducted on the surrounding property. In such a case, care would need to be taken to ensure that the relevant assumptions were all consistent. In this case that is not a problem. The highest and best use, according to Taxpayer’s appraiser, is consistent with the actual use and is also consistent with the parcels future use as part of the economic unit.

Appeal Nos. 11-1977 & 11-1978

been done in the appraisals offered by the Taxpayer.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that as of January 1, 2010, the market value of Parcel #####-1(CITY-1 Parcel) is \$\$\$\$ and Parcel #####-2 (CITY-2 Parcel) is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

COMMISSIONER D. DIXON DISSENTS

The issue in this case is whether an adjustment for the lack of access to a public road should be made in determining the fair market value for these parcels. In the County’s Reply Brief on Access, pg. 7, the County concludes “the question in this case is whether the most reasonable expectation for a hypothetical market transaction would be that the hypothetical seller would act prudently and provide access to the parcel it is selling in order to maximize the parcel’s value or conversely, that the seller would imprudently minimize the parcel’s value by refusing to provide access, effectively land locking the parcel and significantly decreasing the value when it is sold. . . the [County] Board submits that the fair market value standard requires an assumption of a prudent seller that would maximize the value of the parcel by providing continued access just as the parcel currently enjoys.” The Taxpayer argues that the fact that TAXPAYER owns property adjacent to the subject parcels should not be considered in determining the value of the subject parcels. The Taxpayer argues, “The Utah Constitution and applicable law require that the [subject parcels] be valued and taxed in the same manner as all other properties in the county, i.e. according to its fair market value. Fair market value is determined by

looking at the price a hypothetical buyer would be willing to pay and a hypothetical seller would be willing to sell the property. There should be no consideration given to the ownership of the adjacent properties. Otherwise, TAXPAYER would be paying a higher tax rate on the [subject parcels] than other similar backage properties owned by other tax [payers] simply because TAXPAYER owns adjacent property.”¹⁵

In their Post-hearing Briefs the parties provided a discussion of case law and prior Tax Commission decisions that provide some guidance in this matter. The County provided case law that supports the concept of unitary value or valuing a group of adjacent parcels under common ownership as an economic unit.¹⁶ However, as noted by the Taxpayer, the County did not value the subject parcels as part of an economic unit with TAXPAYER'S adjacent FACILITY-1. That the County could have valued the subject parcels as part of the economic unit is not the dispute. The County chose not to do so and valued these lots separately from the unit. As a unit, access is not an issue because the unit as a whole has access. Once removed from the unit and valued as a separate, independent parcel, the lack of access to these properties must be considered. It was not established in the facts why the County chose to value these parcels in this manner. Whether it was related to the unit being exempt from taxation under Utah Code Sec. 59-2-1101 for use for charitable purposes as noted by the majority, or because it might result in a higher value was not established and is not a factor in this decision. Regardless, the County may not value the subject parcels separately from the unit and then ignore the affect lack of access has on the value.

The County also referred to two prior Tax Commission decisions as support for its position that these lots could be valued separately with no adjustment for access, but these decisions primarily support the Taxpayer's contention that an adjustment should be made. The majority's decision in this matter is contrary to its prior decisions offered at this hearing. In *Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 03-0267*, issued September 28, 2004, the Commission addressed the issue of how 14 separate parcels that were going to be developed and were owned by the same person would be valued and concluded they should be valued as separate parcels. As noted by the Taxpayer in its Post-hearing Response Brief, pg. 6, the Commission in that case upheld a valuation that took into account discounts for the fact that access and other factors were not yet in place.

¹⁵ Petitioner's Post-Hearing Brief, pg. 2.

¹⁶ The County cites *Salt Lake City Southern R.R.Co. v. Utah State Tax Comm'n*, 987 P.2d 594 (Utah 1999); *Beaver Co. v. Wiltel, Inc.*, 995 P.2d 602 (Utah 1985) and *Tax Commission Formal Hearing Decision, Appeal No. 03-0760*, issued November 13, 2003. Many prior Tax Commission decisions are available in a redacted format at

As noted in the majority opinion, the County also cites to *Tax Commission Initial Hearing Order, Appeal No. 09-1157*, issued September 3, 2009. This appeal addressed the valuation of a parcel that did not have access to a public road, but would have had access through adjacent parcels owned by the same owner. The Commission in that case stated that the property was not landlocked because it was surrounded by land belonging to the same person. However, at page 5 of the decision the Commission notes, “While the subject is not landlocked, the Commission is not convinced that the property should be valued as a residential lot with frontage.” In its conclusion, in that case the Commission accepted the 50% discount requested by the property owner.

After reviewing the parties’ arguments and the evidence submitted in this matter, an adjustment needs to be made for the fact that the subject parcels do not have access to a public road and access would require an easement or right-of-way across adjacent parcels. The County argues a hypothetical seller, which the County assumes owns adjacent property, would provide the subject access to maximize the value. It would follow from this argument, if the hypothetical seller sold the subject parcels without access, the price would be less and the County did not dispute that the price would be less. The difference between the maximized price received from a sale that includes access and the lower price from a sale without access is the value of the access. The County is assuming not just a hypothetical buyer and hypothetical seller, but also a hypothetical condition where the property has access.¹⁷ This is contrary to the undisputed facts. If TAXPAYER were to sell these parcels, it was not clear from the facts that it would provide access, or at least unlimited access across its adjoining parcels. TAXPAYER would likely place restrictions on the access and use of the subject parcels to continue to maximize its own use of the adjoining parcels. The subject parcels did not have access to a public road as of the lien date. The fair market value must be determined based on the actual facts and conditions of the property as of the lien date. The appraisals submitted by the Taxpayer are the only evidence of market value that considers the lack of access to the subject parcels.

The County also made an argument that giving a discount to the subject parcels for lack of access

tax.utah.gov/commission-office/decisions.

¹⁷ The Tax Commission has previously questioned a valuation based on a hypothetical condition. In *Utah State Tax Commission Initial Hearing Decision Appeal No. 11-158* (April 24, 2010) the Tax Commission stated, “The County estimated the subject property under a hypothetical condition that land could be segregated, developed, and sold separately from the existing parcel. Using a hypothetical condition is questionable at best because it assumes conditions that are contrary to known facts. Furthermore, the County failed to substantiate the hypothetical condition. And, in applying the hypothetical condition, the County ignored facts that would affect the estimate of value.”

would be poor tax policy, as it would encourage property owners to subdivide their properties to get a lower value. Nothing in this decision should be construed to say that the County may not value adjacent related parcels with a common owner as an economic unit. The majority notes that there may have been reasons why the County chose not to do so in this case due to the adjoining parcel qualifying for a property tax exemption, while the subject parcels would not qualify. However, regarding the majority's concern that a decision in favor of the Taxpayer would encourage property owners to divide their properties into multiple parcels to achieve a lower value, this Commissioner would disagree that it would have such an affect. Take for example a commercial property on one single parcel with a building in the front and parking in the rear. The owner subdivides this into two parcels. The front parcel has the building but no parking and the rear parcel has parking but no access to the public road. Regardless of whether the owner argued for a deduction to the rear parcel for no access and to the front parcel for no parking, the County could value both parcels together as one economic unit and that value would be the same as if they were still one combined parcel.

In this matter, the County could have valued the subject parcels as part of the economic unit with the TAXPAYER FACILITY-1 on the adjoining parcels, but chose not to do so. The majority argue that the "County's so called failure to value the property as an economic unit is particularly understandable in this context. Property that is being held for future expansion cannot receive the charitable exemption." The majority cites to *Corporation of the Episcopal Church in Utah v Tax Cmmission*, 919 P.2d 556, 559 (Utah 1996) and *Intermountain Health Care*, 725 P.2d 1357. Although this may have been a factor, the reason for the County's choice in valuation method was not established at the hearing. Certainly, I agree that the parcels at issue as land held for future development would not qualify to receive the charitable exemption. If the County had valued this property on a unitary basis, it would be required to complete the additional work of allocating the value to the portion of property that would qualify for exemption under Utah Code 59-2-1101 and to the portion of property that would not qualify under that statute. It is my understanding that the County routinely makes allocations of this type in valuing properties where some portion of the property qualifies for the exemption and some portion does not.¹⁸ In this case the County chose to value the subject parcels as separate independent parcels, but as independent parcels they have no access and an adjustment to the value needs to be made as indicated in the appraisals submitted by the Taxpayer.

While the majority may feel they are addressing a potential equalization issue, their method of

¹⁸ See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 10-2029*,

Appeal Nos. 11-1977 & 11-1978

valuation is creating an equalization issue. It is my contention that the County could value this property as an economic unit, therefore, valuing the two adjoining subject parcels as if it was one large parcel owned by the same person. Or the County could value the two adjoining subject parcels as if they were two completely separate parcels in the same manner they would if they had two different owners, which would require an adjustment to the back parcel for no access. However, the County instead is valuing the property as two separate parcels but with each parcel having its own independent access. This makes the County's assessment unequal by taxing the value for the subject parcels higher than the value would be if the subject properties had two individual owners¹⁹.

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

issued 12/19/12.

¹⁹ See diagram in Attachment A.

Appeal Nos. 11-1977 & 11-1978

Attachment A
Dissent by Commissioner Dixon
Tax Commission Appeal Nos. 11-1977, 11-1978

The diagram below is representative of different parcels of land with different owners.

Parcels D1 and D2 are owned by the same owner, and represent the situation of the Petitioner and the Subject Properties.

The Dissent says the County can value the Subject Properties like parcel A, as a unit.

Or the County can value the Subject Properties like parcels B and C, and discount B for not having access.

But the County may not value the Subject Parcels as it would parcels F and G.

