

12-2517

TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED

TAX YEAR: 2012

DATE SIGNED: 11-15-2013

COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

EXCUSED: R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

RURAL COUNTY-1 ASSESSOR,

Petitioner,

v.

BOARD OF EQUALIZATION OF
RURAL COUNTY-1, STATE OF UTAH,
ex rel. TAXPAYER,

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-2517

Parcel Nos. 1-#####
2-#####

Tax Type: Property Tax / Locally Assessed
Tax Year: 2012

Judge: Chapman

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
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR RURAL COUNTY-1 ASSESSOR
For Respondent: REPRESENTATIVE FOR RESPONDENT, RURAL COUNTY-1 DEPUTY
AUDITOR
For ex rel. Party: TAXPAYER

STATEMENT OF THE CASE

The RURAL COUNTY-1 Assessor ("Petitioner" or "Assessor") brings this appeal from the decisions of the RURAL COUNTY-1 Board of Equalization ("Respondent" or "County BOE") concerning the fair

market values of two properties owned by TAXPAYER (“ex rel. party” or “taxpayer”). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 25, 2013. TAXPAYER, who is a RURAL COUNTY-1 Commissioner, represented himself as the ex rel. party or taxpayer and did not act as the County BOE’s representative in this appeal. The County BOE was represented by REPRESENTATIVE FOR RESPONDENT.

At issue are the fair market values of two commercial properties as of January 1, 2012. The subject properties are located in CITY-1, RURAL COUNTY-1, Utah and are identified as Parcel No. ##### (“PARCEL-1”) and Parcel No. ##### (“PARCEL-2”).

PARCEL-1. For the 2012 tax year, the Assessor assessed the PARCEL-1’s market value at \$\$\$\$\$ (\$\$\$\$\$ assessed to the land and \$\$\$\$\$ assessed to the improvements). The County BOE reduced the 2012 value of the PARCEL-1 to \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements).¹ In effect, the County BOE sustained the \$\$\$\$\$ value the Assessor had assessed to the PARCEL-1’s land for 2012, but reduced the 2012 value of the PARCEL-1’s improvements from \$\$\$\$\$ to \$\$\$\$\$ (which was its 2011 improvements value). The Assessor asks the Commission to increase the PARCEL-1’s 2012 value to \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements), the amount at which he assessed it. The taxpayer asks the Commission to sustain the PARCEL-1’s current value of \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements). The County BOE did not recommend any change to the \$\$\$\$\$ value it established for the 2012 tax year.

¹ At the Initial Hearing, it was discussed whether the 2012 County BOE had reduced the PARCEL-1’s 2012 total value to its 2011 total value of \$\$\$\$\$ (\$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements). The County BOE, as required by Utah Admin. Rule R861-1A-9(2), forwarded a copy of the County BOE decision to the Commission, specifically a September 19, 2012 letter signed by NAME-1, Clerk/Auditor of RURAL COUNTY-1, in which he informed the “Property Owner” that the County BOE “has reviewed your appeal and has made a final determination of your property’s value as indicated above. A new copy of the property valuation is attached.” The County BOE included the “new copy of the property valuation,” also dated September 19, 2012, which shows the PARCEL-1’s 2011 total value to be \$\$\$\$\$, but its 2012 total value to be \$\$\$\$\$. Based on this evidence, the Commission concludes that the County BOE reduced the PARCEL-1’s 2012 total value to \$\$\$\$\$.

PARCEL-2. For the 2012 tax year, the Assessor assessed the PARCEL-2's market value at \$\$\$\$ (\$\$\$\$ assessed to the land and \$\$\$\$ assessed to the improvements). The County BOE reduced the 2012 value of the PARCEL-2 to \$\$\$\$ (\$\$\$\$ for the land and \$\$\$\$ for the improvements). In effect, the County BOE sustained the \$\$\$\$ value the Assessor had assessed to the PARCEL-2's land for 2012, but reduced the 2012 value of the PARCEL-2's improvements from \$\$\$\$ to \$\$\$\$ (which was its 2011 improvements value). The Assessor asks the Commission to increase the PARCEL-2's 2012 value to \$\$\$\$ (\$\$\$\$ for the land and \$\$\$\$ for the improvements), the amount at which he assessed it. The taxpayer asks the Commission to sustain the PARCEL-2's current value of \$\$\$\$ (\$\$\$\$ for the land and \$\$\$\$ for the improvements). The County BOE did not recommend any change to the \$\$\$\$ value it established for the 2012 tax year.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

UCA §59-2-102(12) defines “fair market value” to mean “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.”

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. . . .
. . . .
- (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.

....

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 contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 Comm'n*, 590 P.2d 332, (Utah 1979); *Beaver County-2 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

Tax Commission Jurisdiction. The first issue concerns the jurisdiction of the Tax Commission in an appeal filed by a county assessor to contest the decision of a county board of equalization. Section 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 . . . may appeal that decision to the commission[.]” In *Kimball Condos. Owners Ass’n v. County Bd. Of Equalization*, 943 P.2d 642 (Utah 1997), the Utah Supreme Court upheld a county assessor’s right to appeal the value established by a county board of equalization, stating:

If the Assessor had no right of appeal from board of equalization decisions, many decisions would be insulated from review altogether. Certainly, taxpayers who successfully contest an assessment would have no reason to appeal, if a board of equalization erred in construing constitutional or statutory provisions in the taxpayer’s favor. In that case, the decision would stand because there would be no one who both would and could appeal. Consequently, the constitutional requirements that assessments be both uniform and represent fair-market value would be undermined.

See also Alliant Techsystems, Inc. v. Salt Lake County Bd. Of Equalization, et al., 110 P.3d 691 (Utah 2005).

For these reasons, Utah law authorizes the Assessor to appeal a decision of the County BOE to the Commission. Accordingly, this appeal is properly before the Commission.

Subject Properties' Values. For the 2012 tax year, the Assessor determined and assessed the land value and the improvements value separately for each of the two subject properties, after which these values were added together to arrive at the total assessed value for each property. The County BOE also appears to have analyzed the land and improvements values separately when it made its decisions concerning the subject properties' 2012 values. The County BOE sustained the 2012 land value that the Assessor assessed to each subject property, but reduced their 2012 assessed improvements values to reflect their 2011 improvements values. For these reasons, the 2012 land value for each subject property is not at issue. At issue is the 2012 improvements value of each property and, consequently, the 2012 total value of each property.

PARCEL-1. The PARCEL-1 is comprised of ##### acres of land and a one-story, sandstone building that was built in YEAR-1. It is commercially zoned. The building was originally built as a (X) and is ##### square feet in size. The PARCEL-1 is located just off of STREET in CITY-1 and is not on a corner lot. At the hearing, the Assessor indicated that the building had not been remodeled, other than to replace some tiles and broken windows. As of the January 1, 2012 lien date, the building was vacant. At various times since it was used as a (X), the building has been used as (X-1) and an (X-2). The building appears to have some historical significance, but it is not on a historical registry.

The Assessor explained that for the 2012 tax year, he contracted with the Property Tax Division of the Utah State Tax Commission (the "Division") to perform a reappraisal of commercial properties in RURAL COUNTY-1. He proffered that the Division used the cost approach to appraise the commercial buildings, specifically using the Marshall & Swift cost program to prepare its appraisals. The Assessor used the final Marshall & Swift value the Division derived to assess a 2012 value of \$\$\$\$ to the PARCEL-1's improvements, which was a significant increase over its 2011 improvements value of \$\$\$\$.²

² The Assessor explained that the Division had originally derived a higher value for the PARCEL-1's improvements with the Marshall & Swift program. However, before the Assessor assessed the property, he

The County BOE determined that the PARCEL-1's 2012 improvements value of \$\$\$\$\$ should be reduced "back" to its 2011 improvements value of \$\$\$\$\$. The Assessor has appealed because he does not believe that the County BOE had sufficient evidence to show that the 2012 assessed value of \$\$\$\$\$ for the PARCEL-1's improvements was incorrect and because the County BOE made its decision without input from his office. As a result, he asks the Commission to increase the PARCEL-1's 2012 improvements value to \$\$\$\$\$, which would increase the property's 2012 total value to the \$\$\$\$\$ amount at which he assessed it.

TAXPAYER, is a CPA in CITY-1. Even though he is a RURAL COUNTY-1 Commissioner, he recused himself from the County BOE's decisions concerning his own properties. At the hearing, TAXPAYER explained that the 2012 commercial building reappraisals in CITY-2 were based on a 1.0 factor, but that the commercial building reappraisals in CITY-1 were based on a higher 1.5 factor.³ He also proffered information to show that the total assessed value of commercial buildings (excluding land) in CITY-1 increased 41% between the 2011 and 2012 tax years, whereas the total assessed value of commercial buildings in CITY-2 only increased 8% for the same period. For these reasons, he contends that the County BOE properly reduced the 2012 improvements value of the PARCEL-1, which is located in CITY-1, down to its 2011 improvements value.

spoke to the Division about his concern that the original value it had derived for its improvements was too high. He stated that the Division either changed its "depreciation factor" or the "base amount" to derive a lower value of \$\$\$\$\$ for the improvements, which he then used for his assessment.

³ TAXPAYER also proffered a document containing a list of commercial properties in CITY-1 and CITY-2 to show the percentage valuation increases of their improvements between the 2011 and 2012 tax years. A sentence at the top of this document indicates that the Division used a "2x factor in CITY-1 and a 1.5X factor in CITY-1". Given the statements made at the Initial Hearing, it is likely that the sentence in the document was intended to read that the lower factor had been used in CITY-2, not CITY-1. It is unknown whether the 2x and 1.5x factors shown in the document or the 1.5x and 1x factors discussed at the hearing are the ones that were actually used. Regardless, this document indicates that the assessed values of more commercial properties increased between 2011 and 2012 in CITY-1 than in CITY-2.

TAXPAYER also contends that the economy of CITY-1 was once better than it is now and that prices for commercial real estate in CITY-1 are lower than they once were. He stated that he and the County BOE were also concerned with the tax increases that occurred between the 2011 and 2012 tax years. Furthermore, he stated that everyone at the County BOE had evidence to consider, such as evidence of the tax liabilities for past years and/or pictures, when it made its decisions to reduce the 2012 improvements values of the subject properties to their 2011 levels.

At the hearing, TAXPAYER also asks the Commission to consider that in 2010, the Assessor raised the value of his home from around \$\$\$\$\$ to \$\$\$\$\$.⁴ The home's 2010 assessed value was subsequently reduced, however, because TAXPAYER had an appraisal in which the home was appraised at \$\$\$\$\$. TAXPAYER indicated that a primary reason why the Assessor's 2010 value for his home was incorrect was because of incorrect square footages in the County's records. TAXPAYER also noted that he did not appeal all properties he owned to the 2012 County BOE and provided 2012 notices that showed that the assessed values of his vacant land properties and his residence remained unchanged between 2011 and 2012. TAXPAYER also expressed concerns that he and some of his clients have recently been subject to personal property audits by the Division and described some issues that have arisen out of these audits, such as income tax audits with the Internal Revenue Service.

TAXPAYER also proffered charts to show that residential values and the average taxes paid per residence in RURAL COUNTY-1 increased between 2003 and 2011 at higher rates than the statewide rate and the county rates for RURAL COUNTY-2, RURAL COUNTY-3, RURAL COUNTY-4, and RURAL

⁴ TAXPAYER proffered an email he sent to NAME-2, a Division employee, on May 3, 2012, in which he showed the exact values assessed to his residence to be \$\$\$\$\$ in 2009 and \$\$\$\$\$ in 2010. In this email, TAXPAYER also expressed concern that the assessed value of a dental office owned by NAME-3 had increased 400% over 9 years. TAXPAYER also indicated in the email that there are about 30% fewer businesses on STREET in CITY-1 now than in 1996, when he purchased the PARCEL-2 (which will be discussed in more detail later in the decision), and that there are now vacant buildings in CITY-1 that were not

COUNTY-5 for the same period.⁵ In addition, he proffered information that indicates that 2009 incomes in CITY-1 were nearly 50% lower than 2009 statewide incomes and that incomes in CITY-1 increased between 2000 and 2009 at a rate that was nearly 50% lower than the rate at which incomes increased statewide for this period. Additional information TAXPAYER provided indicates that the \$\$\$\$ median contract rent for apartments in RURAL COUNTY-1 in 2009 was nearly 50% lower than the 2009 statewide rental rate and that the estimated median house or condo value of \$\$\$\$ in RURAL COUNTY-1 in 2009 was more than 50% lower than the statewide value for 2009.⁶ He also provided information he obtained in August 2013 from a Wikipedia.org website showing that RURAL COUNTY-1 is the ##### poorest county in the United States and the only county in Utah that is among the poorest ##### counties in the United States (based on per capital income).

In this appeal, the Commission will be addressing the 2012 values of the two subject properties. In an appeal to the Commission concerning value, the party or parties requesting a change to the value established by the County BOE has the burden of proof. The Assessor is the only party who has the burden of proof in this appeal because he is the only one asking the Commission to change the values established by the County BOE.

vacant in 1996.

5 TAXPAYER proffered an email he sent to NAME-4, another Division employee, on September 13, 2012. In this email, TAXPAYER indicated that “[t]here is no way that values in RURAL COUNTY-1 are higher than 20 other counties in Utah and rising despite declines all around us.” Although TAXPAYER did not provide the information about these 20 other Utah counties, he did provide information for two other counties in another email he sent to various persons on June 20, 2012. In this latter email, TAXPAYER indicated that in 2010, the average 2010 residential value in RURAL COUNTY-1 was \$\$\$\$\$, compared to \$\$\$\$\$ in RURAL COUNTY-6 and \$\$\$\$\$ in RURAL COUNTY-7. He further indicated that between 2004 and 2010, residential values only increased 2.5% in RURAL COUNTY-7 compared to a 109% increase in RURAL COUNTY-1 for this period.

6 This information shows the 2009 median house or condo value in RURAL COUNTY-1 to be \$\$\$\$\$, yet other information TAXPAYER provided in the June 20, 2012 email indicates that the average 2010 residential value in RURAL COUNTY-1 was \$\$\$\$\$. Perhaps this difference was due to a reappraisal of residential properties in RURAL COUNTY-1 in 2010. Regardless, this difference in residential values between 2009 and 2010 does not affect the Commission’s determination of the 2012 values of the two commercial properties at issue in this appeal.

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For these reasons, neither the taxpayer nor the County BOE has the burden to show that the County BOE's actions were correct. Instead, the Commission will be analyzing the evidence to determine whether the Assessor has met his burden to show that the values established for the two subject properties by the County BOE are incorrect and whether the Assessor has provided a sound evidentiary basis to increase their values to his proposed amounts.

Before addressing the Assessor's evidence, however, a few comments should be made about the evidence that TAXPAYER provided. TAXPAYER's evidence does not show whether the "fair market values" of the two subject properties are better represented by the values at which the Assessor assessed them or by the values established by the County BOE. The evidence points out problems or questions that may arise when a county does not reappraise properties or adjust property values on a regular basis. It also raises questions about values in RURAL COUNTY-1 in comparison to values in other parts of the state. However, this evidence does not show the values at which properties similar to the two subject properties were selling in CITY-1 near the 2012 lien date or help establish the fair market values of the subject properties on that date.

Furthermore, TAXPAYER's information suggests that the County BOE may have been trying to equalize the values of commercial buildings in CITY-1 to those in CITY-2 to account for the higher reappraisal "factor" used to reappraise the properties in CITY-1. However, the evidence is insufficient to show whether such a result was achieved for the two subject properties, much less all commercial properties. No sales were proffered to show whether commercial properties in CITY-2 sold at the same values or at lower or greater values than commercial properties in CITY-1 as of the 2012 lien date, or whether it was appropriate for the Assessor to increase their 2011 values at significantly different rates to arrive at 2012 values. Even if evidence had been available to show that all CITY-1 commercial properties were assessed inequitably high in comparison to CITY-2 properties for 2012, it is unknown whether reducing the CITY-1 properties' 2012 improvements values back to their 2011 levels would have achieved equity.

For these reasons, TAXPAYER's information is insufficient to show that the County BOE's actions were correct. It is immaterial whether or not TAXPAYER's information is convincing, however, if the Assessor does not meet his burden to show that values established by the County BOE are incorrect and that his higher, proposed values are reasonable estimates of the subject properties' fair market values.

For the PARCEL-1, the Assessor must show that the \$\$\$\$ value the County BOE established for the PARCEL-1's improvements (or the total value of \$\$\$\$ for the entire parcel) is incorrect. He must also provide a sound evidentiary basis to increase the PARCEL-1's improvements value to the \$\$\$\$ amount at which he assessed them (or to increase the parcel's total value to \$\$\$\$). The fact that the Assessor assessed the PARCEL-1's improvements at \$\$\$\$ and the total parcel at \$\$\$\$ does not, on its own, meet this burden. The Assessor must provide sound evidence to support his proposed values.

In regards to the PARCEL-1's improvements value, the Assessor indicated that his assessed value of \$\$\$\$ was obtained with a Marshall & Swift cost appraisal prepared by Division personnel. However, he did not proffer this appraisal at the Initial Hearing so that it could be determined what components the Division used to arrive at the \$\$\$\$ value and whether these components appear reasonable. Without such information, the Assessor has not shown that the \$\$\$\$ improvements value established by the County BOE is incorrect or provided a sound evidentiary basis to increase the improvements value back to the \$\$\$\$ amount at which he assessed them.

In regards to the PARCEL-1's total value, a party will often provide comparable sales or an income approach to estimate the total value of a commercial property. The Assessor has not provided any sales or an income approach. TAXPAYER indicated that the PARCEL-1, if leased to a law firm, might rent for \$\$\$\$ a month (which would equate to \$\$\$\$ per year). The Assessor did not challenge this rental rate or provide rent comparables to show the PARCEL-1's market rent, as of the 2012 lien date, would be higher than \$\$\$\$ per month. In addition, the Assessor did not show how this rental rate could be used in an income approach to

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estimate a value for the PARCEL-1, nor did he indicate what other income approach components (such as vacancy rate, expense rate, or capitalization rate) should be used in an income approach to estimate a value for the PARCEL-1.

However, if annual rents of \$\$\$\$ per year were considered to be the market rents and if these rents were capitalized at 10%, such an income approach would result in an estimated total value of \$\$\$\$ for the PARCEL-1. If such rents were capitalized at 8%, the total value would be \$\$\$\$\$. Either of these values would support the \$\$\$\$ total value that the County BOE established for the PARCEL-1 for 2012. There was some suggestion that the PARCEL-1 had historical importance. Whether this importance would result in a fair market value that is higher than that produced with an income approach was not discussed by the parties. For these reasons, the Assessor did not provide sufficient information to show that the PARCEL-1's total 2012 value would be higher than the \$\$\$\$ amount established by the County BOE.

In summary, the Assessor has not provided sufficient evidence to show that the improvements value or the total value that the County BOE established for the PARCEL-1 is incorrect. In addition, the Assessor has not provided sound evidence to support the higher value at which he assessed the PARCEL-1's improvements or the higher total value at which he assessed the entire PARCEL-1. For these reasons, the Commission should sustain the \$\$\$\$ value (\$\$\$\$ for the land and \$\$\$\$ for the improvements) that the County BOE established for the PARCEL-1.

PARCEL-2. The PARCEL-2 is comprised of ##### acres of land and a one-story building that was built in YEAR-2. This property is also commercially zoned. The building is ##### square feet in size and is built of cinderblock with some stucco. It is located on STREET, with parking spaces available behind the building.

The building has four rental spaces. Two of the rental spaces are located at the front of the building on STREET and are rented to a BUSINESS-1 and to BUSINESS-2. The other two rental spaces are located at the

rear of the building. One of these is rented to a BUSINESS-3, and the other, which can only be accessed through the BUSINESS-1, is vacant and unlikely to be rented in its present condition. The BUSINESS-1, which was remodeled in 1996, is the only portion of this building that has been remodeled. The taxpayer indicated that the building's roof needs to be repaired and proffered an estimate from NAME OF CONTRACTOR showing a cost of \$\$\$\$\$ to perform certain repairs, including to "remove and reinstall new metal roof."

The Assessor stated that he obtained the rents paid by two of the tenants in the PARCEL-2's building, specifically the rents paid by the tenants in the BUSINESS-1 and BUSINESS-2. The Assessor indicated that the BUSINESS-1 pays \$\$\$\$\$ a month for rent, while BUSINESS-2 pays \$\$\$\$\$ a month (which TAXPAYER did not dispute). TAXPAYER also added that the person who runs the BUSINESS-3 pays him \$\$\$\$\$ or \$\$\$\$\$ a month for that space, but that the payments are sporadic whenever this tenant can make them. TAXPAYER indicated that he, not the tenants, pay the utilities. As a result, the actual rents are not triple net rental rates.

The Assessor used the Marshall & Swift cost appraisal prepared by the Division to assess the PARCEL-2's improvements value at \$\$\$\$\$ for 2012, which was a significant increase over its 2011 improvements value of \$\$\$\$\$.⁷ The County BOE determined that the PARCEL-2's improvements value for 2012 should be reduced "back" to its 2011 level of \$\$\$\$\$. The Assessor has appealed this parcel, as well, because he does not believe that the County BOE had sufficient evidence to show that the 2012 assessed amount of \$\$\$\$\$ for its improvements was incorrect and because the County BOE made its decision without input from his office. As a result, he asks the Commission to increase the PARCEL-2's 2012 improvements

⁷ The Assessor explained that the Division had also derived a higher value for the PARCEL-2's improvements initially. However, before he assessed the property, he spoke to the Division about his concern that the Division's initial appraised value was too high. He stated that the Division either changed its "depreciation factor" or the "base amount" to derive a lower value of \$\$\$\$\$ for the improvements value.

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value back to \$\$\$\$\$, which would increase the property's 2012 total value to the \$\$\$\$\$ amount at which he assessed it.

For the PARCEL-2, TAXPAYER proffered much of the same evidence previously discussed for the PARCEL-1. For the same reasons as previously discussed for the PARCEL-1, this evidence does not show whether or not the County BOE's actions in regards to the PARCEL-2 were correct.

For the PARCEL-2 only, however, TAXPAYER proffered another reason to explain why it was appropriate for the County BOE to reduce this property's 2012 improvements value down to its 2011 level. TAXPAYER proffered that in addition to the 2012 increase in value, the PARCEL-2's value had previously been increased 46% in 2009 and 20% in 2010. Such large increases in the assessed values for three of the last four years do raise questions, especially if actual values have not increased much during the period. However, the assessed value increases could be reasonable if, prior to 2009, the PARCEL-2 had been valued significantly below its fair market value. Because the Commission is rarely provided evidence to show whether a prior year's value was correct for that year, the Commission generally does not establish a current year's value on the basis of a prior year's value. It prefers to use market, income, or cost information that is more relevant to the lien date. For these reasons, the relatively large valuation increases in 2009, 2010, and 2012 for the PARCEL-2 do not necessarily show that the Assessor's 2012 assessed value for it was incorrect or that the County BOE's action to reduce it was correct.

Again, however, neither the taxpayer nor the County BOE has the burden to show that the County BOE's actions to reduce the PARCEL-2's value were correct. The Assessor is the party asking for a change to the County BOE value and has the burden of proof. As a result, for the PARCEL-2, the Assessor must show that the \$\$\$\$\$ value the County BOE established for the PARCEL-2's improvements (or the total value of \$\$\$\$\$ for the entire parcel) is incorrect. He must also provide a sound evidentiary basis to increase the PARCEL-2's improvements value to the \$\$\$\$\$ amount at which he assessed them (or to increase the parcel's

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total value to \$\$\$\$\$). Again, the fact that the Assessor assessed the PARCEL-2's improvements at \$\$\$\$\$ and the total parcel at \$\$\$\$\$ does not, on its own, meet this burden. The Assessor must provide sound evidence to support his proposed values.

In regards to the PARCEL-2's improvements value, the Assessor indicated that his assessed value of \$\$\$\$\$ was obtained with a Marshall & Swift cost appraisal prepared by Division personnel. However, he did not proffer this appraisal at the Initial Hearing so that it could be determined what components the Division used to arrive at the \$\$\$\$\$ value and whether these components appear reasonable. Without such information, the Assessor has not shown that the \$\$\$\$\$ improvements value established by the County BOE is incorrect or provided a sound evidentiary basis to increase the improvements value back to the \$\$\$\$\$ amount at which he assessed them.

In regards to the PARCEL-2's total value, the Assessor again did not provide any sales or an income approach. The Assessor asked the Commission to consider that TAXPAYER rented the two front spaces of the PARCEL-2's building for \$\$\$\$\$ and \$\$\$\$\$ per month. However, he did not indicate whether these rents were market rents as of the 2012 lien date, and he did not apply these rents in an income approach to show the value at which the PARCEL-2 would be estimated with such an approach. He also did not suggest what other components would be appropriate to use in an income approach to estimate the PARCEL-2's value.

An income approach could be developed that supports either the value established by the County BOE or the value requested by the Assessor, depending on the components used in the approach. For example, if the PARCEL-2's potential gross income ("PGI") was \$\$\$\$\$ and its vacancy and collection losses and expenses (as a percentage of PGI) were high, capitalizing the resulting net operating income ("NOI") at 10% could produce a value near the value established by the County BOE. On the other hand, if the parcel's PGI was \$\$\$\$\$ and its vacancy and collection losses and expenses were low, capitalizing the resulting NOI at 8% could produce a value near the value proposed by the Assessor. Regardless, the Assessor did not provide the

Commission with the factors that should be used in an income approach for the PARCEL-2 to show whether or not the total value of \$\$\$\$\$ that the County BOE established for it is reasonable.

The Assessor also did not provide any sales that could be used to estimate the total value of the PARCEL-2 for 2012. TAXPAYER, however, provided a 2010 comparable sale of a property he used to own. TAXPAYER stated that in 2010, he sold the *real property* associated with a 16-unit BUSINESS-4 that is adjacent to the PARCEL-2 for \$\$\$\$\$.⁸ He further stated that the BUSINESS-4 and the PARCEL-2 building are similar in size, but that the BUSINESS-4 lot is about 2.5 acres in size and, thus, much larger than the PARCEL-2's #####-acre lot. He argues that the \$\$\$\$\$ amount paid for the BUSINESS-4 real property would better support the County BOE's value of \$\$\$\$\$ for the PARCEL-2 than it would support the Assessor's proposed value of \$\$\$\$\$.

It is difficult to determine the PARCEL-2's 2012 value with one sale of a business that occurred in 2010. First, the Commission does not know if values increased, decreased, or remained the same between 2010 and 2012. Second, it appears that the PARCEL-2 and the BUSINESS-4 parcel may have similar exposure on STREET. As a result, it is unknown whether the BUSINESS-4 larger lot is significantly more valuable than the PARCEL-2's smaller lot. Third, the sale of the BUSINESS-4 was the sale of a business, which included value for more than just the real property. It is not known how \$\$\$\$\$ of the \$\$\$\$\$ total sales price ended up being attributed to the real property. Without an appraisal or some other supporting document near the 2010 sales date, the attribution of \$\$\$\$\$ to the BUSINESS-4 real property may be questionable. Lastly, it is unknown whether the BUSINESS-4 and the PARCEL-2 would generate similar or different amounts of income, since income-producing properties often sell on the basis of future expected income.

⁸ TAXPAYER indicated that the total sales price he received for the business was \$\$\$\$\$, which was attributed as follows: 1) \$\$\$\$\$ to the real property; 2) \$\$\$\$\$ to the personal property; and 3) \$\$\$\$\$ for a contract associated with the business.

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Regardless, the Assessor has the burden of proof, and he did not provide sufficient information to show that the PARCEL-2's total 2012 value would be higher than the \$\$\$\$ value established by the County BOE.

One other point should be made. The County BOE reduced the value of the PARCEL-2's improvements to \$\$\$\$ and the value of the PARCEL-1's improvements to \$\$\$\$\$. It seems odd that the PARCEL-1's improvements would be more valuable than the PARCEL-2's improvements when the PARCEL-2's improvements are seven times larger than the PARCEL-1's improvements and when the PARCEL-2's improvements apparently have the potential to generate much more income than the PARCEL-1's improvements. Regardless, the Assessor has not provided sufficient evidence to show that the improvements value or the total value that the County BOE established for the PARCEL-2 is incorrect. In addition, the Assessor has not provided sound evidence to support the higher value at which he assessed the PARCEL-2's improvements or the higher total value at which he assessed the entire PARCEL-2. For these reasons, the Commission should sustain the \$\$\$\$ value (\$\$\$\$ for the land and \$\$\$\$ for the improvements) that the County BOE established for the PARCEL-2.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 12-2517

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the values established by the County BOE for Parcel Nos. PARCEL-1 ##### and PARCEL-2 ##### for the 2012 tax year. 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

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

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner