

15-1072
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 1-8-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 15-1072</p> <p>Parcel Nos. #####-1 #####-2</p> <p>Tax Type: Property Tax / Locally Assessed Tax Year: 2014</p> <p>Judge: Chapman</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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative (by telephone)
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decisions of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 26, 2015.

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At issue are the fair market values of two adjacent properties as of the January 1, 2014 lien date. The first subject property is identified as Parcel No. #####-1 (“Parcel 1”) and is located at SUBJECT ADDRESS-1 in CITY-1, Utah. Parcel 1 is a cemetery consisting of #####-acres of land and a related office building. The County BOE sustained the \$\$\$\$ value at which Parcel 1 was assessed for the 2014 tax year.

The County assessed Parcel 1 using the cost approach. Parcel 1’s current value of \$\$\$\$ is the sum of a \$\$\$\$ land value and a separately derived improvements value of \$\$\$\$. The taxpayer is not contesting Parcel 1’s improvements value. It is only contesting its land value. The taxpayer asks the Commission to reduce Parcel 1’s land value from \$\$\$\$ to approximately \$\$\$\$\$, which would reduce its total value from \$\$\$\$ to approximately \$\$\$\$\$. The County asks the Commission to sustain Parcel 1’s current value of \$\$\$\$.

The second subject property is identified as Parcel No. #####-12 (“Parcel 12”) and is located at SUBJECT ADDRESS-2 in CITY-1, Utah. It consists of #####-acres of land on which a cell tower is located. The County BOE sustained the \$\$\$\$ value at which Parcel 12 was assessed for the 2014 tax year. Parcel 12’s current value of \$\$\$\$ represents the value of its land only (i.e., the County did not assess the value of any improvements to this parcel).¹ The taxpayer does not ask the Commission to adjust Parcel 12’s current value of \$\$\$\$\$, but does ask the Commission to consider its value as part of the value of an economic unit that is comprised of both Parcel 1 and Parcel 12. The County contends that Parcel 12 is not part of an economic unit with Parcel 1 and asks the Commission to consider its value separately. The County also asks the Commission to sustain Parcel 12’s current value of \$\$\$\$.

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

¹ The taxpayer leases Parcel 12 to the owner of the cell tower. The County proffered that the value of the cell tower was assessed to the owner of the cell tower, not to the taxpayer who owns the land.

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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(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”

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 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

Parcel 1 consists of #####-acres of land and improvements used for a cemetery. Both parties agreed that a portion of Parcel 1 is exempt from taxation, specifically that portion of the cemetery that has been sold as cemetery lots. The parties explain that the exemption percentage is applied to Parcel 1’s “fair market value” to determine its taxable value, and there is no disagreement as to the exemption percentage. The only issue is the “fair market value” of Parcel 1 before the exemption percentage is applied.

Parcel 12 consists of #####-acres of land on which a cellular phone tower is situated. The taxpayer contends that Parcel 1 and Parcel 12 should be considered an economic unit because they are adjacent to one another and because they are owned by the same entity. The County contends that because Parcel 12 is not

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used as part of the cemetery on the adjacent Parcel 1, the two parcels are not part of an economic unit and that they should be valued separately. The taxpayer has not shown that Parcel 12 was part of the cemetery whose use for this purpose was approved by CITY-1. For this reason and because Parcel 12 has a different actual use than Parcel 1's cemetery use, the Commission should not consider the two subject properties as a single economic unit for valuation purposes. Regardless, the decision to value the two parcels separately has little, if any, effect on this decision.

The only issue before the Commission is the "fair market value" of the two subject properties' land. Because the County assessed Parcel 1 with the cost approach and because the County had no objection, the taxpayer may contest the value of Parcel 1's land only. Parcel 1 is zoned R-22 (which allows residential use for homes on one-half acre lots). Parcel 1's current land value of \$\$\$\$\$ equates to \$\$\$\$\$ per acre (rounded) for its #####-acres of land. Parcel 12 is zoned R-3 (which allows residential use for homes on one-third acre lots). Both parties agree that Parcel 12 is too small to accommodate a home. Parcel 12's current land value of \$\$\$\$\$ equates to \$\$\$\$\$ per acre (rounded) for its #####-acres of land.

Taxpayer's Evidence. The taxpayer proffers three land sales and one land listing to support lower values for the subject properties' land. The three comparable sales sold between January 2013 and August 2013 for prices per acre of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per acre (rounded). The three comparable sales range between ##### and #####-acres in size. The taxpayer's listing is #####-acres in size and was listed for sale in 2015 at \$\$\$\$\$ per acre (rounded).

The taxpayer did not make any adjustments to the sales and list prices shown by its comparables. Instead, the taxpayer took an average of the three sales prices and one list price and derived a land value of \$\$\$\$\$ per acre (rounded) to estimate the value of the subjects' land. When the \$\$\$\$\$ per acre rate is applied the subjects' combined #####-acres, it results in a combined land value of \$\$\$\$\$ (rounded). Once Parcel 12's current land value of \$\$\$\$\$ is subtracted from this amount, it leaves a land value for Parcel 1 of \$\$\$\$\$. On

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this basis, the taxpayer asks the Commission to reduce Parcel 1's current land value of \$\$\$\$\$ to \$\$\$\$\$, which would reduce Parcel 1's current total value of \$\$\$\$\$ to \$\$\$\$\$.

The taxpayer's three comparable sales are:

1) a comparable in CITY-2 that sold for \$\$\$\$\$ per acre in January 2013. It is #####-acres in size and zoned HFR. Neither party knows what "HFR" zoning refers to. In addition, neither party knew why this comparable's sales price was less than one-fifth the price of the next lowest price shown by one of the taxpayer's comparables. The County's appraiser, RESPONDENT, stated that this comparable was located in an area that is at least 20 blocks further west of subject property where land is less valuable than land in the subject's area;

2) a comparable in CITY-3 (in Utah County) that sold for \$\$\$\$\$ per acre in March 2013. It is #####-acres in size and is residentially-zoned. Neither party knew how many residential lots were allowed per acre under its zoning. RESPONDENT stated that land in CITY-1 where the subject properties are located may be worth twice as much as land in CITY-3; and

3) a comparable in CITY-2 that sold for \$\$\$\$\$ per acre in August 2013. It is #####-acres in size and is zoned R-1-10 (which allows four residential lots per acre). RESPONDENT stated that this comparable's location is inferior to the subject's location because it is located 20 blocks west of the subject properties. However, RESPONDENT stated that he did not know what type of location adjustment would be needed to adjust this comparable's sales price to account for its location. Furthermore, neither party knew why two of the taxpayer's comparable sales that are located in the same city would sell for such disparate values, one for \$\$\$\$\$ per acre and the other for \$\$\$\$\$ per acre.

The taxpayer's listing is for a comparable in CITY-4 that was listed for sale in early 2015 at \$\$\$\$\$ per acre. It is #####-acres in size and is zoned LI (Light Industrial). Neither party knew whether this property has

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subsequently sold and, if so, the price at which it sold. The County, however, indicated that this property was located about one mile south of the (X) in an area that is currently being developed for commercial uses.

None of the taxpayer's comparables are similar in size or utility to the #####-acre Parcel 12. Parcel 12 is too small for a home to be built on it, and it is currently leased for a cell tower. The County contends that the rental income the taxpayer receives to lease Parcel 12 for a cell tower would more than justify its current value of \$\$\$\$\$. For example, the County stated that if the taxpayer leases Parcel 12 for \$\$\$\$\$ per month, the yearly income from this property is almost identical to its assessed value, which could indicate the property is undervalued. The County, however, does not ask the Commission to increase Parcel 12's value. The taxpayer's representative did not know what income Parcel 12 generates. For these reasons, the taxpayer has not shown that Parcel 12's current value of \$\$\$\$\$ is incorrect.

The taxpayer's four comparables are larger parcels of land and, thus, are more similar in size to Parcel 1 than Parcel 12. For a number of reasons, however, the taxpayer's proposed value of \$\$\$\$\$ per acre is not a convincing estimate of Parcel 1's land value. First, it appears that most, if not all, of the taxpayer's comparables are located in areas that may be inferior to Parcel 1's location, and the taxpayer did not adjust its comparables upwards before estimating a value for Parcel 1's land. Second, the taxpayer did not adjust its comparables for other differences between them and Parcel 1.

Third, the taxpayer's comparable that sold for \$\$\$\$\$ per acre appears to be an outlier, and the taxpayer could not explain why it sold for such a low price or why it should be given the same weight as the other comparables when determining the subject's value. As a result, it is likely that the taxpayer's use of this comparable's \$\$\$\$\$ per acre sales price to derive its proposed value of \$\$\$\$\$ per acre underestimates the value of Parcel 1's land.

Fourth, two of the taxpayer's other unadjusted comparables are suspect, specifically the residential comparable in another county (i.e., the CITY-3 comparable) and the comparable that is not residentially-zoned

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(i.e., the industrial comparable in CITY-4). RESPONDENT stated that residential land in CITY-1 is worth much more than residential land in CITY-3 and industrial land in CITY-4, which the taxpayer has not refuted. For these reasons, it appears that the value of Parcel 1 should be at least \$\$\$\$ per acre, the price at which the #####-acre parcel in CITY-2 sold.

The taxpayer asks the Commission to consider that once the remains of deceased persons are placed in a cemetery, the marketability of that property substantially decreases. The taxpayer contends that the property's marketability drops because it is very difficult, if not impossible, to have the remains removed so that the property can be used for another purpose. The County counters that the taxpayer would not have purchased residentially-zoned land for use as a cemetery had it not anticipated a sufficient return on its investment to justify the price required to purchase residential land. As a result, the County contends that the value of Parcel 1's land is equivalent to the value of residential land.

It is unclear if the taxpayer is arguing that cemetery land is worth less than residential land. The taxpayer's use of residential comparables to estimate the value of Parcel 1's land would suggest otherwise, especially when it is considered that the taxpayer made no adjustments to these comparables. The taxpayer has not shown what the diminution in value would be because of Parcel 1's use as a cemetery and whether any diminution in value is accounted for by the exemption that is applied to the subject's "fair market value." The taxpayer's argument is further diminished by its statement that "fair market value" should be determined as though "no cemetery lots had been sold."

Furthermore, it is noted that the cemetery that exists on Parcel 1 does not currently occupy the entirety of the parcel. The taxpayer has not addressed whether it believes that the portion of Parcel 1 not currently used for the cemetery is more valuable than the portion that is currently used for the cemetery. Without more information, it is not apparent that the "fair market value" of Parcel 1's land (before the exemption is applied) should be less than the value of other residential land that is similar in size, location, and zoning.

The taxpayer's most convincing evidence of Parcel 1's value is the #####-acre comparable that sold for \$\$\$\$ per acre in August 2013. It is residential land located in an adjacent city, and it is similar in size to the #####-acre Parcel 1. The County contends that this comparable is less valuable than the Parcel 1's land, but declined to suggest what adjustments, if any, should be applied to the \$\$\$\$ per acre sales price. Before a value is established for Parcel 1's land, however, the County's evidence should also be analyzed.

County's Evidence. The County did not prepare a traditional appraisal for either of the subject properties. Instead, the County proffered 19 comparable sales of land in Salt Lake County that sold between January 2012 and March 2015. Almost all of the County's comparables are located in the southern part of the County, but only 7 of the 19 comparables sold within a year of the lien date. None of the comparables are similar in size to the #####-acre Parcel 1. They range between #####-acres and #####-acres in size, and they sold for prices ranging between \$\$\$\$ and \$\$\$\$ per acre.

The County used the 19 comparables to estimate a value for Parcel 1 (but not Parcel 12). The County did not adjust the comparables to account for all differences between them and Parcel 1. The County did, however, plot the comparables' sales prices on graphs in an attempt to estimate the subject's value by accounting for two factors: 1) differences in market conditions between the dates of the comparable sales and the 2014 lien date; and 2) differences between the sizes of the comparables and Parcel 1. With this methodology, the County's program produced a value of \$\$\$\$ per acre for Parcel 1's land.

This \$\$\$\$ per acre value equates to \$\$\$\$ for Parcel 1's #####-acres of land and is higher than Parcel 1's current land value of \$\$\$\$ (which equates to \$\$\$\$ per acre). The County does not ask the Commission to increase the Parcel 1's land value or its total value. On the basis of the land value produced by its program, the County asks the Commission to sustain not only Parcel 1's current land value of \$\$\$\$\$, but also its current total value of \$\$\$\$\$.

For several reasons, the County's \$\$\$\$ per acre estimate of Parcel 1's land value is not convincing. First, this value does not reflect adjustments for differences in location and zoning, features that the County considered important when discounting the reliability of the taxpayer's comparables. Second, most of the County's comparables did not sell within a year of the lien date, and it is unclear whether the County's graphs adequately adjusted these relatively old sales for time of sale. Third, and most importantly, the County did not use any comparables in excess of #####-acres in its statistical population. The value that a program comprised only of properties that are less than #####-acres in size would produce for a property like Parcel 1 that is in excess of #####-acres in size is suspect.

What the County's larger sales do show, however, is that two properties around #####-acres in size sold in CITY-5, which is adjacent to the city in which Parcel 1 is located.² One of these CITY-5 comparables is located on STREET-1, which is much further east than the STREET-2 location of Parcel 1. This comparable sold for approximately \$\$\$\$ per acre in 2012. The other CITY-5 comparable is located on STREET-3 and, thus, is further east of Parcel 1 but much closer to Parcel 1 than the comparable located on STREET-1. It sold for approximately \$\$\$\$ per acre in 2015. What these comparables show is that smaller parcels in an adjacent city and further east than the Parcel 1 sold both before and after the 2014 lien date for prices that are lower than Parcel 1's current land value of \$\$\$\$ per acre.

The County stated that land values decrease the further west they are. Parcel 1 is located west of both of these comparables. In addition, the Commission is aware that land prices are usually lower for larger parcels than for smaller parcels. For these reasons, Parcel 1's land value is most likely lower than the \$\$\$\$ per acre price at which the closest CITY-5 comparable sold in 2015. The \$\$\$\$ per acre value shown by the taxpayer's best comparable is lower than this \$\$\$\$ per acre price. It is possible that the subject's value may be more

² CITY-5 is also adjacent to CITY-2 (where the taxpayer's #####-acre comparable that sold for \$\$\$\$ per acre is located).

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than the \$\$\$\$ per acre price at which this #####-acre comparable sold, but the County declined to suggest any upward adjustment for this comparable. Furthermore, if the subject's value is diminished because of its use as a cemetery, the \$\$\$\$ per acre value may account for any such diminution in value. When the parties' evidence is considered as a whole, the most convincing evidence of Parcel 1's land value is the \$\$\$\$ per acre price at which a similarly-size residential property in an adjacent city sold in 2013. For these reasons, the value of Parcel 1's #####-acres of land should be reduced to \$\$\$\$ per acre, which equates to \$\$\$\$ (rounded).

Summary. On the basis of the foregoing, Parcel 1's land value should be reduced from \$\$\$\$ to \$\$\$\$\$, which would reduce Parcel 1's current total value of \$\$\$\$ to \$\$\$\$\$. For reasons previously discussed, the taxpayer has not shown that Parcel 12's current value of \$\$\$\$ is incorrect. Accordingly, the Commission should reduce Parcel 1's 2014 value to \$\$\$\$\$, and it should sustain Parcel 12's current 2014 value of \$\$\$\$\$.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Parcel #####-1's current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2014 tax year. The Commission also finds that Parcel No. #####-2's current value of \$\$\$\$\$ should be sustained for the 2014 tax year. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner