

12-1005  
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED  
TAX YEAR: 2011  
DATE SIGNED: 3-27-2013  
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO  
EXCUSED: M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-1005  Parcel No. 1-##### 2-#####  Tax Type: Property Tax/Locally Assessed Tax Year: 2011  Judge: Marshall
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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:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER-1, Owner  
                  REPRESENTATIVE FOR TAXPAYER-2, Owner  
                  REPRESENTATIVE FOR TAXPAYER-3, Appraiser  
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on January 24, 2013 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office valued parcel no. 2-##### at \$\$\$\$ as of the January 1, 2011 lien date, which the Board of

Equalization sustained. The County is asking the Commission to sustain the Board of Equalization. The Taxpayer is requesting the value of the parcel be reduced to \$\$\$\$\$. The Salt Lake County Assessor's Office valued parcel no. 1-##### at \$\$\$\$\$, which the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization. The Taxpayer is requesting the value of the parcel be reduced to \$\$\$\$\$.

APPLICABLE LAW

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

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah*

*State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

Parcel no. 2-##### is located at ADDRESS-2 in CITY. It is a #####-acre vacant lot that is zoned for commercial use. Parcel no. 1-##### is located at ADDRESS-1 in CITY. It is a #####-acre vacant lot that is zoned for commercial use.

REPRESENTATIVE FOR TAXPAYER-2 began by stating they are not trying to avoid paying taxes, but want to pay taxes on what they believe is fair market value for the subject properties. The properties are side by side lots. Across the street to the north is vacant land, to the east of the subject is a BUSINESS-1, and to the north-east are BUILDINGS. In front of parcel no. 2-##### is another small parcel that is part of an overhead walkway for property located across the street that was previously an (X). The Taxpayers believe that the walkway limits the exposure of the subject properties. In addition, there is an access road that bisects the properties, but is not excluded from the total acreage.

REPRESENTATIVE FOR TAXPAYER-3 prepared an appraisal report that determined a value of \$\$\$\$ for parcel no. 2-##### and \$\$\$\$ for parcel no. 1-##### as of the January 1, 2011 lien date. Following are the comparables used in the appraisal:

	Address	Lot Size	Zoning	Sales Date	Sales Price	Price/ Sq.Ft.	Adjusted Price
Subject	SUBJECT ADDRESS-1	###	C-C				
Subject	SUBJECT ADDRESS-2	###	C-C				
Comp #1	COMPARABLE ADDRESS-1	###	C-C	9/10	\$\$\$\$	\$\$\$\$	\$\$\$\$
Comp #2	COMPARABLE ADDRESS-2	###	C-C	8/10	\$\$\$\$	\$\$\$\$	\$\$\$\$
Comp #3	COMPARABLE ADDRESS-3	###	C-C	6/10	\$\$\$\$	\$\$\$\$	\$\$\$\$
Comp #4	COMPARABLE ADDRESS-4	###	RD	6/10	\$\$\$\$	\$\$\$\$	\$\$\$\$
Comp #5	COMPARABLE ADDRESS-5*	###	C-C	2/11	\$\$\$\$	\$\$\$\$	\$\$\$\$

\*The appraisal report identified the property as being on ADDRESS, REPRESENTATIVE FOR TAXPAYER-3 corrected the address verbally at the hearing.

REPRESENTATIVE FOR TAXPAYER-3 stated that because of the lack of commercial development in the subject area and limitations on the property, it was challenging to find comparable sales. He stated that comparable one is the property located across the street to the north and also has the overhead walkway. He noted that it is larger than the subject, the price is net of the costs to raze the (X), and the property was bank-owned. He stated that he spoke with the listing agent who believed there was not much of a discount on the sale because of the access and demolition issues. He stated that comparable two is located two blocks east of the subject. It was also bank-owned. REPRESENTATIVE FOR TAXPAYER-3 stated that the sale was not “distressed” but was property that was owned by BANK-1 that it intended to build a new branch

on, but when BANK-1 was taken over by the FDIC the property was sold. REPRESENTATIVE FOR TAXPAYER-3 stated that comparable three is located on ADDRESS-3, west of the freeway. He stated that it is of similar size and zoning. He stated comparable four was included to bracket the subject, and he believes it is superior to the subject property because it is on the ROAD, is larger, and has a corner location. He stated that comparable five is located in CITY, east of HIGHWAY, near the new BUSINESS-2 and BUSINESS-3 locations. He stated that he spoke with the broker, who believed because of the tardiness of BUSINESS-2 and BUSINESS-3 construction, that the sale represented the going rate for land in the area. REPRESENTATIVE FOR TAXPAYER-3 stated that he made adjustments for the condition of the sales, commercial development in the area, and industrial influences on comparables.

The Taxpayer's representative stated that the commercial subdivision was developed in 2002 and has been available since that time period. REPRESENTATIVE FOR TAXPAYER-2 stated that they have been trying to sell the lots since the subdivision was initially developed, but have been unsuccessful. The property is not currently listed, but there is a sign on the property with their phone number, and have had virtually no phone calls in the last four years. He stated that at one time it was listed on costar, but they believe the pricing was way off because it was based on the 2002 market. He stated that in 2005 they had a REPC on the property, but was cancelled after the overhead walkway was announced. He stated that they are also the owners, through a different entity, of the property on the south-east corner of the same intersection. They also own the property just south of the BUSINESS-1. He stated that they appealed that property as well, and were able to stipulate to a value of \$\$\$\$ per square foot for those properties.

The County's representative stated that the Taxpayer's comparable one was sold at auction and was not on the market very long, and thus had a limited exposure time. He stated that comparable two is also a distressed sale that was sold by FDIC, he stated that it was his understanding that BANK-2 owned the property prior to BANK-1. He stated that comparable three is a significantly inferior location, on the west side of the railroad tracks, with little to no development in the area. The County's representative stated that he also used the Taxpayer's fourth comparable; but noted that most of the land around it is being used for industrial purposes, and that COMPARABLE ADDRESS-4 dead-ends near this property which limits the access. He believes that while the exposure may be superior to the subject, access is inferior, and the adjustments would off-set. The County's representative stated that the Taxpayer's comparable five was also a distressed sale owned by FDIC, and the party who owned it previously had started excavation. In his opinion, four of the Taxpayer's comparables are questionable as to whether

they represent market value and he believes the location adjustment to comparable four is excessive.

In support of the Board of Equalization value, the County’s representative submitted an appraisal that determined a value of \$\$\$\$\$ for parcel no. 2-#####, and a value of \$\$\$\$\$ for parcel no. 1-#####. Following are the comparables used in the County’s appraisal:

	Address	Lot Size	Zoning	Sale Date	Sales Price	Price Sq./Ft.	Adjusted -039	Adjusted -038
Subject	SUBJECT PROPERTY-1	###	C-C					
Subject	SUBJECT PROPERTY-2	###	C-C					
Comp #1	COMPARABLE ADDRESS-1	###	C-D	8/30/10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #2	COMPARABLE ADDRESS-2	###	C-G	7/30/10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #3	COMPARABLE ADDRESS-3	###	C-D	1/26/10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #4	COMPARABLE ADDRESS-4	###	C-D	1/26/10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Comp #5	COMPARABLE ADDRESS-5	###	R-D	6/01/10	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The County’s representative stated that comparable two is located on a corner, and was developed to A STORE. He believes it is very comparable to parcel 2-##### and does not require any adjustment. He stated that comparable three is comprised of three parcels, and is in an area that is not currently being developed, which is similar to the subject.

With regard to the nearby properties that the parties had stipulated to a value of \$\$\$\$\$ per square foot, the County’s representative stated that those properties were valued individually, and that the \$\$\$\$\$ is an average. He stated that one of those properties is on an access road that sits back off the street and has no visibility. In his opinion, those properties are inferior to the subject.

The County’s representative stated that they have taken the walkway into account, but believe the subject still has high visibility. He stated that while the walkway is there, the property still has exposure from both directions. He stated that only individuals coming from one direction will have an obstructed view, those coming from the opposite direction or from STREET will not have an obstructed view.

In rebuttal, REPRESENTATIVE FOR TAXPAYER-2 stated that he takes exception to the County’s contention that the walkway does not have an impact on the value of the property, otherwise the potential buyer they had a few years ago would now own the property. He stated that none of the comparables used by the County have a major crosswalk on the corner, and the County has not made any adjustment to account for it. REPRESENTATIVE FOR TAXPAYER-3 noted that his comparable four has a significantly higher traffic count than the subject, and he disagrees with the County’s characterization of the surrounding properties as industrial. In his opinion it is superior with Class A BUILDING nearby. REPRESENTATIVE FOR TAXPAYER-

2 believes the County is highly inconsistent in its valuation of their other properties at \$\$\$\$ per square foot and the subject properties at \$\$\$\$.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer submitted an appraisal report that determined a value of \$\$\$\$ per square foot for the subject properties based on five comparable sales. The properties sold between June 2010 and February 2011, with sales prices between \$\$\$\$ and \$\$\$\$ per square foot. The adjusted prices range from \$\$\$\$ to \$\$\$\$ per square foot. The County’s representative also submitted an appraisal that determined a value of \$\$\$\$ per square foot for parcel no. 2-##### and a value of \$\$\$\$ per square foot for parcel no. 1-#####. The County used five comparable sales that sold between January 26, 2010 and August 30, 2010, with sales prices ranging from \$\$\$\$ per square foot to \$\$\$\$ per square foot. The adjusted prices range from \$\$\$\$ to \$\$\$\$ per square foot.

Reviewing the comparables submitted by both parties, those most similar to the subject in terms of size and zoning are the Taxpayer’s comparables two and five, and the County’s comparables three and four. The sales prices range from \$\$\$\$ to \$\$\$\$ per square foot for these comparables. The Taxpayer’s comparables two and five were both bank-owned properties; the Taxpayer’s appraisal made a 30% adjustment to the other bank-owned property, which should be made to these comparables as well. Thus the adjusted values would be \$\$\$\$ and \$\$\$\$, respectively. The only adjustment made to the County’s comparables was 15% for whether the property was an interior or a corner lot, making the adjusted values in the \$\$\$\$ range for interior lots and \$\$\$\$ for corner lots. Given that the sales in closest proximity to the subject are all bank-owned, have the same zoning as the subject properties, and the parties agree there is currently little development in the area, the base value is likely at the lower end of the range. \$\$\$\$ per square foot seems reasonable as the base rate. The County’s 15% adjustment for a corner location does not seem to be unreasonable as the sales he submitted indicate that corner locations do sell for more than interior.

Thus, the value should be reduced to \$\$\$\$\$ per square foot, or \$\$\$\$\$, for parcel no. 1-#####; and the value should be reduced to \$\$\$\$\$ per square foot, or \$\$\$\$\$ for parcel no. 2-#####.

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Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of parcel no. 1-##### was \$\$\$\$\$ and the value of parcel no. 2-##### was \$\$\$\$\$ as of the January 1, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner