

13-533

TAX TYPE: PROPERTY TAX-LOCALLY ASSESSED

TAX YEAR: 2013

DATE SIGNED: 12-22-2014

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 13-533</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2013</p> <p>Judge: Phan</p>
--	---

**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, Commissioner  
Jane Phan, Administrative Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney at Law  
For Respondent: RESPONDENT, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 10, 2014, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) filed an appeal of the decision of the Salt Lake County Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The lien date at issue in this appeal is January 1, 2012.

3. The County Assessor had originally valued the subject property at \$\$\$\$\$, as of the lien date and the County Board of Equalization (“County”) sustained the value. At the hearing the Property Owner requests a reduction to \$\$\$\$\$. The representative for the County requested the value remain as had been set by the County Board.

4. The property that is the subject of this appeal is parcel no. ##### and is located at SUBJECT ADDRESS, CITY, Utah.

5. The subject property is ##### acres of land. As of the lien date a building was under construction for a RETAIL STORE. In addition there had been some site improvements on the land including ##### square feet of asphalt paving. The County record showed the paving as completed in 2008, but the representative for the Property Owner testified it had been in 2005 or 2006. The subject property is located in the shopping center known as “THE CENTER” and when the parking was put in, it had been used by other stores or movie theaters on other parcels in that center.

6. Of the \$\$\$\$\$ total value, \$\$\$\$\$ had been attributed by the County to the portion of the building that had been constructed as of the lien date and the other site improvements.<sup>1</sup> The Property Owner did not dispute this portion of the value.

7. From the County Data Card,<sup>2</sup> it is clear that as part of the improvement value, \$\$\$\$\$ was for the site improvements, the largest of which was indicated the ##### square feet of asphalt paving.

8. The portion of the total value which the County Assessor had attributed to the land was \$\$\$\$\$, or \$\$\$\$\$ per square foot.<sup>3</sup> It was only this portion of the assessed value that the Property Owner contested, arguing that the land should be assessed at \$\$\$\$\$ per square foot.

9. The Property Owner indicated that including the subject they had appealed three parcels of property located in THE CENTER to the Utah State Tax Commission for the 2012 tax year. For the other two parcels the value was lowered to \$\$\$\$\$ per square foot for the land.<sup>4</sup>

---

<sup>1</sup> See Petitioner’s Exhibit 8, Salt Lake County Board of Equalization Assessor’s Proposed Conference Record. In that it explains the Assessor’s original value, which the County Board upheld, “As the subject’s retail store building was still under construction as of 1/1/2012, the Assessor’s original value is based on the cost approach. The subject’s #####-acre commercial lot is valued at \$\$\$\$\$ (\$\$\$\$\$/s.f) while the partially completed building and other improvements are valued at \$\$\$\$\$. The total value, therefore, is \$\$\$\$\$,”

<sup>2</sup> Petitioner’s Exhibit 9.

<sup>3</sup> Petitioner’s Exhibits 8 &9.

10. The Property Owner did offer comparable sales to support a reduction for the land value to \$\$\$\$\$ per square foot. One particular sale relied on by the Property Owner was a parcel very near in location to the subject on the North end of THE CENTER. This was a corner parcel at ADDRESS-1 and had been purchased by BUSINESS to construct a convenience store on the parcel. This was a smaller parcel than the subject, being ##### acres or ##### square feet in size. It was located on a good traffic corner at the entry into THE CENTER. The purchase did not close until December 2012. However, the Property Owner’s representative points out that the parties had entered into a Letter of Intent to Purchase prior to the lien date, on December 2, 2011.<sup>5</sup> The Letter of Intent discusses ##### square feet and a price of \$\$\$\$\$. An actual Purchase Contract was entered into on May 3, 2012<sup>6</sup> which indicated that the size of the land sold was ##### square feet for the \$\$\$\$\$. This is a price of \$\$\$\$\$ per square foot. The Warranty Deed on the sale was signed on December 21, 2012.<sup>7</sup>

11. The Property Owner’s representative pointed out that for the 2011 tax year the value for the subject parcel, was \$\$\$\$\$.<sup>8</sup> The subject property had only the site improvements including the asphalt parking at this time. Construction had not yet commenced on the retail store as of January 1, 2011.

12. The Property Owner submitted four comparable sales, including the BUSINESS sale, to support its request for a lower land value.<sup>9</sup> The representative testified that all four properties were near in location to the subject in the area of THE CENTER. He acknowledged that all of these properties had sold after the lien date, but argued that they would be good comparables because they were from the same area as the subject. The Property Owner’s comparables were as follows:

Address	Price/Per Square Foot	Size	Sale Date
Subject: SUBJECT ADDRESS		#####	
ADDRESS-2	\$\$\$\$/\$\$\$\$\$	#####	DATE
ADDRESS-3	\$\$\$\$/\$\$\$\$\$	#####	
ADDRESS-4	\$\$\$\$/\$\$\$\$\$	#####	DATE
ADDRESS-5	\$\$\$\$/\$\$\$\$\$	#####	DATE

---

<sup>4</sup> The Property Owner referred to *Utah State Tax Commission Initial Hearing Orders Appeal No. 13-687* (October 2013) *Appeal No. 13-929* (May 2014). Both decisions reduced the land value for other parcels located in THE CENTER to a value based on \$\$\$\$\$ per square foot.

<sup>5</sup> The Property Owner provided a copy of this Letter of Intent as Petitioner’s Exhibit 3.

<sup>6</sup> Petitioner’s Exhibit 4.

<sup>7</sup> Petitioner’s Exhibit 5.

<sup>8</sup> Petitioner’s Exhibit 7.

<sup>9</sup> Petitioner’s Exhibit 2.

13. The Property Owner did not submit a formal appraisal.

14. The County pointed out that all of the Property Owner's sales were post lien date and stated that they should not be considered for the 2012 value.

15. The County also did not submit a formal appraisal. At the hearing the County's representative argued two different calculations as to the value; both resulted in a value somewhat higher than that set by the County Board of Equalization. However, he had offered these as support for the County Board's value and not a higher value. For the County's first calculation, the County's representative assumed the land price per square foot of \$\$\$\$\$ or \$\$\$\$\$, which resulted in a value for just the land of \$\$\$\$\$ or \$\$\$\$\$ respectively. Then he calculated the depreciated cost of the asphalt parking to be \$\$\$\$\$ and he added this to the land value. The County's representative did provide Marshal and Swift costing information regarding the cost to construct the parking lot and a parking space basis.<sup>10</sup> It was his contention that the cost value for the percentage complete of the building on the lien date was \$\$\$\$\$. This amount was based on a statement or information made by Petitioner's representative prior to this hearing. So in this calculation, although his value for just the land was considerably lower than the value set by the County Board of \$\$\$\$\$, his value for the site improvements and building, which totaled \$\$\$\$\$, was significantly higher than the \$\$\$\$\$ in the record from the County Board. Based on the \$\$\$\$\$ per square value for the land, the \$\$\$\$\$ for the asphalt parking and \$\$\$\$\$ for the building, the total was \$\$\$\$\$, which was higher than the assessed value of \$\$\$\$\$.

16. An alternative value calculation provided by the County was based on comparable land sales. It was the County representative's conclusion that the comparables supported a price per square foot of \$\$\$\$\$.<sup>11</sup> This is a lower rate per square foot than the \$\$\$\$\$ used on the County's original assessment. A value of \$\$\$\$\$ per square foot resulted in a value of \$\$\$\$\$ for the land. The County then added to the land value the depreciated cost of the asphalt at \$\$\$\$\$ and \$\$\$\$\$ for the building which was a total of \$\$\$\$\$.

17. For the land value, the County's representative had made adjustments to account for differences in his comparables and the subject for things like market condition, size and location. Although three of the comparables had sold more than one year prior to the lien date, the County's representative did base his value conclusion at \$\$\$\$\$ per square foot primarily on the sales that occurred in 2011. The comparables provided by the County to support a price per square foot for the land were as follows:<sup>12</sup>

---

<sup>10</sup> Respondent's Exhibit 3.

<sup>11</sup> Respondent's Exhibits 7 & 8.

<sup>12</sup> Respondent's Exhibit 7.

Address	Price/Per Square Foot	Size	Sale Date	Adjusted Price Per Square Ft
Subject: SUBJECT ADDRESS		#####		
ADDRESS-6	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-7	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-8	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-9	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-10	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-11	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$
ADDRESS-12	\$\$\$\$/\$\$\$\$	#####	DATE	\$\$\$\$

18. It was the Property Owner’s criticism of the comparables offered by the County that they were considerably farther in location from the subject property than the comparables the Property Owner had provided. The Property Owner’s representative stated that his comparables were all located in the same area as THE CENTER and although post lien date had generally sold for a lower price per square foot, a range from \$\$\$\$ per square foot to \$\$\$\$ per square foot. The County’s representative, however, had considered the location of the subject property to be superior to all of his comparables, adding 5% or 10% as a location adjustment. The County’s 2011 comparables had sold for a range from \$\$\$\$ per square foot to \$\$\$\$.

These ranges from the two parties overlap and both parties requested values are within the range. The County’s requested value at \$\$\$\$ per square foot is based on a mean from the 2011 sales, none of which were in THE CENTER. The Property Owner’s request at \$\$\$\$ is from the BUSINESS sale very near in location to the subject. Although this sale closed after the lien date in December 2012, it had been negotiated and a price entered into in December 2011, and it is appropriate to give weight to this sale. It also appears that of the sales this one was the most similar as far as location to the subject.

19. After reviewing the County’s 2011 sales and the Property Owner’s BUSINESS sale, it is appropriate to put the most weight on the BUSINESS sale which was nearest in location to the subject and negotiated the nearest to the lien date of the sales. This sale does fit within the range of the comparable sales provided by the County. A value based on \$\$\$\$ per square foot for the land is \$\$\$\$.

20. The Property Owner also pointed out that in calculations to support the County Board’s value, the County’s representative, although acknowledging a lower land value, was arguing for a higher value for the building and improvements than had been set by the County Board. The County’s original assessed value attributed for both the building and site improvements including asphalt had been \$\$\$\$.

In fact the County’s Data Card<sup>13</sup> makes it clear that the value of the asphalt and other site improvements

---

<sup>13</sup> Petitioner’s Exhibit 9.

had been only \$\$\$\$\$. The Property Owner stated that the value placed on the County Data card for the building and site improvements occurred after an appraiser from the County visited the site and measured the improvements.

21. At the hearing, the Property Owner states that the County representatives claimed the asphalt parking cost was higher than the actual cost new to construct the parking and that it did not take into account depreciation for the asphalt. He disputed the cost new for the asphalt as calculated by County's representative. He indicated the owner said the actual cost was \$\$\$\$\$ per square foot at the time it was installed, which was in 2005 or 2006. The Property Owner maintained that it currently costs \$\$\$\$\$ per square foot to construct asphalt parking. The County's Data Card shows ##### square feet of parking and an RCN of \$\$\$\$\$, which is \$\$\$\$\$ per square foot. For the original assessment the County then depreciated the parking based on age, which the County had as 2008. Therefore, the County's original assessed value just for the parking was set at \$\$\$\$\$ or \$\$\$\$\$ per square foot. There were some lights and block retaining walls or fencing that made up the rest of the \$\$\$\$\$ in site improvements. The new value for the asphalt parking argued by the County's representative at the hearing had been calculated based on a cost of \$\$\$\$\$ per parking space and not a per square foot basis.<sup>14</sup> If the County representative's \$\$\$\$\$ conclusion is divided by the ##### square feet of parking, this is a value of \$\$\$\$\$ per square foot.

22. Based on both the actual cost and that the original assessed value had been determined on a square foot basis and run through the County's typical costing system to determine a value, the original value for the parking and site improvements should remain as set by the County. There is insufficient basis to raise the value of the parking. It should be noted that the County originally had not valued the improvements based on a sales or income indicator that would provide for a combined total value of both land and improvements, but instead had used a cost approach for the improvements. The County's new proposed value for the improvements is also based on cost, therefore the Commission must come to a determination of the land value based on sales and then a separate value for the improvements based on cost.

23. As far as the \$\$\$\$\$ that the County was now arguing for the building, the Property Owner's representative did acknowledge that at one time that had been his estimate, but he stated that this had been only a rough estimate on his part. He pointed out that after a representative from the County had visited the site, taken measurements and made an estimate based on the percentage of the building actually complete as of the January 1, 2012, the County's original assessed value was \$\$\$\$\$ for the building and site improvements including the asphalt. There is no evidentiary basis to raise the value of

---

<sup>14</sup> Respondent's Exhibit 3.

the building based on a statement made previously outside of the hearing which is inconsistent with other evidence and has now been contradicted by the person who had originally made the statement.

24. The value added for the building and site improvements, including the asphalt, should remain at the \$\$\$\$\$.

APPLICABLE LAW

(1) 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 Ann. 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 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 Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary basis upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSION OF LAW

1. Property tax is based on its “fair market value” as of the lien date at issue for the tax year 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. The value set by the County Board of Equalization has the presumption of being correct and to raise or lower the value a party must demonstrate that the County Board’s assessment contained error and provide a sound evidentiary basis for the new value. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this case both sides presented information that there was error in the County Board’s value as to the land. Weighing the information presented provides a basis for a new, lower value on the land. Because the improvements were under construction on the lien date, the improvement value was calculated based on a cost approach and then added to the land value. The evidence was not sufficient to raise the value set for the improvements.

3. Based on Utah law, the Commission must determine the value as of January 1 of the tax year at issue. See Utah Code Sec. 59-2-103. The Property Owner did provide post lien date sales. The Property Owner was able to provide evidence that its key comparable, the BUSINESS property, was negotiated in December 2011, so that was a sale that did reflect the market as of the lien date. The actual purchase contract was signed shortly after in May 2012. The Property Owner did provide a sale that occurred in September 2012, which becomes less reliable for establishing a value as of the lien date and then two sales occurring in 2013 that are too far post lien date for consideration. The Commission notes that the BUSINESS purchase was considered along with sales offered by the County that had occurred during 2011.

Considering the evidence and the applicable law in this matter, the value should be reduced to \$\$\$\$\$ for the land and remain at \$\$\$\$\$ for the improvements, for a total of \$\$\$\$\$.

Jane Phan  
Administrative Law Judge



DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2012, is \$\$\$\$\$. The County Auditor is hereby ordered to adjust his records accordingly. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
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 Ann. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.