

14-398 & 14-399
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 5-21-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal Nos. 14-398 14-399</p> <p>Parcel Nos. PARCEL- 010 PARCEL-002</p> <p>Tax Type: Property Tax Tax Year: 2013</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: RESPONDENT, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on February 10, 2015, in accordance with Utah Code §59-1-502.5. The two parcels at issue are adjacent land parcels on STREET. The lien date at issue in this appeal is January 1,

2013. The values originally set by the Salt Lake County Assessor’s Office for each parcel, then as set by the County Board of Equalization (“the County”), as well as what the parties are requesting are set out as follows:

Parcel	County Assessor	County	Owner’s Request	County’s Request
PARCEL-010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$
PARCEL-002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$	\$\$\$\$\$/\$\$\$\$\$

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 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.
- (5) 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.

Effective as of the January 1, 2013 lien date, the following pertained to properties subject to a prior value reduction at Utah Code Sec. 59-2-301.4 as follows:

- (1) As used in this section, “valuation reduction” means a reduction in the value of property on appeal if that reduction was made:
 - (a) Within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a: (i) county board of equalization in a final decision; (ii) the commission in a final unappealed administrative order; or (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor’s determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

A party requesting a value other than that established by the County Board of Equalization has the burden of proof to establish that the market value of the subject property is different. 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. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject parcels are two vacant land parcels located at ADDRESS-1, CITY-1, Utah. These parcels would be adjacent except for the access road off of STREET just to the North of ##### South that separates these two parcels and provides access. Parcel ##### (Parcel 002), located at ADDRESS-2, is on the corner of ##### South and STREET but there are no curb cuts into this property on ##### South or on STREET. The only access into this parcel is the roadway off of STREET that runs along the north side of this parcel. This parcel is #####-acres in size. The Property Owner states that UDOT will not allow additional curb cuts due to the traffic on this corner so Parcel 002 in the future will only be accessed by the roadway that separates these two parcels.

Parcel ##### (Parcel 010) is located at ADDRESS-1, CITY-1, Utah, just north of the roadway that runs along the side of Parcel 002. Parcel 010 is #####- acres in size. Both parcels are zoned CN (HSN) which is Historical CITY-1 Neighborhood Commercial Zone. The Property Owner states that this zoning is restrictive and will allow things like an art gallery, restaurant, hotel or professional offices. He states the only people that he has found that were interested in the subject land were people who wanted to use it for things like gas stations, car sales lots or

mechanic repair shops and all these things were not allowed. He indicated at one point he was working out a deal to sell the property to BUSINESS-1 and he and BUSINESS-1 worked with CITY-1 for about six months trying to get this approved. They were unable to get approval from the city, so the deal fell through. It was the Property Owner’s contention that there was no interest in this property for the types of business CITY-1 wanted to see go into this location.

Additionally, the Property Owner had previously been able to rent this property out for temporary uses, like a (X) or (Y). However, in January 2013 CITY-1 had passed Ordinance 13-06 which restricted this use further by requiring sidewalk, curb, gutter and fifteen feet of landscaping around the edges of the property and other requirements. He indicated that the cost of this was prohibitive in comparison to the amount he could receive in leasing the lot out for temporary uses.

The Property Owner requested that the value of the two parcels be lowered back to the value set by the 2012 County Board of Equalization. After appeal to the County Board in 2012, the County Board had lowered the value for these parcels to \$\$\$\$ for Parcel 002 and \$\$\$\$ for Parcel 010. It was the Property Owner’s contention that nothing had improved for the 2013 year, and in fact, for 2013 the subject was even more restricted with the passage of CITY-1 Ordinance 13-06, so the value should be lower for 2013. He states he was being reasonable in just requesting that the value remain as set for 2012. The County representative at this hearing said the County would not lower the values to the 2012 amounts as the County Assessor disagreed with the County Board’s decision in 2012.¹

The Property Owner submitted six comparable sales to support lowering the value of these parcels. It was his contention that the comparables sales on average had sold for \$\$\$\$ per square foot. One of his sales was also in the same CITY-1 Historical CITY-1 Commercial Neighborhood zoning. His sales were the following:

	Address	Size	Price/Per Sq. Ft	Date	Zoning
1)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CN
2)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CN
3)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CNHSN
4)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	Com/Indust
5)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	Mt-Fam/Com
6)	ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	Sold with #####-Sq. Ft Commercial Bld.

¹ Under Utah Code Sec. 59-2-301.4 (2013), a County Assessor may raise the value of property previously subject to a valuation reduction.

The County’s representative argued that the Property Owner’s comparable 2) had been bank owned and 4) had been an estate sale. She argued that the subject property was located in a good corner location for development as it had high visibility. She also stated that she had talked to CITY-1 and they wanted the property developed, but also indicated something like if the “right” business wanted to go in there. She did acknowledge due to the traffic, there could be no additional curb cuts and the properties could not be used for fast food restaurants with a drive thru. She also stated that a property had recently sold in the area of the subject in March 2014 at over \$\$\$\$ per square foot. She did not provide the MLS or other information and this comparable as it sold significantly after the lien date which is at issue in this appeal. In support of the County Board of Equalization value, the following comparables were offered by the County:

Address	Size	Price/Per Sq. Ft	Date	Zoning
1) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	SS
2) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CC
3) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CC
4) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	BJ
5) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	CN
6) ADDRESS	#####	\$\$\$\$/\$\$\$\$	DATE	SC-2

The Property Owner pointed out that the County’s comparables were far in location from the subject property and did not have the same restrictions as the subject property. He also stated that the County’s comparable 6) was only a listing and had not been sold.

After reviewing the information presented in this case, the two comparables nearest in location to the subject were offered by the Property Owner. They were his comparables 2 & 3 and had sold for \$\$\$\$ per square foot and \$\$\$\$ per square foot respectively. Petitioner’s comparable 2 had been a bank owned property, but given the lack of better sales in the area of the subject should be given some consideration. Comparable 3, selling for only \$\$\$\$ per square foot, had the same zoning restrictions as the subject and were the only comparable with those restrictions offered. Neither of these two comparables is located on a corner, but they are on STREET and very near to the subject. If properties in 2014 are now selling for significantly more than this, it may affect the value for future lien dates. However, in this appeal the issue is the value as of January 1, 2013. Given Parcel 002’s corner location but weighting and the CN(HSN) zoning restrictions, Parcel 002’s value should be set at the \$\$\$\$ price. While Parcel 010 is very similar to the property that had sold for \$\$\$\$ per square foot and should be reduced to that amount. These would indicate values of \$\$\$\$ for Parcel 002 and \$\$\$\$ for Parcel 010.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject parcels as of the January 1, 2013 lien date were \$\$\$\$ for parcel ##### and \$\$\$\$ for parcel #####. 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. 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 _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

