14-2239
TAX TYPE: PROPERTY TAX
TAX YEAR: 2014
DATE SIGNED: 6-5-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
REAFFIRMED: D. DIXON
CONCURRING: A. NIELSON-LARIOS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 14-2239 Parcel No. PARCEL-5 and PARCEL-6 Tax Type: Property Tax Tax Year: 2014 Presiding: Commissioner Dixon Judge Nielson-Larios

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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:
D'Arcy Dixon Pignanelli, Commissioner, in person
Aimee Nielson-Larios, Administrative Law Judge, by telephone

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative for the Petitioner, *pro se*, by telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, County Assessor, Representative for the Respondent, in person

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL COUNTY ("County") Board of Equalization ("BOE"). This matter was argued in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The hearing was held on April 10, 2015 in

CITY-1 at the RURAL COUNTY Government Offices. The RURAL COUNTY Assessor's Office valued the subject properties as follows: parcel no. PARCEL-5 at $$$$$, and parcel no. PARCEL-6 at $$$$$ as of the January 1, 2014 lien date. The Board of Equalization sustained the assessed values. The County is asking the Commission to sustain the BOE values. The Taxpayer is requesting the value of the subject properties be reduced to $$$$$ each.

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.

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. 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 (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).

PRELIMINARY ITEMS

The Initial Hearing was held in the above-entitled matter on Friday, April 10, 2015 at the RURAL COUNTY Offices in CITY-1, Utah. The Representative for the Taxpayer (here forth referred to as "Taxpayer's Rep" or "Rep") did not appear at the hearing as expected, and the Commissioner took approximately 45 minutes seeking to reach him by phone. When he was reached, the Commissioner asked if he wanted to proceed with the hearing and participate by phone; he said he did.[1] During the hearing the County Assessor as the Representative for the Respondent (here forth referred to as the "Respondent's Rep" or "Assessor") provided five documents that had not been submitted 10 business days in advance of the hearing. The Rep objected, but the Commissioner deemed them necessary to understand the issues raised during the hearing and accepted them. The Assessor also provided a sale the Rep wanted considered which had been provided for the Board of Equalization ("BOE") hearing, but had not been included in the BOE record submitted by the County Auditor when filing the appeal to the Tax Commission. At the end of the hearing, the Commissioner stated copies of the six documents received would be mailed to the Rep, who would have 10 days to provide written comment on the documents, and the comments had to be submitted to the Commission by any of the means given, and provided to the Assessor within 10 days of the date of the order. The Scheduling Order outlining this was mailed on April 16, 2015. As of Monday, April 27, 2015, no comments from the Rep had been received. Therefore only the information received prior to and at the hearing, and information proffered at the hearing will be considered.

INFORMATION PRESENTED

A. **Factual Information:**

The Subject Properties are two commercial properties located at SUBJECT ADDRESSES, in CITY-1. The properties are used as retail stores.

[1]The alternative was to default the Taxpayer, who would have had 30 days to appeal for a formal hearing. The Commissioner felt for administrative efficiency, because time had been spent traveling to the rural county, it was better to spend part of the designated hearing time to reach the Taxpayer's Representative.

For parcel no. PARCEL-5 (here forth referred to as "Parcel 5") the parties agree the land is #####- acres and the improvements are ##### square feet ("sf") total, all above grade on one level. Further, they agree the improvements were built in YEAR.

For parcel PARCEL-6 (here forth referred to as "Parcel 6") the parties agree the land is #####- acres, and the improvements were built in YEAR; however, the Parties disagree on the square feet of the improvements on the parcel. The Rep agreed the second level was #####- sf and rented as an apartment, but held the main floor was #####- sf, and the unfinished basement #####- sf for a total of #####-sf. The Rep also disputed that the unfinished basement should be valued. The Assessor held the structure was #####-sf, of which #####-sf was above grade level and includes the #####- sf apartment on the second floor, and #####-sf on the main level, and then a #####-sf unfinished basement. So there is a dispute of #####- sf of above grade level square footage, and #####-sf below grade square footage, or a total of #####-sf in dispute.

B. **Information from Taxpayer's Rep:**

The Rep presented two arguments.

i. Argument One: The Rep said there was a "cloud over the property." He said this cloud exists because of a former gas station that was a hazardous waste brown field on the EPA/DEQ list located at ADDRESS-1, a half block north of the Subject Parcels, and on the same side of the STREET. The Rep stated, "It has never been confirmed if there is any downstream impact to nearby properties." He further emphasized that the possibility of downstream contamination was not disclosed when he purchased the Subject Parcels, which he stated was about ##### years ago.

The Rep stated that in February 2014 he wanted to get a SBA commercial loan to buy the property next door, and north of the Subject Parcels. He said when he went to initiate a loan in March 2014 he was informed of the possible contamination. The Rep stated he was not able to procure a loan to buy the property next door without conducting extensive core sampling.[2]

To support his position that there is a cloud on the Subject Parcels due to contamination on the nearby parcel, the Rep provided several documents. The first is a copy of a letter dated October 6, 2014 from BUSINESS-1 addressed to REPRESENTATIVE FOR TAXPAYER at SUBJECT ADDRESS, CITY-1, Utah. The letter reads:

> BUSINESS-1 is pleased to present BANK (BANK) with this scope of work and cost estimate to perform a Limited Subsurface Investigation (LSI) of a

[2] The Rep indicated he is involved with the business on the Subject Parcels.

> commercial property at SUBJECT ADDRESS in the City of CITY-1, (RURAL COUNTY), (site or subject property)… [3]
>
> This LSI is proposed to address potential diverse environmental impact to the subject property from off-site facilities, in particular a former automotive repair and gasoline station facility located at the southwest corner of ##### North and STREET. This property has been identified as a leaking underground storage tank (LUST) facility.
> . . . .
> SCOPE OF WORK
> . . . .
> Task 1: Pre-Field Activities…
>
> Task 2: Boring Advancement and Sampling
> … we propose advancing up to two borings up to 35 feet below ground surface (bgs) on the western portion of the site…using a Geoprobe®…
>
> Task 3: Laboratory Analysis
> … soil and groundwater samples would be analyzed, as appropriate for the … volatile organic compounds (VOCs)…
>
> Task 4: Data Compilation …
> . . . .
> FEE ESTIMATE
> . . . .
> … **$$$$$**.
>
> (Emphasis added.)

Second, the Rep provided a copy of a Utah Division of Environment Health "Notification for Underground /Storage Tanks" form that gives the "Ownership of Tanks" name as BUSINESS-2 ADDRESS-2, CITY-1, Utah, and gives the number of tanks as "3." The form is signed and dated March 19, 1986. Attached are additional sheets that seem to require more information about the tanks on the site.

Third, is a letter on BANK-1 letterhead, giving an address of the bank as STREET and STREET-1, CITY-1, Utah. The letter is dated December 27, 1991 and is addressed to State of Utah, Division of Environmental Response & Remediation, Department of Environmental Quality (DEQ) in Salt Lake City, Utah. It says:

> We have just received notice of storage tank assessment for fiscal year 1992 which commences July 1, 1991. This assessment is in regards to facility ##### and is referred to as BUSINESS-2.

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[3] Administrative Notice is taken that the address for the estimate for testing is the same address for the Subject parcels.

> In an effort to clean up and market this foreclosed property we have had the storage tanks removed. This removal occurred on July 8, 1991.
>
> Could we please impose on you to delete this assessment billing from your system…

Attached with the letter was a paper titled "Closure Notice" with a stamp bearing the name Utah Department of Environmental Quality and the date of September 27, 1991. There is also a second page that is unreadable, except it seems to have been signed by someone from BANK-1 and dated 9-23-91. There is also a letter on Department of Health, Division of Environmental Health letterhead. The date is very faded, but appears to be June 17, 1991. The subject of the letter is "Closure Plan approval for Underground Storage Tanks located at BUSINESS-2 ADDRESS-2, and CITY-1, Utah." The letter reads in part, "The Closure Plan for the above-referenced facility…has been approved….Enclosed is a copy of the 'Closure Notice' form which must be completed and submitted…" The next four pages appear to be the Site Closure Plan referenced in the letter. Then the next four pages appear to be another "Notification for Underground Storage Tanks," this one signed 6-4-91 and date stamped received by Utah Dept. of Health on June 7, 1991.

Fourth, and finally, the last nine pages appear to be part of the closure inspection as the cover sheet is titled "Closure Inspection." This cover sheet is dated 7-8-91, notes Facility ID No. #####, and bears a date stamp for Utah Department of Environmental Quality and the date Feb. 5 1992. On the third page it reads, "Are there any signs that indicate contamination to soils or Ground Water?" And there is a checkmark under "Y." On the fourth page, handwritten notes say, "Entire excavation was badly contaminated. Tanks on the north excavation was almost completely deteriorated." The fifth page gives a diagram of the LUST site and the area where the tanks were located, and has hand written notes of contamination areas on the property and is dated 7-12-91. The final pages are titled as notes of "Inspection and Compliance Summary Form."

The Rep said all the foregoing shows and supports there may be contamination that traveled to the Subject Parcels. It was the Rep's position that he does not need to do soil sampling on the Subject Parcels. He said there was no value for him to pay almost $$$$$ to do the sampling because it is not required, unless he is going to dig into the dirt, holding that if someone wanted to buy the Subject Parcels it would be their cost to do the core sampling, but he held the possibility of contamination "is a handicap on the property" and for this reason the assessed value should be lower.

ii. Argument Two: The Rep provided one sale to support his requested value of $$$$$ for each parcel. This was MLS #####, and located at ADDRESS-3 and was noted to be across the street and half block south of the Subject Parcels. It was listed on September 18, 2013 for $$$$$, went under contract on January 1, 2014, and sold February 27, 2014 for $$$$$ cash. It is three plus floors, with a total of ##### sf with ##### sf on the main floor, ##### sf on the second floor, ##### sf on the third floor, and ##### sf in the basement. It was built in YEAR and was stated to be a retail and restaurant. The Rep divided the ##### sf of the improvements into the sales price of $$$$$ and determined a value of $$$$$ per square foot selling price. Holding there was ##### sf of usable above grade square footage with both Subject Parcels combined, he multiplied this ##### square footage by $$$$$ per square foot to arrive at a value of $$$$$ for both parcels. He felt there should then be some type of deduction for the “cloud” of the possible environmental contamination. He appears to believe the deduction should be approximately 30%, which left approximately $$$$$, which he divided between the two parcels. He determined that the value of the Subject Parcels based on the sale and the cloud of contamination should be $$$$$ each.

C. **Information from Respondent’s Rep:**

The Assessor presented the following information and arguments in support of the BOE value.

i. Cost Approach and Comparable Sales

The Assessor provided summary report sheets showing the Marshall and Swift values she assigned to the Subject Parcels’ improvements.

For Parcel 6 the Building Cost New is $$$$$, to which the Assessor applied a 77.3% deduction for physical and functional depreciation of $$$$$, for a final depreciated cost value of $$$$$ for the improvements. She shows that 27% of the building is the apartment, so $$$$$ of that is assigned to receive the 45% residential exemption. With land value added to the $$$$$ cost value of the improvements, the final assessed value is $$$$$ (making the land value $$$$$).

For Parcel 5 the Marshall and Swift Building Cost New was $$$$$ on which the Assessor applied 71% physical and functional depreciation of $$$$$, for a depreciated cost value of $$$$$ for the improvements. The cost improvement value added to the land value, is a final assessed value of $$$$$ (making the land value $$$$$).

The Assessor prepared a spreadsheet showing the cost per square foot assessed value of the Subject Parcels, the assessed value for the last four years, the YEAR purchase of Parcel 5, and

ten sales of retail and office commercial properties. She said she used the sales to corroborate the assessed value.

The spreadsheet showed the Subject Parcels are assessed at $$$$$ per square foot for Parcel 5 and $$$$$ per square foot for Parcel 6 for an average assessed value of $$$$$ per square foot. It further shows that the Subject Parcels' assessed values of $$$$$ and $$$$$ for 2014 are lower than the Subject Parcels' assessed values of $$$$$ and $$$$$ for the previous three years.

The Assessor had eight sales with sales dates between 9/30/2008 to 2/27/2014. They ranged in date of construction from 1900 to 1956, square footage from ##### sf to ##### sf, and sales from $$$$$ to $$$$$. The final breakdown showed sales ranging from $$$$$ per square foot to $$$$$ per square foot.

The low sale at $$$$$ was the same sale the Taxpayer's Rep used. In support of her other sales and in rebuttal to the position of the Taxpayer's Rep, the Assessor said the sale of the Taxpayer's Rep is not a comparable property because it is so much larger with ##### sf versus the ##### sf and ##### sf of the Subject Parcels. She said the sale was also a bank owned foreclosure sale and provided the second page of the MLS which shows the owner as "BANK." She also said the final sale date of 2/27/2014 was after the lien date of January 1, 2014.

The Assessor also provided a map showing the proximity of some of the sales to the Subject Parcels. She also included the purchase of Parcel 5 in YEAR as a comparable. She held the three sales shown on her map that are the closest to and prior to the lien date and the closest in proximity to the Subject Parcels support and corroborate the assessed values of the Subject Parcels. These are as follows:

Comparative Sales

	Sale	Price	Age	SF/AG	$/sf	Proximity
	DATE	$$$$$	AGE	#####	$$$$$	one block away
	DATE	$$$$$	AGE	#####	$$$$$	one block away
	DATE	$$$$$	AGE	#####	$$$$$	across the street
Subject Parcels Assessed Values						
Parcel 5	DATE	$$$$$	AGE	#####	$$$$$	
Parcel 6	DATE	$$$$$	AGE	#####	$$$$$	
Parcel 5 Purchase Information						
	DATE	$$$$$	AGE	#####	$$$$$	

The Assessor said the three sales of $$$$$, $$$$$ and $$$$$ per square foot show the sale price per square foot was going up during the years before the lien date and they bracket the assessed values of the Subject Parcels of $$$$$ and $$$$$ per square foot. Finally, she said the highest sales price per square foot was the one closest to the lien date and directly across the street from the Subject Parcels.

The Assessor also provided two sales nine months and 13 months after the lien date. One sold on 9/18/2014 for $$$$$ per square foot and is a half block away, and the other on 3/11/2015 for $$$$$ per square foot is one and half blocks away. She said she only provided these to show sales prices in the area along STREET are continuing to go up.

Finally, she proffered the MLS sheet for the sale of Parcel 6 showed it to be ##### sf which is closer to the ##### sf on the County records than the ##### sf the Taxpayer's Rep is claiming.

ii. <u>Issue of Possible Environmental Contamination</u>

The Assessor showed on her map that the Subject Parcels are four parcels away from the gas station that was a designated LUST site and subject to clean up in YEAR. The Assessor said she made a lot of calls to determine if there was an issue or concern with residual contamination of other nearby parcels. South and next door to Parcel 5 is the BUSINESS-3, which was remodeled in 2012. After it was completed, the old surface of the parking lot behind the BUSINESS-3 and adjacent parcels was removed and new asphalt applied. In preparation for the hearing, she spoke to city and county officials about possible contamination where the new parking surface was applied and they indicated "they knew nothing of possible contamination." She said she also spoke to the project manager at DEQ who was over the LUST site and the project manager said the tanks and contaminated soil were removed and the site closed.

The Assessor advanced the position that the Rep has submitted no evidence of contamination on the Subject Parcels. The Assessor said if the owner provided documentation confirming contamination on the Subject Parcels and the costs to cure, she would look at an adjustment. In support of this, she said she does have one parcel (not near or in the area being discussed in the appeal) that is recorded with the County Recorder and noted as being property that is contaminated. Because the recorded information confirms that property is contaminated, when made aware in 2013 she started to apply a permanent 25% adjustment to the land value. She said the 25% adjustment is consistent with her land guideline, which recognizes a cost to cure.

D. **Rebuttal by the Rep:**

In rebuttal of the Assessor's sales the Taxpayer's Rep said that it is not known if the purchases of the Assessor's sales had bank loans and if testing was required to get the loans. He said the BUSINESS-3 is privately owned, not owned by the city or county, and the remodel was on the interior and did not break ground so it is irrelevant. He said he too has spoken to city officials and they knew about the contaminated soil when the parking lot was being done. The Rep rebutted the old gas station site was "closed" with no further environmental remediation needed. He said it still has monitoring wells, and it is on the "wish list" for final closure. He also stated the Assessor's recounted conversations regarding contamination are hearsay, whereas he had provided direct evidence with documents showing the level of contamination of the old gas station site.

E. **Closing by the Rep:**

The Taxpayer's Rep said that the BANK President said to get an SBA loan he would have to do testing. The Rep said, "I cannot sell. With a full disclosure of the possible contamination it will marginalize the value of my property. Further, no realtor will take and list my property." He concluded by saying he feels there is an "obfuscation and cover-up" and he is being made a victim by city officials who do not want others to know about the possible contamination.

ANALYSIS

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 a sound 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.

A. **Cost and Sales Approaches to Value**

i. The Rep's Sale:

The Taxpayer's Rep provided one sale. The Assessor effectively rebutted the sale by showing that it was a bank owned foreclosure sale and that it is not as comparable because it had almost three times the square footage of the Subject Parcels. The information and rebuttal provided by the Assessor supports giving this sale little weight.

ii. The Assessor's Cost Approach and Sales:

The Assessor used Marshall and Swift guidelines[4], to determine a cost new, less depreciation value of the Subject Parcels' improvements. To this she added the land value and then used sales to support and corroborate her assessed value.

The Assessor provided eleven sales including the YEAR purchase of Parcel 5. It was undisputed that three of the sales were within one and half blocks of the Subject Parcels. The sales of $$$$$ per square foot, $$$$$ per square foot and $$$$$ per square foot, which were 18 months, 13 months and six months before the lien date, bracket the assessed values of the Subject Parcels of $$$$$ per square foot and $$$$$ per square foot. The sales are similar in age and the two sales closest to the lien date are most similar in square footage. These sales are more convincing because they appear more comparable to the Subject Parcels, and are prior to the lien date. Thus, these sales should be given more weight in the analysis.

The Commission notes that the Rep disputed the square footage of the improvements on Parcel 6 claiming there was ##### less square footage above grade level and ##### less square footage below grade than shown on the Assessor's records. While the Commission recognizes that square footage is an issue of fact that can affect value, the Assessor effectively refuted the Rep's position noting that the MLS sheet for the sale of Parcel 6 showed it to be ##### sf, which is closer to the ##### sf the Assessor has on the records versus the ##### sf the Rep is claiming. Further, the Rep did not provide any documentation to support his position that the square footage on the county's records is incorrect.

B. **Argument on Possible Contamination**

In previously issued commission orders, the Commission has addressed the issue of value of contaminated land. We analyze these orders for their applicability to this appeal.

In 08-2396[5], "[t]he subject properties [we]re two of three parcels that are improved with a single building." The assessor discounted the third of three parcels 10% for soil contamination, but provided no discount for the other two parcels. The Commission analyzed the evidence about the direction the contamination was migrating before it concentrated on the third parcel, and the Commission found the contamination could not reach the third parcel without crossing the first subject property and coming close to or possibly contacting the second subject property. The Commission concluded that "because of the **immediate proximity of the subject property to**

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[4] The Commission recognizes use of this information for a cost approach to value.
[5] Redacted Commission orders can be found at http://tax.utah.gov/commission-office/decisions.

the [third parcel which was contaminated, the Commission] finds that a 10% discount should be applied, either for actual contamination or stigma."

In 10-0540, the Commission reviewed remediation costs of a property **known to be contaminated**, and determined which costs should be deducted from the assessed value.

In 05-0168, the commission found that a **property located within an environmentally contaminated area designated as a Superfund Site by the EPA** would be more costly to remediate and clean up than the land was worth, and therefore the Commission assigned a "$0" value to the land.

In 09-3783 there as an in-depth analysis of a property that had formerly been used as a truck stop and convenience market. The **property still had contaminated soil from when the property was operated as a truck stop**. A 1994 report prepared for EPA Region VIII stated *"Contamination at the site is gasoline in groundwater and subsurface soils. The gasoline source was traced to aboveground storage tanks (ASTs) and associated buried lines."*[6] The Commission found EPA had spent over $$$$$ addressing and mitigating contamination of ground water, but did not clean up any of the contaminants in the soil on the property. While the Property Owner had received "a no further action" from the Division of Environmental Response and Remediation (DERR), a division of the State of Utah Department of Environmental Quality, the Owner had not obtained site closure from the Division of Water Quality, also a division of the Utah Department of Environmental Quality, due to the contaminated soil.[7] The Commission found the soil on the property was still contaminated, sufficient evidence had been provided to show the cost to cure the contamination exceeded the land value, and the Commission reduced the assessed land value to $0.

In the appeal before us, the Taxpayer's Rep has proffered information that there was a LUST site, and it is undisputed it is four parcels north of the Subject Parcels. He also proffered he was told in spring 2014 that if he wanted a bank loan against the Subject Parcels to obtain proceeds to purchase a property three parcels south of the LUST site he would need to have

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[6] Attachment B, #2 of 09-3783

[7] Attachment A of 09-3783 explains the following regarding the remediation (paraphrased): The State of Utah Division of Environmental Response and Remediation (DERR), a division of the State of Utah Department of Environmental Quality (DEQ) is contracted and receives funds from the United States Environmental Protection Agency (EPA) to oversee cleanup of Leaking Underground Storage Tanks (LUST) sites in Utah. DERR is also contracted under an MOU with the Division of Water Quality (DWQ), also a division of DEQ, to oversee the clean-up of Aboveground Storage Tanks (AST). DWQ has responsibility of ASTs, but DERR has the experience from doing LUSTs. The MOU between DERR and DWQ states that as long as clean up of an AST is in an active state, DERR can retain oversight and may bill DWQ for the costs of oversight. If a site owner is not actively cleaning the property for an AST, the case file is to be transferred to DWQ for further oversight.

testing done on the Subject Parcels, and the Rep provided a bid dated October 6, 2014 for the testing of the Subject Parcels. However, the Rep has not provided dispositive information that the Subject Parcels were contaminated as of the lien date of January 1, 2014, or any dispositive information that the Subject Parcels are currently contaminated. In all four commission orders analyzed above, there was direct evidence to show the land at subject in the appeal was contaminated and the costs to cure were provided or the land was adjacent to a confirmed contaminated property with information to show it was affected by its proximity to the contaminated property.

While the Taxpayer's Rep. has stated he has no obligation to do testing for contamination on the Subject Parcels, the Assessor has affirmed if there is proof of contamination, she will consider applying prospectively a permanent adjustment to the Subject Parcels.

CONCLUSION

Fair Market Value:

As introduced previously in the Applicable Law section, to prevail in a real property tax dispute, the Taxpayer must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Taxpayer. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). As a general rule, valuations such as those from a county board of equalization are entitled to a "presumption of correctness." *See Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652, 656 (Utah 2000), *quoting, Utah Power & Light Co. v. Tax Comm'n*, 590 P.2d 332 (Utah 1979). "This presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission." *Id*. In addition, Utah courts recognize that "the term 'market value' is at best an approximation." *Rio Algom Corp. v. San Juan County*, 681 P.2d 184, 192 (Utah 1984).

The Representative for the Taxpayer provided enough information to call into question the assessed value of the Subject Parcels. In response, the Assessor, as the representative for the BOE, has provided information to support the BOE value, and in doing so, the BOE value has the presumption of correctness in this appeal. Therefore, we consider the totality of the information proffered by each party to support its estimate of fair market value. While the Rep has called into question the assessed value, the totality of his information does not demonstrate the BOE value is in error. Neither did he provide a sound evidentiary basis for reducing the BOE value. The one

sale provided by the Rep is not comparable. Further, the Rep did not provide convincing evidence that there was contamination on the Subject Parcels that would affect their value. The Assessor performed a cost approach to establish an assessed value and corroborated it with three sales deemed to be the most comparable of the 11 sales provided.

Based on the preponderance of the evidence, the Board of Equalization values for the Subject Parcels as of the January 1, 2014 lien date should be sustained.

D'Arcy Dixon Pignanelli
Commissioner
Authoring Opinion

Aimee Nielson-Larios
Administrative Law Judge
Concurring in Opinion

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject parcels as of the January 1, 2014 lien date to be: parcel no. PARCEL-5 at $$$$$ and parcel no. PARCEL-6 at $$$$$. The RURAL COUNTY Auditor is hereby ordered to assure its records show 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.

REAFFIRMED

John L. Valentine Commission Chair	D'Arcy Dixon Pignanelli Commissioner
Michael J. Cragun Commissioner	Robert P. Pero Commissioner