

14-2284 & 14-2286
TAX TYPE: AMENDED INITIAL HEARING ORDER
TAX YEAR: 2014
DATE SIGNED: 11-20-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH, Respondent.	AMENDED¹ INITIAL HEARING ORDER Appeal Nos. 14-2284 & 14-2286 Parcel Nos. PARCEL-4; PARCEL-26 Tax Type: Property Tax / Locally Assessed Tax Year: 2014 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
 TAXPAYER-2, Taxpayer
 NAME-1, Witness
For Respondent: RESPONDENT-1, from the Davis County Assessor's Office
 RESPONDENT-2, from the Davis County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") bring these appeals from the decisions of the Davis County Board of Equalization ("County BOE"). These matters came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 8, 2015.

At issue are the fair market values of two adjacent parcels of undeveloped residential land as of January 1, 2014. The first subject property is identified as PARCEL-26 ("Parcel **26**") and is the property at issue in

1 In the Initial Hearing Order issued on November 13, 2015, the parcel numbers of the two subject properties were mistakenly "switched." The amendments made to correct this error are in bold.

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Appeal No. 14-2284. It is #####-acre in size and is located at approximately ADDRESS-1 in CITY-1, Utah.² The County BOE sustained the \$\$\$\$ value at which Parcel **26** was assessed for the 2014 tax year. The taxpayers ask the Commission to reduce Parcel **26**'s current 2014 value of \$\$\$\$ to reflect a value that is more consistent with its 2013 assessed value of \$\$\$\$\$. However, they did not indicate what Parcel **26**'s 2014 value should be. The County asks the Commission to sustain Parcel **26**'s current value of \$\$\$\$.

The second subject property is identified as PARCEL-4 ("Parcel **4**") and is the property at issue in *Appeal No. 14-2286*. It is #####-acres in size and is located at approximately ADDRESS-2 in CITY-1, Utah. The County BOE sustained the \$\$\$\$ value at which Parcel **4** was assessed for the 2014 tax year. The taxpayers ask the Commission to reduce Parcel **4**'s current 2014 value of \$\$\$\$ to reflect a value that is more consistent with its 2013 assessed value of \$\$\$\$\$. However, they did not indicate what Parcel **4**'s 2014 value should be. The County asks the Commission to increase Parcel **4**'s 2014 value from \$\$\$\$ to \$\$\$\$.

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 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"

² Neither of the subject properties have an actual address because a street needs to be built to provide access to the subject properties.

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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

The subject properties are ##### and #####-acres in size, respectively, and are adjacent to one another. They are located in a residential neighborhood in CITY-1, and both are adjacent to a property on which a church is located. However, the subject properties have not been developed with utilities and do not currently have street access. One corner of the #####-acre Parcel **26** “touches” the road on which the adjacent church is located and on which homes have been built. However, the amount of Parcel **26**’s land that touches this developed road is insufficient to provide access to either Parcel 4 or Parcel 26. It appears that a road will need to be developed on other undeveloped land adjacent to the subject properties to provide access to them.

A problem, however, has arisen after the 2014 lien date that may affect the road that was being planned to provide access to the subject properties. The subject properties are near a landslide that occurred in CITY-1 in August 2014, which affected several properties that are lower in elevation than the subject properties. The road being planned was supposed to cut across one of the properties on which the landslide occurred. The County indicates that it has talked to the city and that a study is being performed to see if the road can be relocated. However, the city also indicated that it would be November 2015, at the earliest, before the study will be ready.

Taxpayers’ Information. The taxpayers proffer that the subjects’ assessed values each increased more than 400% between 2013 and 2014. Specifically, Parcel **26**’s value increased from \$\$\$\$\$ to \$\$\$\$\$, while Parcel-**4**’s value increased from \$\$\$\$\$ to \$\$\$\$\$. The taxpayers contend that these increases do not reflect the

market increases that occurred in the neighborhood between 2013 and 2014. To establish the subjects' values as of January 1, 2014, the taxpayers ask the Commission to take the subjects' 2013 values and increase them by the average increase in values experienced by other properties in the neighborhood between 2013 and 2014. The taxpayers, however, do not know what the average increase in values experienced by other properties in the neighborhood between these two years is. Nor do the taxpayers recommend any specific values for the Commission to establish for the subject properties for the 2014 tax year.

The taxpayers' argument that the subjects' 2013 assessed values should be used to establish their 2014 values is unpersuasive. The Commission generally does not rely on a property's prior assessed value when determining its current year's value because it is usually unknown if the prior year's value was correct.³ Furthermore, the County contends that the subjects' 2013 assessed values were incorrect because of a mistake that had existed in the County's computer system for a number of years in regards to the two subject properties. The County proffered that when the subject properties were reappraised for the 2014 tax year, the mistake was discovered and corrected, which resulted in 2014 assessed values that were much higher than the subject properties' 2013 assessed values. For purposes of the 2014 reappraisal, the County explained that it valued the two subject properties as "backage" properties that are not currently developable but have the potential for future development.

Furthermore, the County indicates that on the January 1, 2014 lien date, the taxpayers had the two subject properties listed for sale together through the Multiple Listing Service for a total list price of \$\$\$\$\$, which is much higher than the \$\$\$\$\$ sum of their 2014 assessed values (\$\$\$\$\$ for Parcel **26** and \$\$\$\$\$ for Parcel **4**). The County also pointed out that the taxpayers contracted to sell the two subject properties in February 2014. The taxpayers explain that they contracted to sell the two subject properties in February 2014 for \$\$\$\$\$, subject

³ The taxpayers appear to acknowledge that a value assessed by the County may be incorrect. Otherwise, they would not have filed appeals of the subjects' 2014 assessed values.

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to “variables,” one of which was that the price would be reduced if the sellers were required to pay for the road needed to provide access to the subject properties.

Because the sale had not been completed when the nearby landslide occurred in August 2014, the contract was renegotiated. A new contract was signed in July 2015, where the parties agreed to reduce the \$\$\$\$ sales price by \$\$\$\$ to account for the road that would have to be put in. The taxpayers did not provide either of these contracts so that any “variables” in them could be more closely examined. However, from the testimony proffered at the hearing, it appears that even after the landslide, the taxpayers have negotiated to sell the subject properties for \$\$\$\$ (\$\$\$\$ minus \$\$\$\$ for the road), which is higher than the \$\$\$\$ sum of their 2014 assessed values. Given this information, the subjects’ 2013 assessed values do not appear to be reflective of and should not be used to determine the properties’ 2014 values.

The taxpayers also proffered a November 14, 2014 Memorandum that CITY-1 issued in regards to certain lots in Phases 18 and 19 of the nearby SUBDIVISION that were affected by the landslide. The Memorandum indicates that the developer of that subdivision had asked the city to vacate the subdivision so that the assessed values for these properties could be reduced prior to January 2015 to avoid paying large amounts of property taxes on lots that were unusable at that time. The city recommended denying the developer’s request, but indicated that it “is trying to work with the Davis County Assessor to reduce assessed values without going through a formal plat vacation process.” The County admitted that it reduced the 2014 assessed values of some properties affected by the landslide. However, the County stated that it did not reduce the subject properties’ 2014 assessed values because it determined that their values were not diminished by the landslide.

It appears that the County may have reduced the values of some properties affected by the landslide under UCA §59-2-1004.5, which provides for valuation adjustments for value decreases caused by “natural disaster damage.” This reduction may also be what was being referred to in the Memorandum the taxpayers proffered. The subject properties, however, are not located in the subdivision referred to in the Memorandum.

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The landslide did not occur on the subject properties, and no evidence exists to show that the subjects' land was physically harmed because of the landslide.

It is arguable that the subject properties' values may have been negatively affected by the landslide because the landslide appears to have delayed construction of the road that was to provide access to the subject properties. Regardless of whether this is the type of physical damage for which a valuation adjustment may be applied under Section 59-2-1004.5 for the 2014 tax year, it appears that any diminution in the subjects' values because of the landslide did not decrease their values below their 2014 assessed values. Even after the landslide, it appears that the taxpayers have negotiated a contract to sell the two subject properties together for \$\$\$\$\$, which is higher than the sum of the subjects' current 2014 values of \$\$\$\$\$ and \$\$\$\$\$.

Based on the foregoing, the taxpayers have not met their burden of proof to show that the subject properties' 2014 values are too high to reflect their "fair market values." The taxpayers' own testimony about the contracts in which they have entered to sell the subject properties suggests that the properties' current 2014 values may be low. However, before the Commission makes a final determination of the subjects' 2014 values, it should also analyze the County's information.

County's Information. For each subject property, the County proffered an appraisal in which RESPONDENT-1, a County appraiser, had estimated its value as of the January 1, 2014 lien date. For Parcel **26**, the #####-acre parcel, RESPONDENT-1 estimated its 2014 value to be \$\$\$\$\$. Because RESPONDENT-1 appraised value of \$\$\$\$\$ is very close to Parcel **26**'s current value of \$\$\$\$\$, the County asks the Commission to sustain Parcel **26**'s current value of \$\$\$\$\$. For Parcel **4**, the #####-acre parcel, RESPONDENT-1 estimated its 2014 value to be \$\$\$\$\$. Because RESPONDENT-1 appraised value of \$\$\$\$\$ is more than \$\$\$\$\$ higher than Parcel **4**'s current value of \$\$\$\$\$, the County asks the Commission to increase Parcel **4**'s 2014 value to \$\$\$\$\$.

The County used the same four comparables in both of its appraisals for the subject properties. The County explained that it chose comparables that were not on streets, did not have utilities, and with one exception,

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did not have access to a street. None of the comparables are in CITY-1, and they are located between 5 and 16 miles away from the subject properties. The County explained that few properties without street access sell, which required it to use the comparables found in its appraisal. Two of the comparables sold in 2010, while the other two sold in 2014 and 2015. The comparables also varied in size, from #####-acres to #####-acres. The County made three adjustments to the comparables, specifically for time of sale, for location, and for differences in acreage between the comparables and the subject properties.

For a number of reasons, the County's appraisals are suspect. First, the County did not make size adjustments to its comparables to reflect the principle that the unit prices at which larger parcels sell are usually less than the unit prices at which smaller parcels sell. Second, the County did not make an adjustment for the street access that was available for one of its comparables. Third, County Comparable #1, a #####-acre comparable, was purchased to use as horse property and, thus, had a useful purpose at its time of sale. There is no indication that the subject properties could be used as horse property or had any other useful purpose as of the January 1, 2014 lien date. Fourth, County Comparables #2 and #3 were relatively small parcels that were bought by adjacent home owners to increase their lot sizes. There is no evidence to suggest that there would be any demand for the subject properties by an adjacent property owner. Yet, no adjustments for these differences were made in the appraisal.

County Comparable #4 does show that a #####-acre parcel in CITY-2 sold in March 2015 for \$\$\$\$\$. Because this parcel, like the subject properties, is currently without street access but is anticipated to be developed in the future, it suggests that the value of Parcel 26 (the #####-acre parcel) may be lower than \$\$\$\$\$ and that the value of Parcel 4 (the #####-acre parcel) may be higher than \$\$\$\$\$. Parcel 26's current value of \$\$\$\$\$ is lower than \$\$\$\$\$, and Parcel 4's current value of \$\$\$\$\$ is higher than \$\$\$\$\$. However, this comparable is located more than 15 miles away from the subject property and sold more than a year after the lien date. In addition, no

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information was provided to know whether the same difficulties exist to provide a road to this comparable as exist to provide a road to the subject properties.

For these reasons, questions exist as to whether the County's appraised values are better indicators of value than the subject's current 2014 values. The County has not asked the Commission to change Parcel **26**'s current value of \$\$\$\$\$, and neither party has proffered evidence that shows that this value is incorrect. As a result, the Commission should sustain Parcel **26**'s current value of \$\$\$\$\$ for the 2014 tax year.

As to Parcel **4**, the County asks the Commission to increase its value from \$\$\$\$\$ to \$\$\$\$\$. As a result, the County has the same burden that the taxpayers have to show that Parcel **4**'s current value of \$\$\$\$\$ is incorrect and to provide a sound evidentiary basis to support its proposed value. By itself, the County's appraisal of Parcel **4** would be insufficient to meet this burden. The comparables used in the appraisal are located far away from the subject property and have not been adjusted to account for all differences between them and Parcel **4**.

Nevertheless, other evidence that the taxpayers themselves proffered supports the increased value of \$\$\$\$\$ that the County proposes for Parcel **4**. The taxpayers proffered that they have agreed to sell the subject properties together for \$\$\$\$\$, which equates to more than \$\$\$\$\$ per acre. If this sales price of \$\$\$\$\$ per acre is applied to the #####-acre Parcel **4**, it results in a value of \$\$\$\$\$, which is higher than the County's proposed value of \$\$\$\$\$ for this parcel. In addition, the \$\$\$\$\$ sales price is more than the sum of Parcel **26**'s current value of \$\$\$\$\$ and the County's proposed value of \$\$\$\$\$ for Parcel **4**. For these reasons, the County's proposed value of \$\$\$\$\$ for Parcel **4** may still be low.

The evidence is sufficient to show that Parcel **4**'s current value of \$\$\$\$\$ is incorrect and that the County's proposed value of \$\$\$\$\$ is a better reflection of its "fair market value." Accordingly, the Commission should increase Parcel **4**'s value to \$\$\$\$\$ and sustain Parcel **26**'s current value of \$\$\$\$\$.

Kerry R. Chapman

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Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that PARCEL-26 current value of \$\$\$\$ should be sustained and that PARCEL-4 value should be increased to \$\$\$\$ for the 2014 tax year. The Davis 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 _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner