

15-326

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2014

DATE SIGNED: 11-16-2015

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL

EXCUSED: R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER-1 & TAXPAYER-2,</p> <p style="padding-left: 40px;">Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p> | <p>INITIAL HEARING ORDER</p> <p>Appeal No. 15-326</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2014</p> <p>Judge: Chapman</p> |
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER'S, Representative
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 this appeal from the decision of the Davis County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 30, 2015.

At issue is the value at which the subject property should be taxed for the 2014 tax year. The subject is a single-family residence located at SUBJECT ADDRESS in CITY-1, Utah. The subject property was assessed at a fair market value of \$\$\$\$ for the 2014 tax year. The parties agree that the subject's fair market value was \$\$\$\$ as of the January 1, 2014 lien date. They disagree, however, on whether the subject's value should be

reduced for the 2014 tax year pursuant to Utah Code Ann. §59-2-1004.5 because of the subject's proximity to a landslide that occurred in CITY-1 on August 5, 2014.

The County BOE found that the subject property did not qualify for a Section 59-2-1004.5 valuation adjustment and sustained the \$\$\$\$ fair market value at which it was originally assessed for 2014. The taxpayers ask the Commission to find that the subject property qualifies for a Section 59-2-1004.5 valuation adjustment and to reduce its 2014 fair market value to \$\$\$\$ (which would represent a 34% reduction in fair market value). The County asks the Commission to find that the subject property does not qualify for a Section 59-2-1004.5 valuation adjustment and to sustain the subject's current 2014 fair market value of \$\$\$\$.¹

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) (2014)² 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 §59-2-102(36) defines “taxable value” to mean “fair market value less any applicable reduction allowed for residential property under Section 59-2-103.”

UCA §59-2-1004.5 provides for a valuation adjustment for certain decreases in value caused by a natural disaster, as follows:

¹ The County stated that should the Commission find that the subject property meets the requirements of Section 59-2-1004.5 to qualify for a valuation adjustment, the 34% valuation reduction requested by the taxpayers would be reasonable. Neither party, however, addressed how to apply a 34% valuation reduction in accordance with Section 59-2-1004.5(4)(d), which provides for the reduction to “equal . . . the decrease in taxable value of the property multiplied by the percentage of the calendar year remaining after the natural disaster damage occurred.”

- (1) For purposes of this section:
 - (a) "natural disaster" means:
 - (i) an explosion;
 - (ii) fire;
 - (iii) a flood;
 - (iv) a storm;
 - (v) a tornado;
 - (vi) winds;
 - (vii) an earthquake;
 - (viii) lightning;
 - (ix) any adverse weather event; or
 - (x) any event similar to an event described in this Subsection (1), as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (b) "natural disaster damage" means any physical harm to property caused by a natural disaster.
- (2) Except as provided in Subsection (3), if, during a calendar year, property sustains a decrease in taxable value that is caused by natural disaster damage, the owner of the property may apply to the county board of equalization for an adjustment in the taxable value of the owner's property as provided in Subsection (4).
- (3) Notwithstanding Subsection (2), an owner may not receive the valuation adjustment described in this section if the decrease in taxable value described in Subsection (2) is:
 - (a) due to the intentional action or inaction of the owner; or
 - (b) less than 30% of the taxable value of the property described in Subsection (2) before the decrease in taxable value described in Subsection (2).
- (4) (a) To receive the valuation adjustment described in Subsection (2), the owner of the property shall file an application for the valuation adjustment with the county board of equalization on or before the later of:
 - (i) the deadline described in Subsection 59-2-1004(2); or
 - (ii) 45 days after the day on which the natural disaster damage described in Subsection (2) occurs.
- (b) The county board of equalization shall hold a hearing:
 - (i) within 30 days of the day on which the application described in Subsection (4)(a) is received by the board of equalization; and
 - (ii) following the procedures and requirements of Section 59-2-1001.
- (c) At the hearing described in Subsection (4)(b), the applicant shall have the burden of proving, by a preponderance of the evidence:
 - (i) that the property sustained a decrease in taxable value, that:
 - (A) was caused by natural disaster damage; and
 - (B) is at least 30% of the taxable value of the property described in this Subsection (4)(c)(i) before the decrease in taxable value described in this Subsection (4)(c)(i);
 - (ii) the amount of the decrease in taxable value described in Subsection (4)(c)(i); and

- (iii) that the decrease in taxable value described in Subsection (4)(c)(i) is not due to the action or inaction of the applicant.
- (d) If the county board of equalization determines that the applicant has met the burden of proof described in Subsection (4)(c), the county board of equalization shall reduce the valuation of the property described in Subsection (4)(c)(i) by an amount equal to the decrease in taxable value of the property multiplied by the percentage of the calendar year remaining after the natural disaster damage occurred.
- (e) The decision of the board of equalization shall be provided to the applicant, in writing, within 30 days of the day on which the hearing described in Subsection (4)(b) is concluded.
- (5) An applicant that is dissatisfied with a decision of the board of equalization under this section may appeal that decision under Section 59-2-1006.

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”

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 question the parties posed to the Commission is whether the subject property’s 2014 value should be reduced under Section 59-2-1004.5 because of stigma it suffered after a landslide occurred near it on August 5, 2014.³ The subject property is located about 300 feet away from the closest point of the landslide. Thus, neither the subject’s land nor its improvements were damaged by the landslide. However, the subject property is situated

³ Section 59-2-1004.5(2) provides for any valuation reduction to be applied to a property’s “taxable value,” not its assessed value or “fair market value.” Because the subject property was assessed as a primary residential property that qualified for the 45% primary residential exemption, Section 59-2-102(36) provides that its “taxable value” is 45% less than its “fair market value.”

at the bottom of a steep hillside that is similar in steepness to the nearby hillside on which the landslide occurred. As a result, the taxpayers contend that the subject property's value was diminished by 34% due to stigma caused by the nearby landslide.

For the Initial Hearing, the parties agree that the subject's value decreased 34% after the nearby landslide occurred because of stigma. They disagreed, however, on whether a Section 59-2-1004.5 valuation adjustment is allowed for a property, like the subject property, whose land and/or improvements were not damaged by the landslide. One of the requirements that must be met before a property qualifies for a valuation reduction is found in Section 59-2-1004.5(2), which provides that the property's decrease in value must have been "caused by natural disaster damage[.]" "Natural disaster damage" is defined in Section 59-2-1004.5(1)(b) to mean "any physical harm to property caused by a natural disaster." When considered together, these two provisions provide that a property cannot qualify for a valuation reduction unless the decrease in value was caused by any physical harm to the property because of a natural disaster.

The County did not contest the taxpayer's assertion that the nearby landslide is a "natural disaster," as defined in Section 59-2-1004.5(1)(a).⁴ Regardless of whether this particular landslide is a "natural disaster" as defined by the Legislature, the issue the parties asked the Commission to address is whether the subject property's decrease in value was caused by any "physical harm" that it suffered because of the landslide. Given the definition of "natural disaster damage," the County argues that a property owner is required to show that the property's land and/or improvements were damaged to satisfy the "physical harm" portion of the definition. The

4 A "landslide" is not specifically listed as a "natural disaster" in Section 59-2-1004.5(1)(a). In addition, the Commission has not adopted an administrative rule in which it has determined that a "landslide" is a "natural disaster," as it is authorized to do under Section 59-2-1004.5(1)(a)(x). Accordingly, a "landslide" is considered a "natural disaster" only if it also considered one of the events that is specifically listed in the definition. One could argue that because the landslide at issue occurred after heavy rains, it is also considered one of the specifically listed events such as a "storm" or "any adverse weather event." In this decision, however, the Commission need not decide whether the landslide at issue is a "natural disaster" because the taxpayer's appeal is being denied on the basis that another requirement of Section 59-2-1004.5 has not been satisfied.

taxpayers, on the other hand, argue that the term “physical harm” is ambiguous and should be interpreted broadly enough so that value reductions due only to stigma can also qualify for a Section 59-2-1004.5 valuation adjustment.

In *Hercules Inc. v. Utah State Tax Comm’n*, 21 P.3d 231 (Utah Ct. App. 2000), the Utah Court of Appeals addressed the interpretation of a statute. The Court stated that “we first examine the statute’s plain language and resort to other methods of statutory interpretation, only if the language is ambiguous. Accordingly, we read the words of a statute literally . . . and give the words their usual and accepted meaning” (citing *Gull Lab., Inc. v. State Tax Comm’n*, 936 P.2d 1082 (Utah Ct. App. 1997)).⁵ In *Hercules*, the Court also stated that “[w]hen a statute fails to define a word, we rely on the dictionary to divine the “usual meaning”” (citing *State v. Redd*, 954 P.2d 230 (Utah Ct. App. 1998)) (quoting *Gull Lab*).

The Legislature has not defined “physical harm” for purposes of the Section 59-2-1004.5 valuation reduction. As a result, it is appropriate for the Commission to rely on the dictionary to determine its “usual meaning.” *Black’s Law Dictionary* defines the term “physical harm,” as follows: “The words ‘physical harm’ are used throughout the Restatement of Torts to denote the physical impairment of the human body, or of land or chattels. . . . See also Physical injury.” *Black’s Law Dictionary* 1032 (5th ed. 1979). In *Black’s Law Dictionary* at 1032, the term “physical injury” and the word “physical” are also defined. “Physical injury” is defined as “bodily harm or hurt, excluding mental distress, fright, or emotional disturbance.” “Physical” is defined in part to mean “relating or pertaining to the body, as distinguished from the mind or soul or the emotions.” These

⁵ See also *State v. Killpack*, 191 P.3d 17 (Utah 2008), in which the Utah Supreme Court stated that “[t]he best evidence of the legislature’s intent is ‘the plain language of the statute itself. When examining the statutory language, we assume the legislature used each term advisedly and in accordance with its ordinary meaning’” (citing *State ex rel. Z.C.*, 165 P.3d 1206 (Utah 2007)). In *Killpack*, the Court further stated that “[i]f, in reading the statute, the meaning of the language is clear, we need look no further to discern the legislature’s intent.”

definitions clearly establish that “physical harm” is not harm that results from the mind or the emotions and does not include mental distress and emotional disturbance.

The Commission also looks to the definition of “stigma” that the taxpayers proffered for consideration (in the context of environmental risk), which is as follows: “Stigma . . . is generally defined as an adverse public perception about a property that is intangible or not directly quantifiable. It is an additional impact on value, over and above the cost of cleanup or remediation.”⁶ From these definitions, it is clear that cleanup or remediation costs are those needed to repair or remediate the physical damage caused to a property’s land and/or improvements, which are separate from any intangible adverse public perception, or stigma, about a property. Stigma is harm that relates to the mind or the emotions that is addition to, but not included in “physical harm.” Accordingly, the County’s position that a property’s land and/or improvements must suffer damage to be considered “physical harm” is persuasive.

The Commission need go no further than the plain meaning of the words chosen to define “natural disaster damage” to determine whether the Legislature intended for properties that suffer harm only in the form of stigma to qualify for a Section 59-2-1004.5 valuation adjustment. It is clear from the plain meaning of these words that the Legislature intended Section 59-2-1004.5 to apply only to properties whose land and/or improvements suffered damage. Had the Legislature wanted properties that suffered harm only in the form of stigma to also qualify, they could have defined “natural disaster damage” to mean “any harm” caused by the natural disaster. But, it did not. It chose to limit “natural disaster damage” to “any physical harm.”

As stated earlier, the Legislature is assumed to have used each word advisedly. Furthermore, in *Warne v. Warne*, 275 P.3d 238 (Utah 2012), the Utah Supreme Court has stated that “we must give effect to every provision of a statute and avoid an interpretation that will render portions of a statute inoperative.” If the

⁶ Roddewig, *Stigma, Environmental Risk and Property Value: 10 Critical Inquiries*, The Appraisal Journal (Oct. 1996) (internal citations omitted).

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Commission were to find that the definition of “natural disaster damage” was broad enough to include properties that suffered stigma only, the Commission would be giving no effect to the word “physical” that appears in that definition. Such a result would be improper. For these reasons, Section 59-2-1004.5 does not apply to a property that suffers harm only in the form of stigma because of a natural disaster. Accordingly, the Commission should find that the subject property does not qualify for a Section 59-2-1004.5 valuation adjustment for the 2014 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property does not qualify for a Section 59-2-1004.5 valuation reduction for the 2014 tax year. The taxpayers' appeal is denied. 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