15-609
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 2-16-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 15-609 Parcel Nos. PARCEL-24 & PARCEL-9 Tax Type: Property Tax / Locally Assessed Tax Year: 2014 Judge: Chapman

Presiding:
Robert P. Pero, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Member of TAXPAYER
REPRESENTATIVE-3 FOR TAXPAYER, Appraiser
For Respondent: RESPONDENT, Appraiser from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 30, 2015. On December 7, 2015, the Salt Lake County Board of Equalization ("Respondent" or "County BOE") submitted post-hearing rebuttal evidence in regards to appraisals that TAXPAYER ("Petitioner" or "taxpayer") submitted at the hearing.[1] Based upon the evidence and testimony, the Tax Commission hereby makes its:

1 The County stated that it had been allowed to look at the taxpayer's appraisals during a mediation conference held prior to the Formal Hearing, but that it did not receive copies of the appraisals. For this reason and because the taxpayers did not exchange the appraisals with the County prior to the Formal Hearing, the County asked the Commission not to receive the appraisals as evidence at the Formal Hearing. The presiding officers denied the County's request, but gave the County 10 days to submit rebuttal evidence about the appraisals.

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax year at issue is 2014, with a lien date of January 1, 2014.

3. At issue are the fair market values of two adjacent parcels owned by the taxpayer, of whom REPRESENTATIVE-2 FOR TAXPAYER is a member. The first subject property is identified as PARCEL-24 ("Parcel 24" or "Lot 24"). The second subject property is identified as PARCEL-9 ("Parcel 9" or "Lot 9"). The address of both subject properties is SUBJECT ADDRESSES, CITY-1, Utah. Both subject properties are located in the "middle" of the LOOP. Neither is located on a public road.

4. The County BOE sustained the $$$$$ value at which Parcel 24 was assessed for the 2014 tax year. It also sustained the $$$$$ value at which Parcel 9 was assessed for the 2014 tax year. The taxpayer appealed the County BOE's decisions to the Tax Commission.

5. The Commission held a Mediation Conference in this matter on June 30, 2015. Because the matter was not resolved through mediation, it was scheduled for a Formal Hearing.

6. The taxpayer asks the Commission to reduce the value of each subject property to $$$$$. The County asks the Commission to sustain Parcel 24's current value of $$$$$ and Parcel 9's current value of $$$$$.

7. Each of the subject properties is #####-acres in size. Parcel 24 is vacant, while Parcel 9 has an old cabin on it. The cabin on Parcel 9 was built around 1900 and is #####- square feet in size. This cabin is currently uninhabitable because of its poor condition. The County explained that because a cabin is currently located on Parcel 9, it is "grandfathered in," which makes it easier to get a building permit to rebuild

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In addition, on February 5, 2016, the taxpayer submitted additional information for the Commission to consider in this matter. The Commission generally does not receive and consider post-hearing information unless it is requested at the hearing. Nevertheless, the Commission has reviewed this additional information and finds that it would not change the outcome of this decision, as explained in Footnote #14.

or improve the cabin than it would be to get a permit to build a cabin on a vacant lot. Parcel 9 may also have wetlands on it, which would restrict that portion of the lot on which improvements could be built.[2] The evidence, however, does not show that a building cannot be constructed on Parcel 9 because of any wetlands issue because the Army Corp of Engineers has not designated any portion of Parcel 9 as wetlands and because the taxpayer has advertised Parcel 9 for sale as a buildable lot (as will be explained in more detail later in the decision).

8. The taxpayer presented both fair market value arguments and equalization arguments to contest the current values of the two subject lots. These arguments will be addressed separately.

Fair Market Value

9. The parties disagree on whether the two subject properties are "buildable lots" for purposes of determining their fair market values. The taxpayer contends that the subject properties are not buildable lots because there is no recorded easement to access either lot from a public road and because neither lot has water. Given these characteristics, the taxpayer contends that the lots should each be valued at $$$$$ for property tax purposes. The County, on the other hand, contends that the two subject lots are buildable lots because they can be accessed through other properties owned and/or controlled by REPRESENTATIVE-2 FOR TAXPAYER and because the taxpayer marketed both lots for sale in late 2013 as buildable lots with access to water. The County contends that the subjects' current values of $$$$$ and $$$$$ reflect their fair market values as buildable lots. The road access and water access issues need to be addressed in order to determine the subject lots' values.

10. Road Access. The subject lots are not located on a public road. However, they can be accessed through another parcel located on LOOP Road that is owned by an entity that REPRESENTATIVE-2

2 Petitioner's Exhibits 2 and 6; Respondent's Exhibit 2. The stream that flows from the RESORT to LAKE crosses over the southeast corner of Lot 9.

FOR TAXPAYER owns and/or controls. The parcel on LOOP Road is adjacent to Lot 24 and is improved with a parking lot that connects to a private drive that goes to the two subject lots.[3] Because an easement through the LOOP Road parcel to the subject properties has never been recorded, the taxpayer contends that the subject lots must be considered landlocked for valuation purposes. The Commission disagrees. The taxpayers have not shown that a prescriptive easement does not exist to provide access to the subject properties. In addition, in the appraisals of the subject lots submitted by the taxpayer, REPRESENTATIVE-3 FOR TAXPAYER, the taxpayer's appraiser, indicates that each subject lot is accessible through neighboring properties.[4] Furthermore, even if a recorded easement does not exist, the Commission considers the subject lots to have access to a public road through the other lot(s) that are owned by entities which are owned and/or controlled by REPRESENTATIVE-2 FOR TAXPAYER.[5]

11. Furthermore, REPRESENTATIVE-3 FOR TAXPAYER testified that REPRESENTATIVE-2 FOR TAXPAYER also uses one of the subject lots, namely Lot 24, to provide access to other properties he owns and/or controls. REPRESENTATIVE-3 FOR TAXPAYER testimony is supported by a map that was submitted at the hearing, which appears to show that Lot 24 provides access not only to Lot 9, but also to

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3 Petitioner's Exhibit 2; Respondent's Exhibit 2. REPRESENTATIVE-2 FOR TAXPAYER testified that he owns multiple lots in the area and that the parking lot on the CITY-1 Loop Road parcel services various improvements on these lots.

4 Petitioner's Exhibit 7, pp. 2 and 4; Petitioner's Exhibit 8, pp. 2 and 4.

5 The Commission has previously considered the value of a "rear" parcel for which a recorded easement did not exist and which was owned by the same or related party who owned an adjacent parcel through which access to a public road was available. In such cases, the Commission has valued the rear parcel as a parcel with access to a public road and not as a landlocked parcel. *See USTC Appeal No. 11-1977* (Findings of Fact, Conclusions of Law, and Final Decision Jul. 22, 2013); *USTC Appeal No. 11-1978* (Findings of Fact, Conclusions of Law, and Final Decision Jul. 22, 2013); *USTC Appeal No. 14-1020* (Initial Hearing Order Jun. 5, 2015); and *USTC Appeal No. 14-1021* (Initial Hearing Order Jun. 5, 2015).

Redacted copies of these and other selected decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

another lot in the "middle" of the LOOP on which two cabins are located and which is owned by an entity that is owned and/or controlled by REPRESENTATIVE-2 FOR TAXPAYER.[6]

12. Finally, the County submitted Multiple Listing Service ("MLS") information showing that the two subject lots were being marketed for sale in the latter half of 2013 as lots that could be accessed.[7] The MLS information shows that Lot 24 was listed for sale at $$$$$. The listing not only indicates that culinary water is available for Lot 24, but also that Lot 24 is "in a prime location in the heart of Historic CITY-1[,]" that it is a "flat lot with great views and easy year round access[,]" and that it "is in the middle of the CITY-1 Chalets complex[.]" The listing also indicates that "[t]he Seller of this lot owns most of the surrounding parcels and will cooperate with Buyer to perfect access, snow removal and other agreements which may be required." Based on the foregoing, Lot 24 is considered to be a lot with access to a public road for valuation purposes.

13. The MLS information also shows that Lot 9 was listed for sale in the latter half of 2013 at $$$$$. The MLS listing not only indicates that culinary water is available for Lot 9, but also that Lot 9 has "[a]ccess easements in place." It also indicates that Lot 9 is "in the heart of CITY-1 with views all around[,]" that its "[u]nobstructed view orientations are towards CITY-1 Resort[,]" and that it has "[e]asy year round access." Based on the foregoing, Lot 9 is also considered to be a lot with access to a public road for valuation purposes.

14. Access to Water. The parties also disagree on whether the subject lots should be valued as lots with access to water as of the lien date. REPRESENTATIVE-2 FOR TAXPAYER testified that he has owned

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6 Petitioner's Exhibit 2 (This exhibit contains a map on which REPRESENTATIVE-2 FOR TAXPAYERdrew in the private roads or drives accessing the various lots that he owns and/or controls). One of the private drives is located on the southern portion of Lot 24 and provides access to Lot 9, which is situated directly east of Lot 24. Another of the private drives appears to go through the northwestern corner of Lot 24 to the lot with two cabins, which is situated directly north of Lot 24.

7 Respondent's Exhibit 1, pp. 2 and 6.

multiple lots in the CITY-1 area since 1977 and that getting water for lots has always been a problem because of the limited number of water shares available. He explained that water in CITY-1 is provided by COMPANY-1 ("COMPANY-1"), which is authorized by its Articles of Incorporation to issue only ##### water shares entitling a shareholder to one residential connection per share.[8]

15. The County contends that the two subject lots have access to water because they were purchased as lots with water in 2006 and because the taxpayer was marketing them for sale as lots with water in the latter half of 2013. As previously mentioned, both subject lots were marketed for sale in the latter half of 2013 as lots with "culinary water" available. In addition, the 2013 MLS listings suggest that both subject properties are buildable lots. The listing for Lot 9 indicates that "there is plenty [of] buildable space on the lot[,]" and the listing for Lot 24 indicates that it is a lot that is "[e]asy to build on[.]"[9] The County also submitted another MLS listing showing that Lot 9 was marketed for sale in 2009 at a list price of $$$$$. The 2009 listing indicated that Lot 9 can be built on because it has one water share.[10]

16. The County also submitted a letter written by NAME-1 that is dated January 30, 2015.[11] In the letter, NAME-1 indicates that he has entered into an agreement with REPRESENTATIVE-2 FOR TAXPAYER to purchase the two subject lots and "that our contract to purchase these lots would be non-existent if they didn't have the water shares." NAME-1 also indicates that "[t]he value in the lots is truly the water shares" and that he may not use the lots if he decides to "transfer the water shares to a better located lot." NAME-1 further stated that "[o]ther lots in the canyon that are near the road and have no water share can be purchased for $$$$$[to] $$$$$[.]"

8 Petitioner's Exhibit 1.
9 Respondent's Exhibit 1, pp. 2 and 6.
10 Respondent's Exhibit 1, p. 5.
11 Respondent's Exhibit 1, p. 7.

17. The dates of any contracts between the taxpayer and NAME-1 for the purchase of the two subject lots are unknown. In addition, the sales prices agreed to by the taxpayer and NAME-1 for the two subject lots are also unknown.[12] REPRESENTATIVE-2 FOR TAXPAYER did not disclose this information at the hearing. Although REPRESENTATIVE-2 FOR TAXPAYER testified that the sale of the two subject properties had not yet gone through as of the date of the Formal Hearing, he did not refute NAME-1 statement that their contract was for two lots with access to water. When the listings from 2013 are considered in concert with the statements that NAME-1 made in his January 30, 2015 letter, these documents indicate that both subject lots had access to water as of the 2014 lien date.

18. The County also submitted MLS information showing that Lot 9 sold for $$$$$ in October 2006 and that Lot 24 sold with another parcel for $$$$$ in October 2006.[13] REPRESENTATIVE-2 FOR TAXPAYER indicated that each of the 2006 sales came with a water share, which he later transferred to a different entity.[14] REPRESENTATIVE-2 FOR TAXPAYER stated that he purchased the two subject lots in

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12 In his letter, NAME-1 also states that "[t]he value of a building lot with water shares is [approximately $$$$$], so the water shares could easily be valued at [$$$$$ each]." The County contends that this statement indicates that NAME-1 agreed to purchase each subject lot with access to water for $$$$$. NAME-1 statement, however, refers to "values" of lots in general and not to the "sales prices" of the subject lots. As a result, while NAME-1 letter suggests that he may have paid around $$$$$ for each subject lot, it does not indicate the actual prices he agreed to pay for them. In addition, NAME-1 letter is insufficient to show that a LAKE water share has a value of $$$$$.

13 Respondent's Exhibit 1, pp. 3-4.

14 As mentioned in Footnote #1, the taxpayer submitted post-hearing information on February 5, 2016. This information shows that COMPANY-2 ("COMPANY-2") owned two LAKE water shares as of January 20, 2012. REPRESENTATIVE-2 FOR TAXPAYER contends that he transferred ownership of the two water shares that he had acquired when he purchased Lots 9 and 24 in 2006 to COMPANY-2. The taxpayer also provided information from the Utah Department of Commerce and from COMPANY-2's Articles of Incorporation to show that he was not the registered agent, manager, or organizer of COMPANY-2. However, one of documents from the Utah Department of Commerce shows a filing date of January 14, 2013 at the top. At the bottom of this document is printed "REPRESENTATIVE-2 FOR TAXPAYER 01/14/2013." It is unknown what relationship REPRESENTATIVE-2 FOR TAXPAYER has, if any, with COMPANY-2 or its registered agent, manager, or organizer. REPRESENTATIVE-2 FOR TAXPAYER contends that this information is sufficient to show that the subject properties did not have access to water as of the 2014 lien date. It is unknown who owns the two water shares that COMPANY-2 acquired on January 20, 2012, because

2006 to get their water. The taxpayer did not provide any information to show what entity owned these two water shares as of the lien date and what properties, if any, that the water shares were being used for. Regardless, it is clear that the subject properties were being offered for sale with access to water in the latter half of 2013 and that NAME-1 contracted to purchase the subject properties as lots with access to water sometime between the latter half of 2013 and early 2015.

19. The taxpayer contends that it does not matter that the subject properties were offered for sale in 2013 as lots with access to water because water shares are personal property that cannot be considered when determining the value of real property. The County, however, contends that regardless of whether a water share is personal property, the value it adds to a lot when the water share is "in place" must be considered when determining the lot's value. The Commission has addressed similar issues in prior appeals, which may provide some insight on whether the two subject lots should be valued as lots with access to water or lots without access to water.

20. In *USTC Appeal No. 13-606* (Initial Hearing Order Jan. 17, 2014), the Commission considered the value of a recreational cabin located near a ski resort. On the lien date at issue, the cabin had access to water through a water share. The property owner argued that the cabin should be valued as having no water because he could sell the water share or move it to another property and leave the cabin dry. In its decision, the Commission acknowledged that it had previously found that a share of stock in a water company that is "freely transferable separately from the property and from which no water is being used for any property, cabin, or other improvement, is intangible and its value should not be included in the value of the real

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the information the taxpayer provided also shows that COMPANY-2's registration has expired for failure to file renewal. Regardless, this post-hearing information does not show that these or other water shares were not available to provide water to Lots 9 and 24 in late 2013, when the subject lots were advertised for sale as lots with access to culinary water.

property."[15] Nevertheless, the Commission valued the cabin as a property with access to water because the property owner had not shown that his water share could be sold or transferred once it was "attached."

21. In *USTC Appeal Nos. 03-1174, 04-01219, & 05-0132* (Order Dec. 5, 2005), the Commission considered the value of another recreational cabin near a ski resort. The property owner in that case had owned and used one water share to provide water to the cabin until April 2002, when the owner gifted the water share to an LLC owned by relatives. After making the gift, the property owner stated that the cabin was without water. To support this contention, the property owner provided a letter from the water company indicating that because the property owner transferred his water share, he is not allowed to connect his cabin to the water system until such time that the property owner can demonstrate ownership or lease rights to a water share. Because of the letter from the water company, the Commission valued the property as a lot with access to water prior to the April 2002 date of the gift and as a lot without access to water subsequent to the April 2002 date of the gift.

22. In *USTC Appeal No. 10-0292* (Initial Hearing Order Dec. 30, 2010), the Commission considered a property in a rural county that had a home on it that was in such disrepair that it was "not livable" (i.e., it had a dirt floor and no doors or windows). The property owner, however, owned a water share that could have been used with the property. The Commission found that the property owner's "water share should not be included in the overall value" of the property, in part, because the property owner's "ownership of the water share is separate from the land."

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15 The language that is quoted is first found in *USTC Appeal No. 97-0544* (Order 1997), a case in which the Commission considered the value of a vacant lot in a recreational area. Even though the property owner owned a water share, the Commission found that the vacant lot should be valued as though it had no water rights because the water share was not "attached" to the property. The decision for *Appeal No. 97-0544* has not been redacted, nor is it found on the Commission's website. Nevertheless, the Commission has relied on the language quoted from this decision in a number of subsequent cases, and the decisions in these cases have been redacted and are on the Commission's website.

23. The cases discussed in the three preceding paragraphs involved properties with structures on them. Besides *Appeal No. 97-0544* (which was mentioned in a prior footnote), the Commission has considered the water share issue in another case involving a vacant lot. In *USTC Appeal No. 10-1401* (Findings of Fact, Conclusions of Law, and Final Decision Jul. 7, 2011), the Commission considered the value of a vacant lot in a recreational canyon where the property owner also owned a water share and where the property owner had listed the property for sale as having access to water. The Commission valued that property as a lot without access to water, in part, because the property owner submitted a letter from the water company president indicating that "[a]ccording to our records, there is no water share associated with the [property]." The fact that this property owner had listed the property for sale as a lot with access to water was not determinative. In addition, the fact that the property was vacant was not determinative. What the Commission found to be determinative was that the property owner showed that the water company did not have any records showing that there was a water share associated with the lot.

24. In the instant case, there appears to be a water share associated with each subject lot as of the 2014 lien date because of the manner in which they were listed for sale in the latter half of 2013 and later contracted to sell. Furthermore, the taxpayer has not submitted a letter from COMPANY-1 indicating that as of the lien date, no water share was associated with either of the subject lots or that the taxpayer was not allowed to connect the subject lots to their water system until such time that it demonstrated ownership or lease rights to water shares. In his appraisals, REPRESENTATIVE-3 FOR TAXPAYER indicates that each subject lot "has availability to culinary water through the COMPANY-1," but indicates that water shares "are not assigned to a site, until that site is improved."[16] If REPRESENTATIVE-3 FOR TAXPAYER statement is correct, it is arguable that a water share is assigned to Lot 9, which is improved with a cabin.[17] However,

16 Petitioner's Exhibit 7, p. 2; Petitioner's Exhibit 8, p. 2.

17 Admittedly, the cabin on Parcel 9 was old and uninhabitable as of the lien date. However, when the

REPRESENTATIVE-3 FOR TAXPAYER has not provided any documents or other evidence to support his claim that a water share is not "assigned" until the site is improved. In his appraisals, REPRESENTATIVE-3 FOR TAXPAYER also indicates that each subject lot will not be able to be improved until "the owner acquires water rights that can be connected to the site."[18] However, both subject lots were advertised as lots with access to culinary water in the latter half of 2013, and no evidence has been submitted from COMPANY-1 to show that either of the subject lots could not have been connected to its water supply as of the lien date.

25. Without such evidence, the Commission concludes that the subject lots had access to water and were buildable lots as of the lien date. While a water share itself is not subject to taxation, it is reasonable to assume that the value of a lot is enhanced when it has access to water and is a buildable lot. This enhanced value is not necessarily the same as the value of a water share.

26. Subject Lots' Values. Having established that both subject lots should be valued as buildable lots with road access and access to water, the Commission can now analyze and determine the relevancy of the parties' valuation evidence. The taxpayer contends that the subject lots have each been assessed a value of $$$$$ since 2009[19] and contends that the County has not shown that it was appropriate to raise their assessed values to $$$$$ (for Lot 24) and $$$$$ (for Lot 9) for the 2014 tax year. The Commission, however, generally does not establish a property's current year's value on the basis of a prior or subsequent year's value because there is usually no evidence to show whether the prior or subsequent year's value was correct. No evidence was submitted to show that the subject lots' prior years' values were correct for years between and including 2009 and 2013.

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taxpayer advertised Lot 9 for sale in late 2013, its MLS listing indicated that the "[p]roperty has [a] cabin on it built in 1897." Respondent's Exhibit 1, p. 5.

18 Petitioner's Exhibit 7, p. 4; Petitioner's Exhibit 8, p. 4.

19 Petitioner's Exhibit 4.

27. Furthermore, it appears that lot values in the CITY-1 area may change from year to year depending on whether they have access to water for any given year. RESPONDENT, a Salt Lake County appraiser, testified that the County lowered the subject lots' values some years ago when it understood that the water shares associated with the lots had been sold. He testified, however, that the County increased the subjects' values in 2014 when it saw the listings from the latter half of 2013 and discovered that each subject lot now had access to water. As a result, it is not clear that the subject lots' prior values would necessarily relate to their 2014 values. For these reasons, the Commission prefers to establish the subject lots' current year's values on the basis of evidence that is relevant to the 2014 lien date. As a result, the values assessed to the subject lots for prior years are not useful in establishing their 2014 values.

28. The taxpayer submitted appraisals of the subject lots, in which REPRESENTATIVE-3 FOR TAXPAYER estimated the value of each subject lot to be $$$$$ as of April 20, 2015 (approximately 20 months after the 2014 lien date).[20] In his appraisals, REPRESENTATIVE-3 FOR TAXPAYER compared each subject lot to three comparable sales of vacant lots located between two and three miles down CANYON from CITY-1 in the canyon's (X) area. The same three comparables were used in both appraisals. The three comparables sold in 2013 and 2014 for prices of $$$$$ (Comparable #1, a #####-acre lot), $$$$$ (Comparable #2, a #####-acre lot), and $$$$$ (Comparable #3, a #####-acre lot).

29. REPRESENTATIVE-3 FOR TAXPAYER explained in his appraisals that he limited his comparables to ones in CANYON that were sold as lots without water.[21] REPRESENTATIVE-3 FOR TAXPAYER indicated that Comparables #1 and #2 were accessible by a dirt road and had access to utilities and that Comparable #3 did not have access to utilities. REPRESENTATIVE-3 FOR TAXPAYER only made

20 Petitioner's Exhibits 7 and 8.

21 REPRESENTATIVE-3 FOR TAXPAYER testified that there were no sales of lots without water near CITY-1. It is unknown whether REPRESENTATIVE-3 FOR TAXPAYER considered the contracts the taxpayer entered into to sell the two subject lots to NAME-1 when he made this statement.

one adjustment to each of his comparables, specifically to account for differences in sizes between the subject lots and the comparables. After making this single adjustment to each comparable, REPRESENTATIVE-3 FOR TAXPAYER derived adjusted sales prices of $$$$$, $$$$$, and $$$$$ for the three comparables. On the basis of these adjusted sales prices, REPRESENTATIVE-3 FOR TAXPAYER estimated a value of $$$$$ for each of the subject lots.[22]

30. In its post-hearing submission to rebut the taxpayer's appraisals, the County criticized the taxpayer's appraisals because REPRESENTATIVE-3 FOR TAXPAYER used comparables that were in "the less desirable area of (X)" when closer lot sales were available. In addition, the County indicated that none of the three comparables were advertised as buildable lots and that all three of the comparables are steep parcels that were purchased by neighboring property owners as buffer areas for their existing cabin properties. Furthermore, the County contends that REPRESENTATIVE-3 FOR TAXPAYER did not properly consider the value that Parcel 9's existing cabin adds to its value because it is grandfathered in as a buildable lot.

31. At the hearing, RESPONDENT also criticized REPRESENTATIVE-3 FOR TAXPAYER appraisals because no adjustments were made to account for the comparables' less desirable locations and for other inferior characteristics. At the hearing, the County submitted County assessment records to show that REPRESENTATIVE-3 FOR TAXPAYER three comparables are inferior to the subject lots.[23] The County's information shows that Comparable #1 has been classified as residual acres, that Comparable #2 is steep and situated behind power lines, and that Comparable #3 is a backage lot with access and topography issues.

32. Because of the dissimilarities between the subject properties and the comparables used in the taxpayer's appraisals and because REPRESENTATIVE-3 FOR TAXPAYER did not make adjustments for their differences, the taxpayer's appraisals are not convincing. Accordingly, they do not show that each of the

22 Petitioner's Exhibit 7, p.3; Petitioner's Exhibit 8, p. 3.

subject lots' values is $$$$$ as of April 20, 2015, the effective date of both appraisals. In addition, the appraisals do not show that the $$$$$ value proposed by the taxpayer for each of the subject lots is a reasonable estimate of either lot's value as of the January 1, 2014 lien date.

33. The County did not prepare and submit a formal appraisal report in which the subject lots' values were estimated. Instead, the County submitted unadjusted comparables (two sales and one listing) in the CITY-1 area to support the subject lots' current values of $$$$$ and $$$$$.[24] The two comparable sales sold in March 2014 and December 2014, one for $$$$$ (a #####-acre lot) and the other for $$$$$ (a #####-acre lot). Both of these comparable sales are located on ROAD, which the County indicated was in CITY-1 west of the LOOP. The MLS listing for the lot that sold for $$$$$ provides little information about the property and does not indicate whether it had access to water or other utilities when it sold. On the other hand, the MLS listing for the #####-acre lot that sold for $$$$$ indicates that this property had water and other utilities "all in place" and had been approved to be built on at the time of sale. The comparable listing is #####-acres in size and was listed for sale in September 2014 for $$$$$. It is located in CITY-1 to the east of the LOOP. The MLS information for the listing shows that it had culinary water available and that it was a buildable lot.

34. Unfortunately, little, or no, information is known about the County's comparable that sold for $$$$$. In addition, the County has not adjusted its comparables to show how these sales and listing prices may relate to the subject lots' values. Nevertheless, the County's three comparables suggest that lots in the immediate CITY-1 area sell for at least $$$$$. The taxpayer has not provided any sales to show that *any* lot in CITY-1, much less a buildable lot in CITY-1, has sold for a price anywhere near the $$$$$ amount it proposes for the subject lots.

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23 Respondent's Exhibit 1, pp. 12 and 14.
24 Respondent's Exhibit 1, pp. 8-10.

35. For these reasons, the taxpayer's evidence is insufficient to show that the current value of either subject lot is incorrect. In addition, the taxpayer's evidence is insufficient to show that the $$$$$ value it proposes for each subject lot is a better reflection of their "fair market values" than their current values.

36. The Commission also notes that the subject lots' current values of $$$$$ and $$$$$ are significantly less than the $$$$$ and $$$$$ values at which they were listed for sale in late 2013 and that these assessed values may also be less than the prices at which the taxpayer contracted to sell them to NAME-1. Furthermore, the subject lots' current values are also significantly less than the $$$$$ and $$$$$ prices at which two other vacant lots with access to water in the immediate CITY-1 area sold in 2014. As a result, it is possible that the subject properties' current values already reflect whatever discounts may be necessary to ensure that the value of a water share is not taxed, even if they had been determined to be lots without access to water as of the 2014 lien date. The taxpayer's evidence is insufficient to show otherwise.

37. For 2014, the "fair market value" of Lot 24 is $$$$$, and the "fair market value" of Lot 9 is $$$$$.

Equalization

38. The Commission has determined that the 2014 "fair market value" of Lot 24 is $$$$$ and that the 2014 "fair market value" of Lot 9 is $$$$$. Nevertheless, pursuant to Utah Code Ann. §59-2-1006(4)(b), the subjects' values may be reduced for equalization purposes if evidence shows that either value deviates more than 5% from the values at which other comparable properties are assessed.[25]

39. The taxpayer argues that both of the subject lots' current values are inequitable when compared to the assessed values of other comparable properties. For its equalization argument, the taxpayer

25 *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

submitted the 2014 assessed values of six vacant lots in or near CITY-1 that the taxpayer contends are comparable to the subject lots.[26] The taxpayer's six equalization comparables were all assessed at values that are less than $$$$$ per acre. As a result, the taxpayer contends that the current values of the #####-acre subject lots (which equate to $$$$$ per acre for Lot 24 and $$$$$ per acre for Lot 9) is inequitably high and should be reduced to the $$$$$ value (which equates to $$$$$ per acre) it is proposing.

40. The County contends that the six properties on which the taxpayer is relying are too dissimilar to the subject properties to be convincing equalization comparables. The County submitted information from County assessment records to show that most of these comparables are inferior to the subject lots because they are not buildable lots with access to water.[27] The County did not provide any information to show that other buildable lots with access to water in CITY-1 are assessed for values as high as the subject lots' current values. Nevertheless, the County asks the Commission to find that the taxpayer's equalization argument is unfounded and to sustain the subject lots' current values.

41. Each of the taxpayer's six comparables will be addressed separately. The taxpayer's first equalization comparable is identified as the "NAME-2" property. It is #####- acres in size and was assessed a value of $$$$$ in 2014.[28] The County's information about this property show that it is "steep," has "no water," and is "coded as dry."[29] The taxpayer also admitted at the hearing that this parcel does not have water. Because the subject lots are buildable lots with access to water, the NAME-2 property is too dissimilar and inferior to the subject lots to be a reliable equalization comparable. As a result, it will not be considered when determining whether the current values of the subject lots are equitable.

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26 Petitioner's Exhibit 5.
27 Respondent's Exhibit 3.
28 Petitioner's Exhibit 5, p. 1.
29 Respondent's Exhibit 3, p. 1.

42. The taxpayer's second equalization comparable is identified as the "NAME-3" property. It is #####-acres in size and was assessed a value of $$$$$ in 2014.[30] This property is adjacent to and east of Lot 9. The County's information about this property indicates that it is landlocked and that the "entire parcel is designated wetlands by Army Corps of Engineers."[31] The taxpayer has not refuted the County's evidence that the entire property is designated wetlands and is landlocked. In addition, the taxpayer admits that the property does not have water. Because the subject lots are not designated as wetlands but are instead buildable lots with road access and access to water, this property is too inferior and dissimilar to the subject lots to be considered a reliable equalization comparable. As a result, it will not be considered when determining whether the current values of the subject lots are equitable.

43. The taxpayer's third equalization comparable is identified as the "NAME-4" property. It is #####-acres in size and was assessed a value of $$$$$ in 2014.[32] The County did not provide any documentary evidence about this property, and RESPONDENT gave no testimony about it. REPRESENTATIVE-2 FOR TAXPAYER, however, testified that this property has no water and is located north of the RESORT-2 about one mile away from the subject properties. In addition, the information from County assessment records that the taxpayer submitted about this property shows that the County has classified about half of it as "secondary acres" and the remaining half as "residual acres." No portion of the property appears to have been classified as a buildable lot. Because no portion of this property appears to be a buildable lot with access to water, it is too inferior and dissimilar to the subject lots to be a reliable equalization comparable. As a result, it will not be considered when determining whether the current values of the subject lots are equitable.

30 Petitioner's Exhibit 5, p. 2.
31 Respondent's Exhibit 3, p. 4.
32 Petitioner's Exhibit 5, p. 3.

44. The taxpayer's fourth equalization comparable is identified as the "NAME-5" property. It is #####-acres in size and was assessed a value of $$$$$ in 2014.[33] The County's information about this parcel indicates that it has no water and that one cannot "build on or use [the] property due to wet lands (sic) and creek."[34] In addition, RESPONDENT testified that the property could not be built on because of the wetlands associated with it. The taxpayer admitted at the hearing that this property does not have water, but contends that it could be built on if it had water. The information from County records that the taxpayer submitted about this property shows that the County has classified the property as "secondary acres," not as a buildable lot. The taxpayer, who has the burden of proof, has not submitted sufficient evidence to show that this parcel could be built on if it had access to water. For these reasons, this property is not considered a buildable lot. Because the subject lots are buildable lots with access to water, this property is too dissimilar and inferior to the subject lots to be a reliable equalization comparable. As a result, it will not be considered when determining whether the current values of the subject lots are equitable.

45. The taxpayer's fifth equalization comparable is identified as the "NAME-6" property.[35] It is #####- acres in size and was assessed a value of $$$$$ in 2014.[36] The County's information about this parcel does not provide any information about its features other than to indicate that it has a "stream on one side."[37] At the hearing, RESPONDENT admitted that he had no information about this property to suggest why its value was only $$$$$. REPRESENTATIVE-2 FOR TAXPAYER, however, testified that the property has no water. In addition, the information from County assessment records that the taxpayer submitted about this property shows that the County has classified the property as "secondary acres," not as a buildable lot. The

33 Petitioner's Exhibit 5, p. 4.
34 Respondent's Exhibit 3, p. 1.
35 This property is owned by COMPANY-3, which may be another entity that REPRESENTATIVE-2 FOR TAXPAYER owns and/or controls.
36 Petitioner's Exhibit 5, p. 5.
37 Respondent's Exhibit 3, p. 2.

taxpayer has not submitted evidence to show that this parcel could be built on once it obtained access to water. Because the subject lots are buildable lots with access to water, this property is too dissimilar and inferior to the subject lots to be a reliable equalization comparable. As a result, it will not be considered when determining whether the current values of the subject lots are equitable.

46. The taxpayer's last equalization comparable is identified as the "NAME-6 property. It is #####- acres in size and was assessed a value of $$$$$ in 2014.[38] The County's information about this parcel indicates that its "water system needs major repairs," that it "has creek down center of lot," and that it has wetlands "based on letter from Army Corp of Engineers."[39] RESPONDENT testified that the property is inferior to the subject lots because neither of the subject lots has been designated as unbuildable wetlands and because portions of both subject lots can be built on. REPRESENTATIVE-2 FOR TAXPAYER testified that this property does not have water. For these reasons, this property appears too dissimilar and inferior to the subject lots to be a reliable equalization comparable. However, the information from County assessment records that the taxpayer submitted about this property shows that the County has classified the property as a "primary lot," which suggests that it, like the subject lots, is a buildable lot. Even if this property is a buildable lot, it is still inferior to the subject lots because it does not appear that it has access to water.

47. Furthermore, even if the NAME-6 property is a buildable lot and is similar enough to the subject properties to be considered a reliable equalization comparable, it is the only one of the properties that the taxpayer provided that would be "comparable" to the subject lots for equalization purposes. The Utah Supreme Court has found that providing one such comparable is insufficient to show that a property whose value is at issue has been inequitably assessed.[40] The Utah Supreme Court has found that a taxpayer must

38 Petitioner's Exhibit 5, p. 6.
39 Respondent's Exhibit 3, p. 4.
40 *See Mountain Ranch Estates v. Utah State Tax Commission*, 2004 UT 86 (2004), in which the Court found that a property owner whose property was assessed at fair market value could not establish a violation of

provide more than one comparable property having an assessed value that is inequitable in comparison to the value of the property at issue.

48. Based on the foregoing, the taxpayer's equalization evidence is insufficient to show that the current values of the subject lots are inequitable in comparison to the assessed values of other "comparable" properties. Accordingly, the Commission should deny the taxpayer's appeal and sustain Lot 24's current value of $$$$$ and Lot 9's current value of $$$$$.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll 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."

2. 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 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.

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

> (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. . . .
> . . . .
> (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

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its constitutional right to a uniform and equal assessment without providing evidence of more than one comparable property with a valuation disparity.

> (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.
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> . . . .

4. 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).

CONCLUSIONS OF LAW

1. For 2014 property tax purposes, Subsection 59-2-103(1) provides for each of the subject properties to be taxed on the basis of their "fair market value" as of January 1, 2014. Subsection 59-2-102(12) defines "fair market value" as "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."

2. The County does not request a value that is different from the $$$$$ value that the County BOE established for Parcel 24 or the $$$$$ value that it established for Parcel 9. Accordingly, these values have the presumption of correctness. As a result, the taxpayer has the burden of proof and must not only demonstrate that the current values of the subject lots are incorrect, but also provide the Commission with a sound evidentiary basis for reducing the values of each of the subject lots to the $$$$$ amount it proposes.

3. For purposes of establishing the "fair market value" of each subject lot, the Commission has determined that each lot is a buildable lot with road access and access to water. As explained earlier in the decision, the taxpayer's evidence is insufficient to show that the current value of either subject property does

not reflect its "fair market value" or to provide a sound evidentiary basis to show that the $$$$$ value it proposes is a better reflection of "fair market value." Accordingly, the taxpayer's "fair market value" argument fails.

4. Furthermore, as also explained earlier in the decision, the taxpayer's equalization argument fails because the properties the taxpayer submitted as evidence to show an inequity of assessment are too inferior and dissimilar to the subject lots to be convincing equalization comparables. Accordingly, the taxpayer's equalization argument also fails.

5. Because the taxpayer has not shown that the current values of the subject lots are too high with either its "fair market value" or equalization argument, the Commission should sustain Parcel 24's current value of $$$$$ and Parcel 9's current value of $$$$$.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains PARCEL -24 current value of $$$$$ and PARCEL-9 current value of $$$$$ for the 2014 tax year. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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. §§59-1-601et seq. and 63G-4-401 et seq.