

APPEAL # 22-1933
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 4/5/2024
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, AND J.FRESQUES
EXCUSED/RECUSED: J.VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 22-1933</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2022</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER
For Respondent: RESPONDENT'S REP-1, COUNTY-1 Assessor
RESPONDENT'S REP-2, Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 18, 2024, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

I. General Information

1. The issue before the Tax Commission at the Formal Hearing is Petitioner’s (“Property Owner’s”) appeal of the decision issued by the County Board of Equalization in regards to the assessed value of parcel no. ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is January 1, 2022.

3. The County Assessor’s original assessed value as of the January 1, 2022, lien date was \$\$\$\$\$ (\$\$\$\$\$ per square foot). That value was upheld by the County Board of Equalization (“County”) for tax year 2022. At the hearing, the Property Owner requested a reduction to \$\$\$\$\$ per square foot¹ for the subject property. At the hearing, the County also recommended a reduction in value to \$\$\$\$\$ for the subject property as of the lien date January 1, 2022. The County’s requested value of \$\$\$\$\$ was \$\$\$\$\$ per square foot, rounded.

4. The value of the subject property was not appealed to the County in tax year 2021. Prior to tax year 2021, there had been different parcel configurations that had encompassed the land that is now the subject property and other contiguous properties. Therefore, the subject property did not exist in its current configuration prior to tax year 2021, so there were no prior years’ appeals for the subject property.

5. The subject property is located at approximately ADDRESS-1. It is a ##### acre vacant parcel. The subject parcel is part of the LOCATION-1 subdivision.

6. Both parties indicated that there were some soil issues with bad and poorly compacted soil, bad land fill dirt and debris and drainage problems that would increase the costs to construct on the subject property and, therefore, negatively affected the value as of the January 1, 2022 lien date. It was because of these soil issues that the County recommended the lower value for the subject property at the hearing.

¹ The subject property is ##### acres in size, or ##### square feet. Multiplying \$\$\$\$\$ times ##### equals a value of \$\$\$\$\$.

II. Property Owner's Evidence

7. At the hearing, the Property Owner's representative testified that an offer to purchase the subject property and some additional land went under contract in January 2022 for the price of \$\$\$\$\$. The total square footage for the combined property under contract was #####. The Property Owner testified this was a price of \$\$\$\$\$ per square foot. The Property Owner stated that the sale fell through after a geotechnical report detailed the soil problems and the additional costs in constructing on the subject property. The Property Owner testified that after the geotechnical report was issued, he had made a counter offer of \$\$\$\$\$, or \$\$\$\$\$ per square foot for this combined property, but the prospective buyer would not accept the counter offer. The Property Owner testified that the subject property could have been developed for townhomes if the builder had constructed the homes with basements, but that was an additional cost, and the prospective buyer had cancelled the sale.

8. The Property Owner offered as evidence at the hearing a soil report prepared by Earthtec Engineering dated DATE. This report indicated that seven test pits were drilled on the subject property and neighboring properties and found soil issues including debris and poorly compacted soils and fill.²

9. The Property Owner also offered as evidence at the hearing a geotechnical report prepared by COMPANY-1, which was dated DATE. The report had been prepared to analyze a proposed townhome subdivision at the site that included the subject property and other neighboring land. That report concluded:³

Highly collapsible/compressible soils were encountered which may need to be overexcavated and recompacted as outlined in this report. Large amounts of undocumented fill was encountered at the site which will need to [be] excavated as outlined in this report.

The report detailed the actions that would be needed to be taken for the depth of the excavation and the required basements or foundations in order to construct townhouses on the subject property. The report did not provide a bid for the costs to take these recommended actions.

10. The Property Owner also submitted an email from PERSON-1. The email was dated DATE, and was addressed to REDACTED EMAIL. The email stated, in its entirety:⁴

PROPERTY OWNER here is the cost to remove and replace the area of #####X
at a depth of #####ft.

² Petitioner's Exhibit 2.

³ Petitioner's Exhibit 3.

⁴ Petitioner's Exhibit 1.

Remove and haul off \$\$\$\$\$
Replace with granular fill \$\$\$\$\$
Thanks, PERSON-1

11. The Property Owner did not submit an appraisal, comparable sales or any other market reports to support that land for comparable property impacted by the poor soil and fill issues would sell for as low as the Property Owner's requested value of \$\$\$\$\$ per square foot.

III. County's Evidence

12. At the hearing, the County's representatives testified that they were recommending the reduction in value to \$\$\$\$\$ per square foot, or \$\$\$\$\$, to take into account the soil issues on the subject property.

13. The County representatives provided the history of the plats for Phase 1 and Phase 2 of the LOCATION-1 Subdivision, and how they had been modified several times over the years. However, at the hearing, the size and location of the subject property as of the lien date was not in dispute.⁵

14. The County representatives pointed out that an office building with a basement had been built on one of the adjacent properties that was part of the Centennial Plaza subdivision, and also the subject of the soil surveys. This property had similar soil issues as the subject property and the owner was able to construct on this property, by adding the basement to the building.

15. The County provided three comparable sales to show that its lower recommended value of \$\$\$\$\$ per square foot for the subject property was well supported and took into account the soil issues on the subject property. One of these comparable sales had sold twice. These properties were all adjacent or nearly adjacent to the subject property.⁶ The County's comparables were the following:

REDACTED TABLE

16. The County testified at the hearing that lot ##### had the same type of soil issues as the subject property and had been purchased for \$\$\$\$\$ per square foot. The County also testified that only ##### acres (##### square feet) of the subject property had the worst of the soil issues.

⁵ Respondent's Exhibit A, PDF # 22-29.

⁶ Respondent's Exhibit A, PDF # 31-32.

IV. Commission Value Conclusion

17. As discussed more below in the Conclusions of Law section, because both parties are requesting a different value from the original assessed value, both parties have the burden of proof to show error in the original assessed value and to provide a sound evidentiary basis to support a new value. The Property Owner provided the geotechnical reports showing that there were soil problems in the subdivision that encompasses the subject property, and that would need to be addressed when constructing in the subdivision. The Property Owner did not submit a bid of the costs to remediate the subject property, but did submit an email stating that it would cost \$\$\$\$\$ to remove and haul off, and \$\$\$\$\$ to replace with granular fill approximately ##### square feet at a depth of ##### feet. This email did not identify that it was in regards to any specific parcel of property and the County had pointed out that the worst of the soil issues were only on a small section of the subject property. Regardless, at the Formal Hearing the County agreed that a lower value was warranted to account for the soil issues.

18. In order to prevail, a party must provide a sound evidentiary basis for changing the subject property's original assessed value to the amount it proposes. The Property Owner proposed a value of \$\$\$\$\$ per square foot, or \$\$\$\$\$, for the subject property, but did not provide comparable sales of similar properties in the area selling for only \$\$\$\$\$ per square foot. Additionally, the Property Owner has not established that the costs to build on the subject property were so significant that the costs supported reducing the \$\$\$\$\$ value of the subject property by more than \$\$\$\$\$ to a value of \$\$\$\$\$. The County submitted sales of adjacent or nearly adjacent properties, one of which had the same type of soil issues as the subject property, and all of the comparable sales had sold for more than the \$\$\$\$\$ per square foot that the County was recommending, even the property with similar soil and fill issues. There were no sales that suggested that the subject property would sell for any amount lower than the \$\$\$\$\$ per square foot. The Property Owner has not provided a sound evidentiary basis to support the \$\$\$\$\$ per square foot he is requesting. The weight of the evidence does show that some reduction is needed and supports the County's recommended value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2) provides for the assessment of property, as follows:

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(13), as follows:

- (a) "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.
- (b) 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.

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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
 - (a) 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 or entity with designated decision-making authority described in Section 59-2-1101; and
 - (b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.
- ...
- (3) In reviewing a decision described in Subsection (1), the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization or entity with decision-making authority.
- (4) In reviewing evidence submitted to the commission to decide an appeal under this section, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
 - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.

- (5) In reviewing a decision described in Subsection (1), 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.

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
 - (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by a county board of equalization, including a value based on a stipulation of the parties;
 - (ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:
 - (A) the commission, if the commission has issued a decision in the appeal or the parties have entered a stipulation; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; or
 - (iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.
 - (b) "Inflation adjusted value" means the same as that term is defined in Section 59-2-1004.
 - (c) "Qualified real property" means real property:
 - (i) that is assessed by a county assessor in accordance with Part 3, County Assessment;
 - (ii) for which:
 - (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;
 - (B) the appeal described in Subsection (1)(c)(ii)(A) resulted in a final assessed value that was lower than the assessed value; and
 - (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and
 - (iii) that, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not had a qualifying change.
 - (d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:

- (i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of the fair market value of the real property or \$20,000;
 - (ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or
 - (iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.
- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
- (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
 - (C) if Subsection (3) applies, the original assessed value; or
 - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.
- (3)
- (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:
 - (i) that is not qualified real property; and
 - (ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (b) For purposes of Subsection (3)(a), the following have the burden of proof:
 - (i) for property assessed under Part 3, County Assessment:
 - (A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:

- (i) the original assessed value shall lose the presumption of correctness;
 - (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties; and
 - (iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.
- (4)
- (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.
 - (b) For purposes of Subsection (4)(a):
 - (i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or
 - (ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.
 - (c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:
 - (i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or
 - (ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4 below, in pertinent part:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and

- (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value different from the subject property's current value but not higher than the value originally assessed, the respondent has the burden of proof to support its position. *See 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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. Salt Lake County Board of Equalization*, 2021 UT App 4. For either party's position to prevail in this case, Utah Code Ann. §59-2-109(2) provides that the party must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

CONCLUSIONS OF LAW

1. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."

2. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property's "fair market value" as of January 1 of the tax year at issue pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the "amount for which property would exchange 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." *See* Utah Code Sec. 59-2-102. Therefore, to determine the fair market value of the subject property as of the lien date at issue in the appeal, the Tax Commission must consider what the subject property would have sold for on that date if both the buyer and seller were aware of the soil and fill conditions on the subject property. For vacant land

parcels, value may be estimated based on comparable sales of other similarly affected parcels, which is how the County has valued the subject property. The County was the only party to submit comparable sales and the comparable sales more than supported the County's recommended value.

3. In this proceeding before the Tax Commission both the County and the Property Owner are requesting a value different from the original assessed value. For either party's position to prevail in this case, Utah Code Ann. §59-2-109(2) provides that the party must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. In this case, both parties asked for a value lower than the original assessed value. However, the Property Owner failed to provide a sound evidentiary basis to support a value as low as the one the Property Owner was requesting. The County did support the lower value that the County was requesting based on comparable sales of similar properties.

4. The subject property is not a "qualified real property" for tax year 2022 pursuant to Utah Code §59-2-109(1)(c) because the value of the subject property was not reduced based on an appeal for tax year 2021.

5. Utah Code Ann. §59-2-301.4 is not applicable in this matter because the subject property had not been the subject of a "valuation reduction" in any of the three tax years preceding 2022.

Based on these Findings of Fact and Conclusions of Law, the value of the subject property should be reduced to the value recommended by the County at the Formal Hearing for tax year 2022.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of January 1, 2022, is \$\$\$\$\$. The COUNTY-1 Auditor is to adjust the records accordingly. It is so ordered.

DATED this ____ day of ____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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. §59-1-601 et seq. and §63G-4-401 et seq.