12-1108
TAX TYPE: PROPERTY TAX
TAX YEAR: 2011
DATE SIGNED: 6-16-2014
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 12-1108 Parcel No. ##### Tax Type: Property Tax Tax Year: 2011 Judge: Phan

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 mail the response to the address listed near the end of this decision.

Presiding:
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law REPRESENTATIVE-2 FOR PETITIONER, Attorney at Law REPRESENTATIVE-3 FOR PETITIONER, Manager, PETITIONER
For Respondent:	REPRESENTATIVE FOR RESPONDENT, Deputy Salt Lake County District Attorney RESPONDENT, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial

Hearing on March 4, 2014, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office had originally valued the subject property at $$$$$ as of the January 1, 2011 lien date. The County Board of Equalization ("County") reduced the value to $$$$$. The Property Owner appealed the decision and requested a further reduction to $$$$$. At the hearing the representative for the County requested an increase in value to $$$$$.

APPLICABLE LAW

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

> (1) All tangible personal property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

> "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

> (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.
> (5) In re(X)ing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
> (a) the issue of equalization of property values is raised; and
> (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. To prevail, a party must 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. The

Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The property at issue in this appeal, parcel no. #####, is a vacant land parcel ##### acres in size. It is located at ADDRESS, TOWN, Utah. This parcel is zoned residential. The subject parcel is one of several parcels located on Lot ##### of the (Y) Subdivision in the TOWN.

As of the lien date, all of Lot #####, including the subject parcel, as well as Lot ##### were subject to a lawsuit by the (X) Condominium Association ("X"). The (X) is a condominium located on Lot #### of the (Y) Subdivision. In the lawsuit which had been pending for ##### years, The (X) asserted a right for parking spaces on Lot ##### under the Master Declaration of Covenants, Conditions and Restrictions of the (Y) Planned Unit Development. The parking claim affected ##### parcels in total including the subject parcel. For Lot ##### the issue was snow storage and not parking. Regarding Lot #####, the claim was that the original CC&R's had identified Lot ##### as parking. Before any of the lots were sold, the developer recorded an amended plat that reconfigured the lots, moved Lot ##### across the street and removed the parking designation. The developer neglected to amend the CC&R's. The (X) Condominium Association filed the suit which made its way to the Utah Court of Appeals in 2004 and that decision was reversed by the Utah Supreme Court in 2005. The Developer then amended the CC&R's, the District Court dismissed the parking claim in 2008 and removed the Lis Pendens on the parcels. However, that did not resolve the litigation. In January 2011 draft settlement terms were discussed but not finalized.[1] After the initial draft settlement, numerous drafts were exchanged and there continued to be contentious negotiations over the terms. The Property Owner provided the information that the Plaintiffs in the lawsuit threatened on more than one occasion to proceed with the litigation and appeal the court's summary judgment order. It was not until March 2013 that the parties signed the final set of settlement documents and the lawsuit was dismissed.[2]

The representatives for the Property Owner point out that for the 2010 tax year, the County had valued the subject lot at $$$$$. Then for the 2011 tax year the value jumped to $$$$$. The Property Owner appealed the 2011 value to the County Board and the County Board

[1] Respondent's Exhibit 6.
[2] Petitioner's Prehearing Memorandum, pg. 8 and Petitioner's Exhibit E.

reduced the value because of the litigation to $$$$$. The Property Owner argues that this failed to adequately consider the impact of the pending litigation on the marketability and fair market value of the parcel.[3] The Property Owners point to a prior *Tax Commission Decision, Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-0812*, which had applied a 75% reduction to market value for a different lot, Lot ##### in the (Y) subdivision, for the 2005 tax year. The Property Owner argued the same 75% reduction that had been applied to the subject lot for the 2010 tax year and should be applied for the 2011 tax year.

In the *Tax Commission Decision, Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-0812*, the litigation was ongoing for the 2005 tax year that was the year for that appeal. However, there was a difference in Appeal No. 06-0812 because the parcel in that appeal was located on Lot #### and the litigation claim regarding Lot #### parcels was that they were to be used as snow storage. The use for snow storage would preclude the parcel from having any use as a single family residence. In the subject appeal the County had presented evidence that the subject could be used for both parking and for a residence. In *Tax Commission Decision, Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-0812*, the Commission made the finding:

> Assuming it was legally permissible to develop the subject lot as a residential single family lot as allowed under the Agreement with the town, this use would be the highest and best use of the subject property under appraisal principles. If use for a single-family residence was a legally permissible use for the property, it would be this use that would be appraised for determining fair market value. However, the pending litigation calls into question whether this use is a legally permissible use for the property.[4]

In *Appeal No. 06-0812,* the County was the Petitioner and was requesting an increase in value from that set by the County Board of Equalization. The Tax Commission went on to find in that decision:

> When determining a value for a property based on a certain use, in this case as a single family residential lot, and where there are issues regarding whether that use is legally permissible that are substantial enough that a buyer would pay less for the property, the questions regarding use affect the fair market value of the property. Petitioner [the County] has not taken into account factors that would be relevant to a knowledgeable buyer and that may affect the property's highest and best use. Therefore, Petitioner [the County] has not shown error in the value set by the County Board of Equalization, nor provided a sound evidentiary basis to establish a new, higher value.[5]

[3] Petitioner's Prehearing Memorandum, pg. 2.
[4] Findings of Fact, Conclusions of Law, Final Decision, Appeal No. 06-0812, pg. 4.
[5] Findings of Fact, Conclusions of Law, Final Decision, Appeal No. 06-0812, pg. 5.

In the subject appeal, the Taxpayer submitted a Declaration of NAME-1, Certified General Appraiser. NAME-1 had appraised the parcel in Appeal No. 06-0812 for the 2005 tax year and it was his appraisal that was the basis for the Commission's decision in that case. NAME-1 indicates in his Declaration[6] that in his opinion the same 75% reduction which he had concluded in his 2005 appraisal for the Lot ##### parcel should be applied to the subject property for the 2011 tax year. NAME-1 compared the potential encumbrance of the snow storage to the potential parking structure. He indicated that even if a purchaser were willing to build a residence over a parking structure on the surface, the timing of the construction would be determined by the holder of the right to the parking. He also stated it would be difficult for the purchaser to then have parking for the residence. NAME-1 stated in his Declaration as follows:

> Although the Lot ##### Appraisal does not contain an appraisal for Lots #####-##### that are the subject of this Appeal, the same reasoning and conclusions apply for Lots #####-##### and based on my review of the lot ##### Appraisal and the REPRESENTATIAVE FOR PETITIONER Declaration, it is my opinion that the highest and best use of Lots #####-##### is reduced from single family home use to speculation for future single family home use, exactly as was the case with Lot #####, and that speculation remained a component of highest and best use until legal actions as identified by REPRESENTATIVE FOR PETITIONER were exhausted and/or the parties definitely settled the dispute when they signed the final settlement agreement in March 2013. As highest and best use is negatively impacted, so too is market value of Lot #####-#####, and by the 75 percent value diminution factor as I concluded in the Lot ##### Appraisal Report.[7]

The County argued that there was a difference between the restrictions on the parcel that was the subject to this appeal, located in Lot #####, and the parcel in Lot ##### that was at issue in A*ppeal No. 06-0812* and the subject of NAME-1 2005 appraisal. If the Plaintiff in the lawsuit were to win, the Lot ##### parcel would have been limited to use for snow storage and Lot ##### could not be used for both residential and snow storage. It was the County's contention that the subject parcel and the other parcels in Lot ##### could still be developed for residential lots, the development would just have to be over the surface parking. The County points out that it was not a full parking structure across the bottom of all the lots, but just ##### parking spaces in total that needed to be provided to (X) over the ##### parcels and this was not such an impact on the value. The County also argued that the assessed value needed to take into account the full bundle of rights. So if the subject lot was reduced based on the fact that some of it had to be used for parking for (X), the value of the additional parking rights owned by (X) should be added to the assessed value for (X).

[6] Petitioner's Exhibit D.
[7] Petitioner's Exhibit D, pg. 5.

At the hearing the County proffered information[8] that indicates the Plaintiff had been willing to settle the lawsuit regarding the Lot ##### parking claim with a payment of $$$$$ and ##### parking spaces total spread over the ##### parcels including the subject. It was the County's contention that all of these parcels could still be used for residential development over, or in addition to, the ##### parking spaces.

The County presented an appraisal[9] supporting its requested increase in value to $$$$$. It was the County's position that the value of this lot for the full bundle or rights, or as if the parking encumbrance was not an issue, was $$$$$. Taking into account the parking easement claim by making a reduction of 10% for cost to cure, the County's conclusion was the requested value of $$$$$. The Appraisal had been prepared by NAME-2, Certified General Appraiser. NAME-2 value conclusion was based on six comparable sales and one listing. Some of the sales had occurred years prior to the lien date. The Property Owner did not submit comparable sales of its own or sales that might be more similar or nearer the lien date.

In his appraisal, NAME-2 considered two sales in CANYON, this was a canyon area he considered inferior to the subject. These were buildable residential lots which sold for $$$$$, with one selling in September 2010 for that price and one selling in February 2008 for that price. Then there were four sales in TOWN, in the same subdivision as the subject and also on ROAD where the subject is located. These properties had sold either unencumbered by the legal dispute or the purchasers where indemnified against the law suit. These properties had sold as follows: $$$$$ for a .21 acre lot in January 2006; $$$$$ for a 0.21 acre lot in June 2005; $$$$$ for a .10 acre lot in January 2005 and $$$$$ for a 0.10 acre lot in August 2003. The subject lot is ##### acres in size.

In the appraisal, NAME-2 had made a 10% adjustment for the cost to cure the parking encumbrance. At the hearing a correction was made to the original appraisal conclusion of $$$$$. NAME-2 did not attend the hearing, but RESPONDENT, Salt Lake County Appraiser, pointed out an error on comparable no. 5 in the appraisal where an adjustment of 10% cost to cure was added instead of subtracted. Once this was subtracted he took an average of the values which resulted in the $$$$$ conclusion from the County.

It should be noted that comparable no. 5 was one of the two parcels on ROAD, located in the same subdivision as the subject, that was ##### acres in size, the same size as the subject. Of the four sales in the same subdivision and on the same street as the subject, two were larger with ##### acres, and had sold for more; $$$$$ and $$$$$ respectively. NAME-2 made no size

[8] Respondent's Exhibits 4 & 6.
[9] Respondent's Exhibit 1.

adjustments. His adjusted value from these two sales was $$$$$ and $$$$$. The two comparables from the same subdivision that were the same size as the subject had sold for $$$$$ and $$$$$ and the adjusted values from these two sales, after the correction noted above, was $$$$$ and $$$$$. Given this difference it appears that either a size adjustment was warranted, or that more weight should be placed on the comparables that were more similar in size to the subject.

The County argues that its adjustment for the parking encumbrance would roughly be $$$$$ per building lot over the ##### parcels that were affected. This would be a total in deductions for this encumbrance in the amount of $$$$$. The County's representative points out that the Property Owner's argued deduction of $$$$$ per lot for the parking encumbrance would be a total deduction for this encumbrance of $$$$$ over the ##### lots. It was the County's contention given that the settlement negotiations around the lien date were indicating the Plaintiff was willing to settle the parking claim for $$$$$ plus a total of ##### parking spaces over the ##### parcels, the Property Owner's adjustment was excessive.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County, but also provide a sound evidentiary basis to support a new value. Both parties argued error in the County Board's value and that it was based on an estimate to account for the law suit. However, upon review of the information and evidence provided in this matter a 75% reduction for the parking encumbrance is excessive. The County's 10% adjustment, although low appears to be more reasonable given the actual matter in dispute in this case that would not preclude the property from being developed for residential use. However, the County has also come to a higher market value in its appraisal conclusion because no consideration was given for lot size. Base on the adjusted value from the County's appraisal for the lots that were as small as the subject, the value for the subject lot should be increased to $$$$$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was $$$$$, as of the January 1, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner