

10-1805 & 11-2190
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED
TAX YEAR: 2009 & 2010
DATE SIGNED: 3-21-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 and PETITIONER-2, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal Nos. 10-1805 & 11-2190 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Years: 2009 & 2010</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 mail the response to the address listed near the end of this decision.

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Representative
REPRESENTATIVE FOR PETITIONER-2, Representative
REPRESENTATIVE FOR PETITIONER-3, Representative

For Respondent: RESPONDENT-1, Deputy Salt Lake District Attorney
RESPONDENT-2, Deputy Salt Lake District Attorney
RESPONDENT-3, Salt Lake County Assessor
RESPONDENT-4, Appeals Manager, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et seq., on November 7, 2012. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “Taxpayer”) had timely appealed the decision of the County Board of Equalization regarding the subject property for the 2009 tax year. That appeal was assigned Appeal No. 10-1805. Petitioner had also timely appealed the value of the subject property for the 2010 year and that appeal was assigned Appeal No. 11-2190. Both appeals were consolidated for this hearing.

2. For purposes of the Formal Hearing, and for both tax years, the only parcel at issue is parcel #####. When these appeals were filed they originally included a number of related parcels. The parties were able to enter into a stipulation regarding the value of all the parcels prior to the hearing except for parcel ##### and the Tax Commission issued its Partial Orders of Approval for all the other parcels on March 30, 2012. For the tax year 2009, in Appeal No. 10-1805, the parties had stipulated to the values for parcels #####, #####, #####, #####, #####, and #####. In Appeal No. 11-2190 for the 2010 tax year the parties had reached a stipulation regarding the value for parcels #####, #####, #####, ##### and #####.

3. For the tax year 2009, the value of parcel ##### at issue in this hearing had originally been set by the Salt Lake County Assessor at \$\$\$\$\$. The County Board of Equalization reduced the value to \$\$\$\$\$. At the Formal Hearing the Taxpayer requested that the value be lowered to \$\$\$\$\$. The County requested that the value for 2009 be raised to \$\$\$\$\$.

4. The County requested an increase for 2009 because the County had changed the square footage on the county records.

5. For the 2010 tax year the County Assessor had originally valued parcel ##### at \$\$\$\$\$. The County Board of Equalization had reduced the value for the 2010 year to \$\$\$\$\$. At the hearing the Taxpayer requested a reduction to \$\$\$\$\$. For this year the County is requesting a slight reduction in value to \$\$\$\$\$.

6. The subject parcel is located at ADDRESS-1, CITY, Salt Lake County, Utah. PETITIONER-1 operates this property as the HOSPITAL-1. PETITIONER-1 leases the property from PETITIONER-2 of CITY. Under the terms of the lease PETITIONER-1 is obligated to pay all property tax.

7. The subject parcel includes ##### acres of land improved with a building used as the hospital.

The Taxpayer's appraisal considered the building to be ##### square feet in size. The County had concluded that the building was ##### square feet after reviewing and correcting the County record for the 2009 tax year. The Taxpayer's appraiser, NAME-1, testified that he had used the square footage from the County's prior record. He had not measured the property and did not provide information to rebut the County's larger size for the building.

8. The building on the subject property had been constructed primarily in YEAR-1, with a minor addition in YEAR-2. The building had been remodeled in YEAR-2 with 30% of the building gutted and rebuilt in the remodel. The remodel included the main floor as well as the third and fourth floors of the five story section. The second and fifth floors were not remodeled.

9. PETITIONER-2 purchased the subject property effective March 13, 2008 in a bulk sale transaction which included 21 different medical properties in fifteen different states. The total purchase price for these properties was \$\$\$\$\$. Of this \$\$\$\$\$ was allocated to the subject and associated parcels.¹ The parcel that is the subject of this hearing contains the hospital building and does represent the largest portion of the value for which this \$\$\$\$\$ was allocated. The associated parcels include parking lots, a medical office building and landscaped areas. There was not a further allocation of the \$\$\$\$\$ between the subject parcel and the associated parcels, but for comparison the original assessment for the associated parcels in 2009 had been a total value of \$\$\$\$\$² while the original assessment for the subject parcel for 2009 was \$\$\$\$\$.

10. The value requested by both parties at the hearing was significantly less than the \$\$\$\$\$ allocated value from the bulk sale transaction. The Taxpayer's witness, NAME-1, testified that in his opinion the \$\$\$\$\$ allocation was based on 70% occupancy and stated that the subject hospital has had a much lower occupancy, around 28% occupancy. The witness for the County, NAME-2, testified that for hospitals 70-75% occupancy is the optimal rate.

11. Prior to PETITIONER-2 purchase of the subject property, PETITIONER-1, had leased the property to HOSPITAL-1. Portions of the lease dated June 28, 2002 were provided which indicated a \$\$\$\$\$ per year lease payment as well as a \$\$\$\$\$ initial investment cost.³ NAME-1 testified at the hearing that this is a financing lease, not a typical lease that he would use in an appraisal to determine a fee simple valuation. Neither party submitted the current lease between PETITIONER-2 and PETITIONER-1, nor did they base

1 Respondent's Exhibit 13, SCH 1.3.

2 Respondent's Exhibit 15.

their valuations on the current lease.

12. The parties were in disagreement on the class of construction of the building. It was the Taxpayer's position that the building was a mixed class B/C construction having portions that were masonry and portions that were steel frame and the Taxpayer's appraiser, NAME-1, used a mixed B/C hospital classification to calculate the cost of the structure. NAME-1, MAI, SRA, stated that the five story section was a mix of Class A and Class C, as it was not built to current codes for Class A. The Taxpayer provided testimony from NAME-3 of BUSINESS-1. NAME-3 has significant experience in the construction of buildings and he testified that he had personally inspected the interior of the subject. It was his testimony that the one story portion of the building is Class C. He also noted that the five story tower portion had "some features of Class A Construction evident in the exterior wall framing; however, the flooring and roof components are more consistent with Class B construction."⁴ He testified at the hearing that the decking was not fireproofed. NAME-3 noted that the building was average of whatever class: average safety, average structurally and average architecturally.

13. It was the County's contention that the whole building was a Class A construction with fire protected structural steel frame. The County indicated that in a Class A construction it was the steel frame that needed to be fireproofed, not necessarily the decking. The County provided witness testimony from NAME-2, of BUSINESS-2, who clarified that the difference between a Class A or B building is based on the interior framework. Class A buildings are a steel structural fire proofed frame. Class B buildings are reinforced concrete framework. The County's witness, RESPONDENT-4 Certified General Appraiser, testified that he had inspected the interior of the building and that he was able to see the I-Beam construction typical of a structural steel building. He provided photographs of some of the interior areas where beams were visible.⁵ He also testified that it was clear that the beams were coated with a fire retardant spray.

14. HOSPITAL-1 is a general acute care hospital, with a busy emergency room. For 2009, HOSPITAL-1 had 28,501 total visits to the emergency room. The Salt Lake County market total emergency room visits had been 294,002 for that year.⁶

15. From the testimony provided, the parties had a difference regarding the number of hospital

3 Respondent's Exhibit 12.

4 Petitioner's Exhibit 1, Letter attachment dated February 6, 2012, from NAME-3.

5 Respondent's Exhibit 2.

6 Respondent's Exhibit 15.

beds in the subject property. The County submitted reports showing that the subject had ##### licensed beds,⁷ but the County acknowledged that after the remodel there were likely fewer beds than the #####. The County indicated it was likely there were ##### beds and the appraiser for the Taxpayer used ##### beds in his appraisal.⁸ The County also indicated that the hospital had staff for only ##### beds. Additionally, to add to the confusion it was unclear whether beds on the fifth floor were being counted in the ##### hospital beds or were reported under a separate healthcare organization. From 2002 to July 2007 the entire fifth floor of the hospital with ##### beds had been leased to HOSPITAL-2.⁹ In 2011, the fifth floor was reopened as a behavioral health unit.¹⁰ For the years at issue 2009 and 2010 it was unclear whether the fifth floor beds were leased to another party, or whether they were included in the total licensed beds.

16. The subject property had lower occupancy than competing hospitals during the years at issue in this appeal. The appraiser for the Taxpayer indicated that based on the subject having ##### beds, the subject hospital had 28% occupancy in 2009 and 27.1% occupancy in 2010. It was his contention that countywide, the average hospital occupancy rate had been 65.1% in 2009 and 62.4% in 2010.¹¹ Information submitted by the County confirmed that the subject did have a lower average occupancy or lower ‘average census’ compared to other competing hospitals. The County’s information indicated that for 2009 the subject’s average census was 26.4% and for 2010 it was 24.1%.

17. The County considered the market group of hospitals located in Salt Lake County that competed with the subject and it was the County’s conclusion that of this group, including the subject, the average census was 57.3% in 2009. Included in the County’s market group were eight hospitals which were: HOSPITAL-3, HOSPITAL-4, HOSPITAL-5, HOSPITAL-6, HOSPITAL-7, HOSPITAL-8, and HOSPITAL-9.¹² From the County’s information the highest average census was HOSPITAL-4, at 81.9% in 2009. Three other hospitals had an average census over 60%. The subject did show the lowest average census at 26.4% in the County’s calculation. However, it was acknowledged that the County’s calculation was based on ##### beds, if this was adjusted for ##### beds the percentage would be in the 30% range. The County also

7 Respondent’s Exhibit 4, pg. 008 et at, Exhibits 15 & 16.

8 Petitioner’s Exhibit 1, pg. 45.

9 Respondent’s Exhibit 1, pg. 010 and Exhibit 6.

10 Petitioner’s Exhibit 1, pg. 45.

11 Petitioner’s Exhibit 1, pg. 45

12 Respondent’s Exhibit 1, pg. 004.

presented this information for the 2010 tax year and the numbers were similar.¹³

18. In support of its requested value, the Taxpayer submitted an appraisal prepared by NAME-1, of BUSINESS-3.¹⁴ It was NAME-1's conclusion that as of January 1, 2009, the value of the subject property was \$\$\$\$\$. It was the Taxpayer's contention that market values were flat from January 1, 2009 to January 1, 2010, so that the appraisal value should be accepted for both tax years. In the appraisal NAME-1 considered both a cost and sales comparison approach. His conclusion from the cost approach was \$\$\$\$\$ and from the sales approach \$\$\$\$\$. His reconciled value was in between at \$\$\$\$\$.

19. In his cost approach, NAME-1 estimated a replacement cost of the improvements using the Marshall Valuation Service and then added entrepreneurial profit and the land value. For the replacement cost new, NAME-1 considered the single story area of the subject building to be a Class C (Masonry Block) construction and the five-story portion of the building a Class B (Reinforced Concrete and Steel) construction. He considered the building to be a mixed Class B and C construction in concluding that the base replacement cost new for the mixed classification was \$\$\$\$\$ per square foot. Using the Marshall Valuation Service he added \$\$\$\$\$ per square foot for sprinklers, for a subtotal of \$\$\$\$\$ and to this applied various multipliers for floor area, height, current cost and local market conditions. He concluded a cost per square foot of \$\$\$\$\$. He multiplied this by his gross building area of ##### and this indicated a value of \$\$\$\$\$ new.

20. NAME-1 subtracted both physical deterioration and functional obsolescence from his cost new. For physical deterioration, he used a life expectancy of 40 years and he estimated the improvements had an average effective age of 18 years. This resulted in incurable physical deterioration at 45% or a deduction of \$\$\$\$\$. NAME-1 did provide the opinion that he thought hospitals may actually have a shorter life expectancy than 40 years. He pointed to the example of HOSPITAL-10 in CITY-3 and indicated that after 32 years, instead of being upgraded or remodeled, a new hospital had been built to replace the existing hospital. However, he acknowledged that was just one example so he went with a 40 year life expectancy.

21. In determining that there was functional obsolescence, NAME-1 considered that the subject hospital had seen a gradual decline in occupancy during the past five years. He opined that this may be due to competition from newer hospitals in the area, which had higher end architectural finishes and were in better locations. He also testified that in his opinion no one would build a hospital at the location of the subject

13 Respondent's Exhibit 1, pg. 007.

14 Petitioner's Exhibit 1.

property today, and that a hospital was not the highest and best use of the land if the land were vacant. He indicated that the daily census declined by a third, from ##### rooms or 36.4 % in 2006 to ##### rooms or 27.1% in 2010.¹⁵ He compared this with the average occupancy for acute care hospitals in Salt Lake County, which he had concluded ranged from 62.4 to 71.8 percent between 2006 and 2011. After taking this into consideration he estimated a functional obsolescence factor of 25% or \$\$\$\$\$.

22. After subtracting \$\$\$\$\$ in physical depreciation and \$\$\$\$\$ in functional obsolescence, from the \$\$\$\$\$ cost new, it was NAME-1 conclusion that the contributing value of the building improvements was \$\$\$\$\$. He added \$\$\$\$\$ for the site improvements which included landscape, paving and retaining walls. He had also concluded a value for the land of \$\$\$\$\$ based on land sales. He also added 5% or \$\$\$\$\$ for entrepreneurial profit, for a total of \$\$\$\$\$.

23. If the square footage of the building was corrected to the ##### square feet presented by the County and all other of NAME-1 factors remained the same, it would indicate a cost approach value of \$\$\$\$\$.

24. In his appraisal, NAME-1 also considered a sales comparison approach. He presented in the appraisal seven comparable sales of hospital properties. Because there are few sales of individual hospitals he did not find any that occurred in Utah. His sales were as follows:

Location	Sale Date	Price	Building Area	Year Built	Price Per Square Ft
COMPARABLE-1 CITY & STATE-1	2/07	\$\$\$\$\$	150,000	1973	\$\$\$\$\$
COMPARABLE-2 CITY & STATE-2	1/10	\$\$\$\$\$	207,204	1955/1989	\$\$\$\$\$
COMPARABLE-3 CITY & STATE-3	1/09	\$\$\$\$\$	118,147	1966/1982	\$\$\$\$\$
COMPARABLE-4 CITY & STATE-4	8/08	\$\$\$\$\$	220,412	1987/1991	\$\$\$\$\$
COMPARABLE-5 CITY & STATE-5	7/08	\$\$\$\$\$	186,967	1998	\$\$\$\$\$

¹⁵ NAME-1 noted that occupancy had increased slightly to ##### rooms in 2011 after the fifth floor of the building was opened in May 2011 as a behavior health unit. See Exhibit 1, pg. 45.

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COMPARABLE-6 CITY & STATE-6	7/11	\$\$\$\$	131,792	1999	\$\$\$\$
COMPARABLE-7 CITY & STATE-7	8/11	\$\$\$\$	250,000	1975	\$\$\$\$

25. NAME-1 did make some appraisal adjustments based on year built/effective age, location, land coverage ratio and economic conditions. After adjustments, his indicated range of value was from \$\$\$\$ to \$\$\$\$ per square foot. His sales approach conclusion was based on \$\$\$\$ per square foot or, \$\$\$\$ rounded for the subject property.

26. If the square footage of the building was corrected to the ##### square feet represented by the County, using the \$\$\$\$ per square foot would result in a value of \$\$\$\$.

27. The County did not submit a complete appraisal in this matter, but did provide an opinion of market value based on a cost approach and offered criticism of NAME-1 appraisal conclusions. The County provided testimony and argument that the subject building was a Class A construction under the Marshall Valuation System, and, therefore, the base cost new used by NAME-1 should have been higher than what he used in his appraisal. NAME-1 had used a cost new based on mixing Class B and C for hospitals.

28. The County had also argued that NAME-1 should have based entrepreneurial profit on the replacement cost new, rather than the replacement cost new less depreciation. In his appraisal, NAME-1 had determined entrepreneurial profit in the amount of \$\$\$\$\$, which was 5% of his cost new less depreciation. NAME-1 stated in the appraisal that it was “difficult to quantify” and “[b]ased on my experience involving similar commercial properties, I have allocated entrepreneurial profit at 5.0 percent.”¹⁶ If NAME-1 were to base the entrepreneurial profit on the higher replacement cost new, he may have used a lower percentage. The County did not provide evidence that NAME-1 entrepreneurial profit amount of \$\$\$\$\$ was clearly in error.

29. The County did not submit sales comparables of its own, but did provide additional testimony regarding the Taxpayer’s sales from NAME-2, of BUSINESS-2. NAME-2 has had extensive experience in valuing hospitals nationwide. He indicated that his company prepares valuations using both sales and cost approaches but relied more on cost comparables. He also indicated that they generally developed their cost approach using cost comparables rather than Marshall’s Valuation Services. He said it was his experience that Marshall’s was on the low end of actual costs. NAME-2 testified that the subject is a general acute care

16 Petitioner’s Exhibit 1, pg.46.

hospital that provides a full spectrum of services including emergency room, surgery, radiology, pharmacy and laboratory. It was his contention that a general acute care hospital is valued differently from a long term acute care facility (“LTAC”). An LTAC does not provide the full range of services. There is no emergency room, surgery, diagnostics or radiology. Instead this is a facility to care for patients who are expected to need hospitalization for more than 25 days. He also testified that the trend in hospitals is to go to larger patient rooms and larger outpatient services.

30. NAME-2 provided additional information¹⁷ and testimony regarding each of the comparable sales relied on by the Taxpayer’s appraiser. The Taxpayer’s Comparable 1, COMPARABLE-1, was general acute care hospital. It was a bankruptcy sale and also, NAME-2 testified that he had never seen a hospital sell as low per bed as this sale.

31. Taxpayer’s Comparable 2, COMPARABLE-2, was an LTAC facility and it was purchased to be used as an LTAC. The information that he provided on this sale indicated that the size of the building was 170,080 square feet and it had sold for a price of \$\$\$\$ per square foot. The Taxpayer’s appraisal had indicated this building was 207,204 square feet and had sold for a price per square foot of \$\$\$\$.

32. NAME-2 testified that that the Taxpayer’s comparable 3, COMPARABLE-3, was a general acute care facility both before and after the sale. He testified that this had been a sale lease-back arrangement. This property was located in STATE-3 and he testified that this had been sold for a low price because the State of STATE-3 had adopted the Alquist Hospital Facility Seismic Safety Act requiring all existing hospital to comply with seismic safety requirements. He indicated that the law had given existing hospitals until 2013 to make these upgrades which would be substantial and costly. He testified the COMPARABLE-3 hospital had been sold prior to the required upgrading.

33. It was NAME-2 contention that Taxpayer’s Comparable 4, COMPARABLE-4, was not an acute care facility. He testified that this hospital had been closed at the time of the sale and bought by another medical provider to keep someone from competing against the purchaser.

34. Taxpayer’s Comparable 5, COMPARABLE-5, had been closed at the time of the sale. NAME-2 stated that it was not a general acute care hospital. It was purchased to be used as a call center.

35. Taxpayer’s Comparable 6, COMPARABLE-6, also was not a general acute care hospital. This business had been closed prior to the sale.

17 Respondent’s Exhibit 11.

36. For the Taxpayer’s Comparable 7, COMPARABLE-7, NAME-2 testified this building was vacant after the owner had built a new, larger facility and moved to that. It was purchased to be operated as an LTAC.

37. At the hearing, the County recommended a value different from that set by the County Board of Equalization for each tax year at issue. For 2009 the County’s recommended value of \$\$\$\$\$ was higher than the Board of Equalization value of \$\$\$\$\$. For 2010 the County’s recommended value of \$\$\$\$\$ was just under the value set by the County Board at \$\$\$\$\$. The County’s recommended value was based on a replacement cost new less depreciation approach.¹⁸ In determining the cost new for this hospital, the County used a cost new per square foot of \$\$\$\$\$. RESPONDENT-4 testified that the County had used this per square foot cost new for all hospital properties in the County. They had determined this from cost comparables, including the cost information from two hospitals recently constructed in Salt Lake County. At the hearing the County submitted eleven hospital cost comparables.¹⁹ Two of the comparables were the Salt Lake County properties and there were two additional small hospitals from rural Utah locations. The rest of the cost comparables were from STATE-8. The County’s cost comparables were as follows:

Location	Building Area	Year Built	Cost Per Square Ft	Square Ft Per Bed
Subject	#####	YEAR		##### ²⁰
COUNTY COMPARABLE-1 CITY-4, UT	347,732	2009	\$\$\$\$\$	3,368
COUNTY COMPARABLE-2 CITY-5, UT	1,601,643	2007	\$\$\$\$\$	3,136
COUNTY COMPARABLE-3 CITY-6, UT	44,319	2009	\$\$\$\$\$	2,770
COUNTY COMPARABLE-4	55,900	2010	\$\$\$\$\$	3,288

18 Respondent’s Exhibit 1.

19 Respondent’s Exhibit 3.

20 Based on ##### licensed beds. If based on the ##### beds used in the Taxpayer’s appraisal, the subject would have approximately ##### square feet per bed.

CITY-7, UT

COUNTY COMPARABLE-5 CITY-1, STATE-8	40,000	2009	\$\$\$\$\$	2,667
COUNTY COMPARABLE-6 CITY-2, STATE-8	80,000	2009	\$\$\$\$\$	3,200
COUNTY COMPARABLE-7 CITY-3, STATE-8	673,000	2011	\$\$\$\$\$	2,474
COUNTY COMPARABLE-8 CITY-4, STATE-8	240,000	2010	\$\$\$\$\$	4,800
COUNTY COMPARABLE-9 CITY-5, STATE-8	465,000	2008	\$\$\$\$\$	2,943
COUNTY COMPARABLE-10 CITY-5, STATE-8	215,000	2007	\$\$\$\$\$	2,529
COUNTY COMPARABLE-11 CITY-6, STATE-8	41,000	2007	\$\$\$\$\$	1,640

38. To determine the value of the subject hospital, RESPONDENT-4 used the \$\$\$\$\$ cost new and concluded from that that the total replacement cost new for the subject was \$\$\$\$\$. The \$\$\$\$\$ per square foot included site improvements, while these had been added separately in NAME-1 appraisal. RESPONDENT-4 determined physical depreciation in the amount of \$\$\$\$\$ for the 2009 tax year, based on a 40 year economic life, the same as had been used by NAME-1. RESPONDENT-4 calculates functional obsolescence in the amount of approximately 7.1% or \$\$\$\$\$ for the 2009 tax year. In comparison, NAME-1 functional obsolescence had been 25% or \$\$\$\$\$, but was from a lower cost new estimate. RESPONDENT-4 conclusion from this was a replacement cost new less depreciation value for the building of \$\$\$\$\$.

39. RESPONDENT-4 functional obsolescence adjustment of approximately 7.1% was a considerably lower percentage than the 25% that had been used by NAME-1 in his appraisal. RESPONDENT-4 made two different functional obsolescence calculations. The first he referred to as a market saturation method. In this method, RESPONDENT-4 looked at the total number of beds in the market that included the subject hospital and the other general acute care facilities in Salt Lake County as noted above. He excluded HOSPITAL-11 and the HOSPITAL-12 which were not general facilities. He concluded that there were a total of ##### hospital beds in this market and of this total, the subject hospital had 6.58%. Then RESPONDENT-4 concluded that the market as a whole had excess beds based on the number of patient days. It was his conclusion that the market group as a whole had 382 excess beds. Although the subject hospital had the lowest average census or percentage of patient days in the market, RESPONDENT-4 attributed 6.58% of the 382 excess beds or 25 excess beds to the subject hospital. This is based on the number of beds of the subject property compared to the total beds in the market without consideration to the lower occupancy of the subject. Then RESPONDENT-4 calculated an obsolescence adjustment based on a cost approach to determine the value of the obsolete square footage related to the 25 unused beds. For the 2009 tax year this calculation was \$\$\$\$\$.²¹ RESPONDENT-4 argued at the hearing that the reason for calculating obsolescence in this manner was that the excess beds applied to all participants in the market. He argued that instead of using actual vacancy rates capitalized into perpetuity, market vacancy rates should be used to get to the market value.

40. RESPONDENT-4 second functional obsolescence calculation he referred to as an actual dark space method. From this method he concluded a much lower obsolescence amount. However, he placed no weight on this approach and relied primarily on his market saturation method, but he made a further adjustment to the \$\$\$\$\$ amount calculated from that approach because he felt it necessary due to the subject having fewer than the ##### registered beds. He concluded that after the remodel the subject hospital had fewer than this number. Because the lower number of beds reduced the subject's percentage of total beds in the market, this would also reduce the percentage he attributed to the subject for excess beds. He reduced the \$\$\$\$\$ amount by an additional 5%, getting to the \$\$\$\$\$ functional obsolescence amount that he subtracted from his 2009 cost new value.

41. With these adjustments for depreciation and obsolescence, it was RESPONDENT-4 conclusion that the replacement cost new less depreciation for the improvements was \$\$\$\$\$ for the 2009 tax

²¹ Respondent's Exhibit 1.

year. To this RESPONDENT-4 added \$\$\$\$ for the land value,²² to reach his total value conclusion for this property of \$\$\$\$ for the 2009 tax year. As a comparison, NAME-1 in the Taxpayer's appraisal had added \$\$\$\$ for the land value in his cost approach.

42. For the 2010 year, RESPONDENT-4 total value for the subject was \$. He had calculated this value using the identical methods as for the 2009 year. For 2010 he had also used for the cost \$\$\$\$ per square foot which resulted in a replacement cost new for the improvements of \$. Because the building was now one year older the amount he calculated for physical depreciation was higher at \$. He also calculated a somewhat higher amount for functional obsolescence of \$. This was based, however, on the same market saturation method, but for 2010 there were a higher number of excess beds in the market area. He used the same land value for 2010 as he had for 2009.

43. The Taxpayer argued that the County had improperly calculated functional obsolescence based on a pro rata share of the total excess beds in the market, when the subject had a much lower percentage of occupancy than the market competitors. The Taxpayer argued that the subject property is not performing at the ideal because of factors like location and appeal. In the County's obsolescence calculation, properties that were performing much better than the subject would be attributed excess beds based on percentage of beds that hospital had compared to the total beds in the market. It was the Taxpayer's contention that if instead this calculation attributed more of the excess beds to the subject hospital because it clearly had a lower occupancy than the other hospitals, it would result in a value equal to that argued by the Taxpayer. The Taxpayer's representatives additionally argued that in the cost approach, functional obsolescence was a property specific factor.

44. The Taxpayer also argued that the County's replacement cost new of \$\$\$\$ per square foot was too high. It was the Taxpayer's contention that this had been based primarily on the costs of the two new hospitals in Salt Lake County, HOSPITAL-13 and HOSPITAL-4. The Taxpayer's witnesses testified that these hospitals are new, state of the art, with high end finishes and architectural details that the subject does not have. It was the Taxpayer's position that the County was taking the costs from the best hospitals constructed in the County and applying it to the worst and one of the oldest hospitals.

45. Upon review of the testimony and evidence submitted at the hearing, the Taxpayer has submitted a certified appraisal that considered both a cost and sales approach. Functional obsolescence was

22 Respondent's Exhibit 7.

determined by considering a specific measurable problem relating to the subject; the subject had a considerably lower census, or fewer occupied beds than other hospitals in the County. The appraiser also noted other specific factors like a poor location for the hospital and much smaller square feet per bed than would be constructed in the newer hospitals. The appraiser concluded that a 25% functional obsolescence adjustment was appropriate. The Taxpayer's appraisal conclusion had been \$\$\$\$ for the 2009 tax year, which the Taxpayer requested also be applied to the 2010 year. There was no evidence submitted that the value should have increased from 2009 to 2010, in fact the evidence was to the contrary; the 2010 value would be lower.

46. However, the Taxpayer's appraisal was based on old information regarding the square footage of the subject. The Taxpayer's appraiser had used ##### square feet, while the County indicated the building now had ##### square feet. The Taxpayer did not present evidence contrary to the County on this point. If the Taxpayer's appraisal is corrected to ##### square feet it would increase the cost approach value to \$\$\$\$ and the sales comparison approach to \$\$\$\$.

47. Looking at the reconciliation and final value from the Taxpayer's appraisal it appears that NAME-1 had given approximately 65% of the weight to his cost approach and 35% to his sales comparison approach, although this is not stated in the appraisal.²³ The County presented some strong arguments against the Taxpayer's sales approach, criticizing the comparables as well as presenting testimony from their expert NAME-2, that his firm generally uses a cost approach to value hospitals. For these reasons there is no support for giving more weight to the sales comparison approach offered by the Taxpayer. If the sales indicator was eliminated entirely as seemed to be argued by the County, it would result in a lower value. Because the Commission's ultimate value conclusion in this matter is based on NAME-1 appraisal with the correction for square footage, the value should be calculated using the same 65% /35% weighting.²⁴

48. Giving 65% weight to the corrected cost approach calculation of \$\$\$\$ and 35% to the corrected sales comparison approach calculation of \$\$\$\$ results in a value of \$\$\$\$\$, for this property.

49. Although the County provided strong criticism of the comparable sales relied on by the appraiser for the Taxpayer, the County did not submit its own sales comparables or prepare a market indicator for the property. The County did provide some information regarding the recent bulk sale in which the subject

23 Petitioner's Exhibit 1, pg. 61.

24 The Commission has considered how much weight to give the cost approach in two prior cases that dealt with special purpose types of properties. These are *Utah State Tax Commission, Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 03-1417, 04-1366 and 05-1470* and *Utah State Tax Commission Initial Hearing*

property had been acquired by PETITIONER-2, including that of the \$\$\$\$ total bulk sale transaction price in March 2008, \$\$\$\$ was allocated to the subject and related parcels. The County argued that this allocation would suggest a lease rate of \$\$\$\$ to \$\$\$\$ per year and provided excerpts from the 2002 lease between the prior owner and prior tenant.²⁵ It appeared that these points were offered to suggest that the Commission should not lower the value below what the County was arguing at the hearing for this property. However, the County did not prepare the calculations to show how a value could be derived from the leases based on an income approach or present a sales approach using the allocated purchase price. The County was not requesting that the Commission raise the value to the \$\$\$\$ allocation of the purchase price. Instead the County argued only that value be set at its cost approach. The County's cost approach was the only appraisal approach prepared by the County and submitted at this hearing.

50. The County has argued that the subject building was a Class A structure, that it was of a structural steel building with fireproofing on the beams. The Taxpayer's expert witnesses testified that there were some mixed elements and the subject was not built to the current codes regarding a Class A structure. The Taxpayer used a lower grade to determine that the cost new was \$\$\$\$ per square foot. The County, however, used an appraisal cost indicator of \$\$\$\$ per square foot. From the testimony this was a mass appraisal conclusion and the County had used this cost to develop a value for all hospital properties in the County, whether they were newer with better quality architecture and finishes or older properties like the subject. There had been two recent hospitals constructed in Salt Lake County. The HOSPITAL-13 at a cost of \$\$\$\$ per square foot and the HOSPITAL-4 at a cost of \$\$\$\$ per square foot. From the testimony these were both superior grade and quality compared to the subject. The Commission understands that Counties may need to rely on mass appraisal techniques in assessing all properties in the County, but if the property is appealed to the Tax Commission the County needs be prepared to defend the value established through mass appraisal as it pertains to the specific property at issue or present an appraisal or other evidence of value for that specific property.

51. In addition to relying on the mass appraisal cost number of \$\$\$\$ per square foot, derived from properties with higher end architecture and finishes, the County also made functional obsolescence adjustment based on excess beds which would be attributed to the market as a whole and did not take into

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25 Respondent's Exhibit 12.

account that the subject had a higher percentage of excess beds than other properties in the market.

52. Evidence was submitted by both parties that the subject had a lower average census than other hospitals in the market. There was opinion testimony provided that physical factors attribute to the poor performance of the subject. The subject was not in a good location for a hospital, it has much less square feet per bed than newer properties, and it has less desirable features architecturally. The County's functional obsolescence does not make any adjustment for the excess vacancy of the subject compared to other hospitals in the market. The Taxpayer argued that if in the County's functional obsolescence calculation more of the excess market beds were attributed to the subject because the subject has more excess beds than the market average, there would be no difference between the County's value and the Taxpayer's appraisal value. There are different ways that the functional obsolescence calculation could be developed, but the Commission agrees with the Taxpayer the total excess market beds should not be allocated to the subject based on the percentage of beds the subject has of the total market. This is not the proper starting point for the functional obsolescence calculation. The calculation needs to take into account that the subject has more excess beds than its market competitors, so more excess beds would need to be attributed to the subject than just its percentage of the total beds. If this factor is taken into consideration, even using the County's cost at \$\$\$\$ per square foot, the indicated values would be near or at the Taxpayer's appraisal value as corrected for square feet.

53. The evidence presented at the hearing supports a value for the subject property for \$\$\$\$ for each tax year at issue.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

“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. (Utah Code Sec. 59-2-102(12).)

(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. . . (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 (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 Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. Property tax is based on its "fair market value" 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 seller. See Utah Code Sec. 59-2-102.

2. To prevail in a real property tax dispute, a party must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary bases upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). If the County requests at the hearing a value different from that set by the County Board, the County must also show error in the value set by the County and provide a sound evidentiary basis for the new value. The County did establish an error in the square footage of the subject property for the 2009 tax year, but the County's cost approach based on a mass appraisal cost per square foot per failed to account for the functional obsolescence specific to the subject property.

3. The County made assertions that the 2008 bulk sale acquisition and allocation to the subject of \$\$\$\$\$, or current or prior leases of the subject might support the value requested by the County or a higher value. However, these were mere arguments on the part of the County as the County did not perform the calculations or prepare an appraisal value based on an income approach from the actual leases of the property or a market approach based on the 2008 sale. It appears that the County considered these items as something of a reasonableness test without performing the work of determining how they would actually calculate out to market value. The County's mere assertions and allegation that a value could be derived from this information is not sufficient to support a value or even its requested value. The only complete value approach prepared by the County was its mass appraisal cost approach, which indicated a value considerably less than the 2008

allocated purchase price and failed to allow for sufficient functional obsolescence.

4. The Taxpayer did submit a complete appraisal of the subject property considering two different valuation approaches. Although a correction based on square foot is needed to the appraisal, with the correction it supports a value that is not inconsistent with the County's cost value if sufficient adjustment is made for functional obsolescence. Considering the evidence and the applicable law in this matter, the value should be reduced to \$\$\$\$\$ for both years at issue.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel #####, as of January 1, 2009 and as of January 1, 2010, is \$\$\$\$\$ for each year. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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 Sec. 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.