

13-2389

TAX TYPE: PROPERTY TAX

TAX YEAR: 2013

DATE SIGNED: 9-16-2014

COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-2389</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Dixon</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

Appearances:

For Petitioner: OWNER-1, Owner, Member of Board, and an Officer as Secretary of the Board
REPRESENTATIVE-1 FOR PETITIONER, family supporter
REPRESENTATIVE-2 FOR PETITIONER, President and General Manager, and OWNER-2

For Respondent: RESPONDENT-1, Assessor
RESPONDENT-2, County Auditor/Clerk
RESPONDENT-3, Chief Deputy Assessor
RESPONDENT-4, Certified General Appraiser,
county contract appraiser, by phone

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the RURAL COUNTY Board of Equalization (“the County”). This matter was argued in an Initial Hearing on April 29, 2014 in accordance with Utah Code Ann. §59-1-502.5 at the RURAL COUNTY Offices in CITY-1, Utah. The RURAL COUNTY Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2013 lien date. The Board of Equalization (BOE) sustained the value of \$\$\$\$.

The Assessor on behalf of the County BOE is asking the Commission to sustain the BOE value of \$\$\$\$.

The Taxpayer is requesting the value of the Subject property be reduced to \$\$\$\$\$, by specifically requesting the land value be reduced from \$\$\$\$\$ to \$\$\$\$\$.

APPLICABLE LAW

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

- (1) 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(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 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.

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).

PRELIMINARY ITEMS

At the hearing, OWNER-1 (the "Petitioner" "Owner" "Taxpayer") objected to the Commission's acceptance and consideration of the County's direct information holding that he had not received it in the required 10 business days prior to the hearing. The hearing was held on Tuesday, April 29. The Commission shows the documents being emailed to the Office of the Commission on Thursday, April 17. The Commission shows this as eight business days prior to the hearing. It is not clear if the information was emailed or faxed to the Petitioner on the same day.

The Commission notes that no direct information was submitted by OWNER-1 (here forth referred to as "the Owner"). Instead, the Owner read from a nine page statement at the hearing. The nine-page statement included many dollar figures, and analysis and conclusions drawn by the Owner. After the hearing, the Owner provided a hard copy to the Commissioner. The Owner then emailed a version on Tuesday, April 29 at 5:42 pm to the Office of the Commission.

During the hearing, RESPONDENT-4, the Contract Appraiser for the County, and spokesperson for the County at the hearing (here forth referred to as "the County Appraiser" or "Appraiser") said he had information that may answer questions for the Owner. The Owner stated he would like to see the information on the contingent he could respond to the material. The Appraiser stated he would email the information right after the hearing. The Commissioner agreed each party would have ten days to reply to the opposing party's rebuttal, starting the day of the hearing. The following was the understood schedule:

- The Owner had 10 business days from Wednesday, March 30 to May 13 to reply.
- The County had 10 business days from Wednesday, May 14 to Wednesday, May 28 to provide rebuttal (included Memorial Day).

- The Owner had 10 business days from Thursday, May 29 to Wednesday, June 11 to provide rebuttal.

It is noted the comments and rebuttal from the parties were received by the Office of the Commission as follows:

-The County Appraiser emailed the additional information on Tuesday, April 29 following the hearing.

-The Owner's response was dated Wednesday, June 4 and received June 4.

-The County's response was dated Thursday, June 10 and received on June 10.

-The Owner's response was dated Thursday, June 10 and received on June 12.

As the Petitioner's direct evidence was provided in the form of a verbal presentation and then in hard copy later, and the response to the additional information was submitted later than agreed, the Commission is going to accept and consider all information.

INFORMATION PROVIDED

Subject Description

At the hearing it was understood the Parties agreed to the following **ITEMS OF FACT** regarding the Subject.

1. The physical address of the Subject is ADDRESS-1 in CITY-1, Utah. This address is in downtown CITY-1.
2. The Subject parcel is ##### acres or ##### square feet ("sf"), but for the purposes of the appeal, the parties agreed it was ##### acres¹.
3. The Subject parcel is a rectangle shape, with three sides bordered by three streets – STREET-1, STREET-2, and STREET-3. One corner of the Subject parcel is on the main intersection of CITY-1, which is STREET-1 and STREET-2, and another corner of the Subject at STREET-2 and STREET-3. The parcel has frontage on STREET-1, STREET-2 and STREET-3, and from these three streets there are three access points to the improvements on the Subject.
4. The Subject Parcel is improved with the following three distinct structures:

¹This distinction is important because of the difference in square footage (sf). The square footage of ##### acres is ##### sf, while the sf of ##### acres is ##### sf, a difference of ##### sf. This is based on ##### sf in an acre. It appears the county records state the subject is ##### acres, but for the purposes of assessment the square footage of the ##### acres is used.

Structure One:

A hotel² called the PETITIONER with a gross building area of ##### sf where ##### sf is above grade level (AGL). It was completed in April YEAR. It has ##### rooms. Its public address is ADDRESS-1.

Structure Two:

A restaurant (“Restaurant”) that is ##### sf, built in YEAR, except ##### sf of it was added on in YEAR-YEAR. It is all above grade. It is leased to an operator running a restaurant called RESTAURANT-1. The public address of the restaurant is ADDRESS-2.

Structure Three:

A commercial building with a gross building area of ##### sf, with above grade area of ##### sf. Its construction was started in 2010 and completed in March YEAR³. It has two stories above grade, with three rooms on the second floor, and a basement. It is leased to an operator running a restaurant called the CAFÉ (“Café”) with a public address of ADDRESS-3.⁴

5. The Subject land and improvements is all one parcel which is parcel number #####.
6. The County reconciled a cost approach and an income approach, weighted at 50% each, to establish a market value for assessment purposes.
7. The Subject with land and improvements was valued and assessed at \$\$\$\$ as of the January 1, 2013 lien date.
8. With ##### units in the hotel, the Subject is assessed at \$\$\$\$ per unit.
9. The total assessed value of \$\$\$\$ was allocated⁵ by the County between the land and the improvements.
10. The Subject parcel was allocated at a value of \$\$\$\$.
11. The improvements were allocated at a value of \$\$\$\$.
12. The allocations to the land and improvements were further allocated, and these are shown later in this order.

The Parties agreed the Subject was located in the “Walking District” in downtown CITY-1, but they did not agree what boundaries constituted the walking district. It is understood for the purposes of this Order there is a general area between ##### South and ##### North, along

² The subject is a HOTEL -1 and was referred to as a motel, but the Owner preferred to refer to it as a Hotel as it has an interior hallway.

³ A commercial retail building was torn down in 2009/2010.

⁴ The county records provided for the hearing note an apartment. The issue of an apartment was not raised during the hearing, so it is not clear where the apartment is located.

⁵ The assessment documents provided by the County note it as “Value Distribution.”

STREET-1 in downtown CITY-1 that is generally referred to as a walking district. But it is further understood that there is an area between those boundaries with greater concentration of store fronts on STREET-1 that can also be referred to as the walking district. The County held the concentrated walking district was two blocks which were between ##### North and ##### South, and the County considered this a specific neighborhood, and the Subject was on the main intersection in the middle of this neighborhood. The Owner held the properties in the four blocks from ##### North to ##### South were equally part of the more heavily trafficked walking district. As there was no agreement, the Commission will determine based upon the evidence if the boundaries of the walking district are relevant to or dispositive to determining the value of the Subject.

The Parties' main arguments are summarized as follows:

The Owner:

The Owner is requesting only the land value be reduced from \$\$\$\$\$ to \$\$\$\$\$, for a total assessed value of \$\$\$\$\$. The main supporting arguments are:

- (1) The value of the land is overvalued, and
- (2) The land value is not equalized with other similar situated land because the Subject is assessed at a higher rate than other comparable properties near in location.

The County:

The County is requesting the total value of \$\$\$\$\$ as approved by the Board of Equalization (BOE) be sustained, holding that:

- (1): The Subject is valued as an economic unit, and
- (2): The information provided supports the economic unit value for the Subject at its highest and best use, valued at its maximum capacity. It is reconciliation of a cost and income approach, supported by the sales approach.

Owner's Direct Evidence:⁶

OWNER-1 (here forth referred to as "the Owner") stated that five years ago he appealed the Subject to the Tax Commission and went through the same appeal process, spending \$\$\$\$\$

⁶After the hearing, the Owner faxed in a copy of statement he read at the hearing, and which was his verbal direct evidence. With the opening statement he included a copy of the Commission's initial hearing decision from 2008 that he references here.

on appraisal and attorney costs, and then stipulated with the County within \$\$\$\$ of the land value they had requested.⁷ His concern continues to be that the Assessor's office is not complying with statute in two ways (1) the Assessor is valuing the business, not the land, and (2) land values are not equalized.

The Owner advanced the position that using the income received off the lodging, or the income approach, to value the Subject was irrelevant. He affirmed he would not provide income information because he has no obligation to provide income to the Assessor, and the actual income would not help value the property. It was his position that income is used to value the business (the service being provided), not the real estate. He also stated that he does not believe the market value is reasonable to the selling of the Subject because it includes personal property, the franchise fee, and a continental breakfast. He said the assessed value for 2013 is \$\$\$\$\$, but the personal property is valued at \$\$\$\$\$ and the franchise agreement is \$\$\$\$\$, plus then there is the goodwill of the brand name of the hotel. He cited Utah Code Annotated 59-2-102(28)(b) "property does not include intangible property." He acknowledged all three approaches can be used for property valuation -- the sales, the income and the cost approach, but said if the income and sales approaches are used, then there needs to be an agreement on how the overall value will be allocated to all those items that are captured in the income and sales approach. He said "I practiced tax law for 33 years before working with IRS. I made it a practice to allocate the purchase price between real estate, personal property and the goodwill." He concluded that if the items noted could not be separated out then the cost approach should be used.

It was his further position that Utah law requires an assessor to assess at market value, but questioned that the Assessor had a standard method to determine market value. He questioned how the Assessor could establish uniformity and equality, with what seemed to be no standard method for determining value. It was for all these reasons he held the only effective approach was the cost approach, then you look at whether it is being treated uniformly and equally, emphasizing that court decisions require uniformity and equality. In support of his argument on equalization the Owner stated that the Subject land value should be adjusted to the assessed value of like properties. In support of his equalization argument, the Owner provided six properties he held were like the Subject. These properties included four hotel properties, one restaurant property and one bank property. All the properties were noted to be within two blocks of the Subject. For each property the Owner gave the acreage, the assessed value, and the assessed value per sf. Then for each property the Owner calculated what he held was the "percent

⁷ While the Owner said it was within \$\$\$\$\$, the Commission notes the requested value was \$\$\$\$\$ and the stipulated value \$\$\$\$\$, a difference of \$\$\$\$\$.

difference”. For example, the Owner stated and wrote, “the PETITIONER’ assessed land value per square foot is 125% of INN’S-1 assessed value”. The Owner’s written and verbal information and additional comments regarding the six properties he held were like the Subject, and thus his comparables to support his equalization argument, are summarized in the next table:

Owners Information Submitted in Support of Equalization Argument

Property	Acres	Assessed Land Value	\$/sf	% difference ⁸	Distance from Subject	Owner’s additional comments
Subject HOTEL-1	###	\$\$\$\$	\$\$\$\$	NA	NA	
BANK	###	\$\$\$\$	\$\$\$\$	%%%	### feet (NE corner of STREET 1 & 2)	Less than ### the size of the Subject
INN-1	###	\$\$\$\$	\$\$\$\$	%%% ⁹	### ft. south (one block)	### larger site than Subject
INN-2	### ¹⁰	\$\$\$\$	\$\$\$\$	%%%	### ft. south (one block)	### the size of the Subject
RESTAURANT -2	###	\$\$\$\$	\$\$\$\$	%%%	### ft. south (one block)	
INN-3 ¹¹	### ¹²	\$\$\$\$	\$\$\$\$	%%%		Substantially smaller
MOTEL	###	\$\$\$\$	\$\$\$\$	%%%		Substantially smaller

⁸It is not clear what the Owner intended to convey with his “% difference.” The percent difference does not seem to be a type of comparison that would be done for an equalization argument, which would be the % difference in the assessed value per sf of the Subject and a comparable. For the purposes of illustration, if the Commission took the difference of the assessed sf value of the Subject and the Bank, \$\$\$\$- \$\$\$\$ = \$\$\$\$\$, and divided that by the assessed sf value of the Bank, \$\$\$\$/\$\$\$\$\$, the resulting value would be \$\$\$\$ or 40% difference between the assessed value of the Subject and the Comp. If one adds ### to###, for ###, and multiplies that by the assessed value of the Comp, the resulting value will be the assessed value of the Subject as shown: ### x ### = \$\$\$\$ (rounded). In this calculation “#” represents # times the Comp plus ### of the Comp or the 40% difference. The Owner appears to have determined the % difference between the Subject’s assessment and each property’s assessment, and multiplied that by ###. Using again the Subject and the Bank, the following is understood to be the Owner’s calculation: \$\$\$\$/\$\$\$\$\$ = ### x ### = 140%. While the Owner obtained the ###, the Owner then multiplied it by ### giving a 140% difference. Thus, it is not clear what the Owner intended to convey with his % difference calculations.

⁹ The Commission notes a discrepancy in the Owner’s written material; one document says 125%

¹⁰ The Commission takes administrative notice this is not consistent with the verbal statement by the County. The County stated the INN-2 site was ##### acres, the RESTAURANT-2 site was ##### acres, and they operated as an economic unit of ##### acres. The county also stated part of the INN-2 site was in a flood zone and not useable; however, the exact amount that was not useable was not given.

¹¹ The Commission takes administrative notice that the INN-3 and MOTEL are two blocks north of the Subject.

¹² The Commission notes the Owner’s information is inconsistent. One document shows ##### acres and two others #####.

The Owner stated he does not know the actual value of the Subject land and does not think there are adequate sales to determine the value of the land, but held minus land sales, the land value must be equalized with like properties, citing *Kennecott* “equality prevails.” In closing, to emphasize his opening statement, he said he would like to agree to the land value stipulated to five years ago. In answer to questions from the County asked by the Appraiser, the Owner’s comments are summarized as follows:

“Valuing our economic unit values our business,¹³ not our land. I will not tell you lease amounts for the restaurants. I took the position in STATE-1 and here, we do not provide income information. We can lose a good restaurant tenant and then we have a hard time getting the assessed value adjusted.”

County’s Direct Evidence:

RESPONDENT-4, a general certified appraiser, (here forth referred to as “The County’s contract appraiser” or “the Appraiser”) spoke on behalf of the County. The Appraiser said he was contracted by RURAL COUNTY to complete a reappraisal of all the commercial properties in RURAL COUNTY, including the Subject for the January 1, 2013 lien date. To do this he personally visited each property. He looked at the county records, and reviewed those records against the properties he visited noting any changes to condition or effective age. He said he gathered rental information from retailers, restaurants, lodging facilities and all similar situated commercial properties.¹⁴ He said the Owner was unwilling to provide income information on the hotel or any lease information for the restaurants. The Appraiser said he uses the rental information owners provide to verify his conclusions. He said he developed a land guide (also called a land guideline) to value the underlying land, and a guide to value improvements.¹⁵ He said he valued the Subject using both the income approach because it is an income producing property, and a cost approach because that is the method to value economic units like the Subject. He then used sales to bracket and give additional support to the final value of the Subject. The Appraiser said the Subject is valued based on what is legally possible, financially feasible at a maximum productive use.

¹³ The Commission holds the business value would be the daily restaurant sales. What a property will lease for is an indication of the value of the property.

¹⁴ He acknowledged the Property Owner has a right to share or not share rental information, but emphasized that by law he cannot disclose proprietary information and for 21 years he has gathered and kept confidential information that he only uses for analysis.

¹⁵ In his written rebuttal in post-hearing briefs, the Appraiser provided a table which he wrote “summarized the current and historical market evidence used by the assessor’s office in developing the current land guide for the subject neighborhood.” This is addressed further in this order where the Parties provided rebuttal.

Income approach

The Appraiser stated that because the Owner would not disclose the average daily rental (ADR) for the Subject, he had to use the best reliable information he could find, so he used a Revenue Per Available Room (referred to in the hearing as the “RevPAR”) Method to estimate a gross income for the Subject. To do this he used an Average Daily Rate (ADR) published in the REPORT (REPORT), and an industry multiplier he determined using data from the REPORT and the Smith Report. The Appraiser said the ADR of other hotels similar¹⁶ to the Subject in 2012 was \$\$\$\$ with 33.6 percent occupancy, and a RevPAR of \$\$\$\$\$. He noted the ADR for Utah in 2012 was \$\$\$\$\$, the average occupancy for Utah was 64.2%, and the average RevPAR \$\$\$\$\$. The Appraiser used the \$\$\$\$ per room night of similar Utah hotels, and multiplied it by the rounded up Utah occupancy average of 65%, to obtain a \$\$\$\$ RevPAR. He then multiplied the \$\$\$\$ by 365 days, and ##### rooms to obtain a gross income value of \$\$\$\$\$. This gross income he multiplied by Gross Income Multipliers (GIM) of 3.1 and 3.6; the 3.1 multiplier being for lower to modest hotels, and the 3.6 for newer and nicer hotels. He held both multipliers were recognized by the hotel industry. The resulting values indicated a value between \$\$\$\$ to \$\$\$\$\$.¹⁷ The calculations are shown below.

Appraiser’s Income Approach to Value Calculation using Revenue Per Average Room Night of RevPAR¹⁸

HOTEL-1: #####-acres
 RESTAURANT-1 #####-acres
 CAFE #####- acres
 Total: #####- acres

Number of Rooms	#####	#####	
ADR:	\$\$\$\$	\$\$\$\$	
Occupancy:	%%%	%%%	(EQUATION REMOVED)
RevPAR:	\$\$\$\$	\$\$\$\$	(EQUATION REMOVED)
Gross/Room/Year:	\$\$\$\$	\$\$\$\$	(EQUATION REMOVED)
Gross Income:	\$\$\$\$	\$\$\$\$	

GIM:	3.6	3.1	GIM: Older Motels: 3.0 to 3.25
(gross income			New/Nicer Motels: 3.5 to 3.9

¹⁶ The REPORT (REPORT) REMOVED NAMES OF CITIES IN THE REPORT. The Appraiser used “other Utah” lodging facilities. The Appraiser provided two pages from the December 2012 and 2011 REPORT. The Commission takes administrative notice that the Smith Report compiles data for the hotel industry http://en.wikipedia.org/wiki/Smith_Travel_Research.

¹⁷At this time, the Appraiser stated he had a document showing the value range. This was the item that led to the items discussed in Preliminary Matters.

¹⁸The specific calculations were provided after the hearing, but it was agreed this information would be provided after the hearing, and the Owner would have time to rebut in writing after the hearing.

multiplier)

MARKET VALUE:	\$\$\$\$\$	\$\$\$\$\$
PRICE PER ROOM:	\$\$\$\$\$	\$\$\$\$\$

The Appraiser chose to use the 3.6 GIM value of \$\$\$\$\$. He clarified that the income approach does include rental income from the RESTAURANT-1 and the CAFÉ. He stated that because the Owner would not provide lease agreements or lease amounts, he used credible income information from other like properties to estimate a likely lease income for those restaurants, and then added that to the \$\$\$\$\$ and determined a final income value of \$\$\$\$\$ or \$\$\$\$\$ per unit.¹⁹

Cost approach:

The Appraiser stated the cost approach for the land was based on the land guide he developed. He said the cost approach for the improvements was based on Marshall and Swift cost guidelines.²⁰ For the Subject land of ##### acres, the base rate is \$\$\$\$\$/sf. The land then receives a ##### size adjustment and a ##### parcel adjustment (an overall ##### adjustment), which yields a value of \$\$\$\$\$/ sf for a total cost approach land value of \$\$\$\$\$. For the improvements, the County performed replacement cost new less depreciation (RCNLD) calculations based on Marshall and Swift valuation guidelines. The County noted the actual age of the hotel as #####, but an effective age of #####, and applied 19% depreciation. The restaurant had the same actual age as the hotel, but an effective age of ##### so the depreciation was higher at 39%, and the Café had an actual age of #####, but an effective age of #####, and was given one percent depreciation. The total cost approach value for the Subject improvements was \$\$\$\$\$. Adding the land and improvement values yielded a cost approach value for the Subject of \$\$\$\$\$. Based on the Subject having a hotel, the County noted the Subject to have a Per Unit Value of \$\$\$\$\$. The next two tables summarize the information from the County records provided by the County.

¹⁹ The Commission takes administrative notice that the total income value was \$\$\$\$\$. The Appraiser said he estimated the income for the two restaurants and added it to the Hotel RevPAR to arrive at a total estimated income value. The Commission notes that income value attributable to the restaurants was not provided, but the Appraiser used the 3.6 GIM. Therefore, the Commission would understand that the Appraiser estimated the Subject income value to be \$\$\$\$\$ and the estimated income value for the two restaurants to be \$\$\$\$\$, for a total estimated income value of \$\$\$\$\$.

²⁰The Commission notes this is a recognized service <https://www.marshallswift.com>

Land (Land Guide)

Class	Type	Assmnt. Code	Size/ AC	Base Rate	Size Adj.	Section Adj.	Parcel Adj.	Adjusted base rate	Model value
Commercial ²¹	Primary	LCO1	###	\$\$\$\$	###	###	###	###	\$\$\$\$
Commercial	Primary	LCO1	###	\$\$\$\$	###	###	###	###	\$\$\$\$
Commercial ²²	Primary	LCO1	###	\$\$\$\$	###	###	###	###	\$\$\$\$
Total									\$\$\$\$ or \$\$\$\$\$/ acre

Buildings (Marshall and Swift)

Building Type	Year Built/ % complete	Actual Age	Effect. Age	Units	GBA ²³	Replacement Cost New	Dep. %	Dep. cost and estimated value	Value/sf
Hotel	YEAR	###	###	###	##### sf	\$\$\$\$	%	\$\$\$\$	\$\$\$\$
Restaurant	YEAR	###	###		##### sf	\$\$\$\$	%	\$\$\$\$	\$\$\$\$
Restaurant ²⁴	YEAR	###	###		##### sf	\$\$\$\$	%	\$\$\$\$	\$\$\$\$
Total					##### sf			\$\$\$\$	\$\$\$/\$sf

Economic Unit Information

Land Value \$\$\$\$\$
 Improvements \$\$\$\$\$
Economic Unit Value \$\$\$\$\$ **Unit Value** \$\$\$\$\$

Market Approach:

The Appraiser said he then measured the unit values of the Subject based on the income approach and the cost approach against five sales of hotel properties, using the sales as a test against the other approaches.²⁵ He had five sales ranging from September 2010 to December 2012. Two were in CITY-3 one in CITY-2, and one in (X) County, and the fifth in STATE-2. The sales ranged in value from \$\$\$\$\$ per unit to \$\$\$\$\$ per unit. The sales are summarized in the table below.

County Sales of Hotel Properties

Sale	Location / Notes	Acres	# of Rooms	Sales price Per room	Sales Price	Date of Sale
Sale #1 INN-2	CITY-3, Utah. Listed on open market. Reported 2012 ADR was \$\$\$\$\$ with occupancy of 45%	###	###	\$\$\$\$	\$\$\$\$	DATE
Sale #2 HOTEL-1	STATE-2. On open market 164 days	###	###	\$\$\$\$	\$\$\$\$	DATE

²¹Understood to be the hotel

²² Understood to be the cafe

²³ Understood to be Above Grade Level (AGL) Square Footage. See Elements of Fact.

²⁴ Understood to be the Café.

²⁵ The specifics of the five sales were provided after the hearing as part of rebuttal. The Commission has already determined it will consider all information.

Sale #3 INN-3	CITY-2, Utah The property was not listed on the open market at time of sale.	###	###	\$\$\$\$	\$\$\$\$	DATE
Sale #4 INN-4	CITY-3, Utah. Listed on the open market for two years. The restaurant and conference facilities are leased to a third party at \$\$\$\$ /month.	###	###	\$\$\$\$	\$\$\$\$	DATE
Sale #5 INN-5	CITY-4, (X) County, Utah. Listed for five months. Purchase was for 25% interest. Terms of sale were cash down, assumption of bank deed, second deed of \$\$\$\$ at 6.5% for five years.	###	###	\$\$\$\$	\$\$\$\$	DATE

Reconciliation:

The Appraiser stated he did a final estimate of the Subject value using a weighted approach. He used the cost approach value of \$\$\$\$\$, weighted 50%, and the income approach value of \$\$\$\$\$, weighted 50%, and determined an estimated total assessed value of \$\$\$\$\$, which he held valued the Subject as an economic unit, compliant with USPAP²⁶, at its highest and most productive use. This reconciliation is shown in the table below:

County Reconciliation of Value

	Weighted Percent	Approach Value	Weighted Value
Cost Approach	50%	\$\$\$\$	\$\$\$\$
Income Approach	50%	\$\$\$\$	\$\$\$\$
Reconciled value			\$\$\$\$
Unit value			\$\$\$\$

Allocation:

The total assessed value of \$\$\$\$\$ was then allocated between the land and the improvements--\$\$\$\$\$ to the land value and \$\$\$\$\$ to the improvement values. These were further allocated between each improvement as shown in the table below:

Subject Value Distribution²⁷

Previous Values (1/1/2012)

New Values (1/1/2013)

Code	Acres	Value		Code	Acres	Value	
Land							
LC03	2.25	\$\$\$\$		LC01	1.90	\$\$\$\$	(hotel)
				LC01	0.10	\$\$\$\$	(restaurant)
				LC01	0.25	\$\$\$\$	(café)
Sub		\$\$\$\$					
Imprs.							
	BC09	\$\$\$\$		BC09		\$\$\$\$	(hotel)
	BC03	\$\$\$\$		BC05		\$\$\$\$	(restaurant)

²⁶ Uniform Standards of Professional Appraisal Practice

²⁷ Also known as “allocation of value.” The Commission takes administrative notice that the allocation to the individual buildings in the cost approach was 80% to the hotel, 3% to the restaurant, and 17% to the café. With the final reconciled approach the allocation was 82% to the hotel, 3% to the restaurant and 15% to the café.

	BC03	\$\$\$\$\$		BC09		\$\$\$\$\$	(café)
Sub		\$\$\$\$\$				\$\$\$\$\$	
Total		\$\$\$\$\$				\$\$\$\$\$	

In terms of the Owner’s equalization argument, the Appraiser countered that just attacking the land value does not consider the economic unit, and that it is the total value that should be considered, not just the land value. He argued this could be considered a question by the Owner of how the County has chosen to allocate the overall value between the land and the improvements. The Appraiser held the Owner had not provided enough direct evidence to support his requested reduction in value. The Appraiser stated in his 22 years as an appraiser he had never compared a bank property to a motel property, holding it is an irrelevant comparison. Finally, the Appraiser challenged the Owner’s position that based on the valuation method used, specifically the income and market, components such as franchise licenses should be allocated out; the Appraiser argued components could not be allocated out.

In response to questions from the Owner, the Appraiser provided the following information and answers regarding the properties the Owner held as comparables to support an equalization argument.

1. The Appraiser confirmed the INN-1 did not receive an updated 2013 value. He said the INN-1 was under complete renovation in 2012. As a result, he agreed with the Assessor that the 2012 value should remain for the 2013 year due to the shutdown and renovation; a new value would be reflected for the 2014 roll. He said it is a #####-unit motel with an attached restaurant valued at \$\$\$\$\$/unit for 2013. He said that value is bracketed by the hotel sales data.
2. The INN-2 has ##### motel rooms on ##### acres; however, part of the acreage is along the creek on a flood plain and not usable to build. That property has a large land to building ratio, but has an economic unit value of \$\$\$\$\$/unit.
3. The INN-6 is at the north end of the walking district. It is a ##### acres motel with ##### units; valued at \$\$\$\$\$/ unit.
4. The MOTEL, which is across the street from the INN-6 has ##### units and ##### acres and valued at \$\$\$\$\$/ unit.

The Appraiser said the Subject has ##### acres, and ##### units. It is valued at \$\$\$\$\$/unit. He emphasized that the Subject has two separate restaurants, and those restaurants contribute to the value of the economic unit, and that is why the value per unit for the Subject is

higher. He said most hotels do not have two eating facilities contributing to their value per unit like the Subject, so other hotels will have a lower per unit value.

In regards to the Owner's argument that he is valuing the business value, he said if the Owner would work with the Assessor and him as the Appraiser, they would do their best to assure they have considered and accounted for any business value, but he held that was difficult to do when the Owner was not willing to share financial information. He said because the Owner will not provide information, and the Assessor is required to value, the County can use the ADR and reconcile with the cost approach.

In response to the Owner's position that the Cost Approach is the only reasonable approach to use, the Appraiser said the cost approach value is \$\$\$\$\$, which is a higher value than the assessed value. He added that he could have gone with the cost approach, but thought it should be reconciled with the income approach. The Appraiser noted that the Owner said "he agrees with the improvement values", but the Appraiser noted those were the improvement values from the reconciled approach, not the cost approach. The Appraiser concluded by saying he has to be able to defend his values to his peers, he has had no cooperation from the Owner, and he is even concerned that the reconciled value could be undervaluing the property. He said there is a difference between valuing a property at its highest and best use vacant versus its highest and best use as improved. The Subject, at its maximum use is improved, working as an economic unit with a hotel and two restaurants, with no functional or economic obsolescence.

Rebuttal and Final Arguments

There were two opportunities for rebuttal; the first was at the hearing, the second was in post hearing briefs. At the hearing the Owner rebutted the County's position that it was inappropriate to attack only the land value. The Owner replied that he had reviewed hundreds of appraisals, which separate value of the improvements from value of the land, and that it was not inappropriate to attack one element of an appraisal. The Appraiser again rebutted the Owner's position that components could be removed from a determined value, stating it would be contrary to USPAP.

Provided After the Hearing in Post Hearing Briefs

The Owner:

Income Approach: The Owner questioned use of the Income Approach and specifically questioned the use of the RevPAR valuation method. He did specifically question the use of the 3.6 multiplier, when 3.5 is the common industry multiplier for the type of Subject hotel. Holding

to his position that “real property taxes are not assessed on the value of the business, but on the value of the real estate” he emphasized use of the income approach would include the value of the HOTEL-1 membership (franchise) worth \$\$\$\$\$²⁸ and personal property assessed at \$\$\$\$\$. He said even subtracting the assessed value of the personal property at \$\$\$\$\$ from the assessed value of the Subject at \$\$\$\$\$, yields a value of slightly more than \$\$\$\$\$, which he said is close to the settlement value of \$\$\$\$\$ he offered at the hearing, which was derived by reducing the land value to \$\$\$\$\$, or a proposed value of \$\$\$\$\$/sf.

Equalization: The Owner summarized his equalization argument, writing “we presented evidence that the land valuations for land fronting on STREET-1, ranged from \$\$\$\$\$per square foot for a site that is ##### acres to a low of \$\$\$\$\$ per square foot for a site that is ##### acres”, and repeating “*Where it is impossible to achieve perfectly both the standard of true value and the standard of uniformity and equality, the latter standard should prevail,*” as stated in *Kennecott*. He said the most glaring of these is the BANK which is ##### acres, less than ##### feet away, and assessed at \$\$\$\$\$/sf and the second parcel, the RESTAURANT-2, less than ##### feet to the south²⁹ on STREET-1 is ##### acres and assessed at \$\$\$\$\$/sf. The Owner criticized the Appraiser for not providing the assessed valuation of the five land sales the Appraiser submitted to support the assessed square foot value of the Subject.³⁰ The Owner also questioned how those land sales were used to establish uniform and equal valuation assessments, ending his communication with:

“We wish we could tell the Commission what we believe our real estate is worth. We do not know. What we do know is that the Assessor uses such a system of valuation that makes it impossible to tell if we are being treated uniformly and equally. Such a system screams for revision so that all payers of real estate taxes will be able to tell if they are being treated uniformly and equally in relationship to their neighbors.

Finally, the Owner submitted a memorandum citing Utah code and court cases as summarized below:

²⁸ The Commission notes there is a disparity between the verbal and written testimony of the Owner. At the hearing it was understood the franchise value was almost “\$\$\$\$\$”, the post hearing document states it is “\$\$\$\$\$”. The franchise agreement is addressed later in the analysis.

²⁹ The Commission takes administrative notice that a typical CITY-1 block in Utah on a STREET-1 is 660 feet by 660 feet, so 900 feet would be about one and half blocks away.

³⁰ The Commission notes sales prices of properties may be helpful in determining fair market value, but based on the dates of sale, may not be as helpful in determining whether there is an issue of equalization with the Subject for the year at issue.

UCA 59-2-1006(4)(b) provides that a property's assessed value shall be adjusted for purposes of equalization if "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."

Mountain Ranch Estates v. Utah State Tax Commission, 100P.3d 1206, 1211 (Utah 2004), "Section 59-2-1006 (4)] mak[es] valuation adjustment relief available...to the aggrieved property owner who can compile evidence of more than one comparable property with valuations outside its five percent tolerance range"

Harmer v. State Tax Comm'n 452 P.2d 876, 879 (Utah 1969) "While absolute equality and uniformity in the assessment of property is not practicable, a requirement of reasonable uniformity is essential."

Kennecott Copper Corp. v. Salt Lake County, 799P.2d 1156, 1161 (Utah 1990), "Where it is impossible to achieve perfectly both the standard of true value and the standard of uniformity and equality, the latter standard should prevail."

The County:

In support of its concluded value, the Appraiser provided the following information and rebuttal on behalf of the County:

Sales Approach:

Sales of motel property were used to test the reliability of the concluded value for the Subject. He held of the three approaches to value used in the appraisal industry, the Income Approach "generally provides the most persuasive and supportable conclusions when valuing lodging facilities."

Land Guide and Land Sales:

In support of the County's land value, the Appraiser provided a table that he wrote "*summarizes the current and historical market evidence used by the assessor's office in developing the current land guide for the subject neighborhood.*" The Appraiser provided five land sales, all within three blocks of the Subject; four of the land sales occurred prior to the lien date, one of them was at least ten years prior to the lien date, and the fifth sale was under contract (understood to be as of the date of the submission of this rebuttal).³¹ The sales ranged in size from ##### acres to ##### acres and sold for a price per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$. The five land sales and the Appraisers comments are summarized in the next table.

³¹ The Owner objected to the Commission's consideration of the sale under contract, as it was not prior to the lien date in question. The Commission will consider this objection when analyzing the totality of the information and weight accordingly.

County’s Land Sales to Support Land Guideline

Sale # / Location (all in CITY-1)	Sales Date	Sales Price	Acres	\$/acre	\$/sf	Appraiser’s Comments
Subject	DATE (lien date)	\$\$\$\$ (assessed)	###	\$\$\$\$	\$\$\$\$	
Sale #1 ADDRESS-4	DATE	\$\$\$\$	###	\$\$\$\$	\$\$\$\$	Purchased by local lodging property owner
Sale #2 ADDRESS-5	DATE	\$\$\$\$	###	\$\$\$\$	\$\$\$\$	Purchased to provide RV parking for adjacent motel property. ##### year old home demolished after purchase. The purchase price does not reflect demolition cost.
Sale #3 ADDRESS-6	DATE	\$\$\$\$	###	\$\$\$\$	\$\$\$\$	Former service station site
Sale #4 ADDRESS-7	DATE	\$\$\$\$ ³²	###	\$\$\$\$	\$\$\$\$	Contract price is just shy of \$\$\$\$ or \$\$\$\$/sf
Sale #5 ADDRESS-8	DATE	\$\$\$\$	###	\$\$\$\$	\$\$\$\$	This is an inline property sale on STREET-1. All that existed were the remnants of a previous building foundation.

Petitioner’s Requested Land Value: The Appraiser emphasized the Owner had provided no market evidence to support his requested land value. Of the Petitioner’s position that the land value should be the same value as to what the parties stipulated to for the January 1, 2008 lien date, the Appraiser stated that a property at ADDRESS-9 sold in February 2004 for \$\$\$\$\$, and then sold again in May 2009 for \$\$\$\$\$ with no major changes in the building. He said the 30% increase in value shows that property values were not impacted in CITY-1 during the national economic downturn that became evident in 2008, thus there is no support for the Owner’s requested 2008 value.

Business Value and Reconciled Value: The Appraiser wrote that the Cost Approach “only reflects the value of the real estate – no business value,” but the Appraiser also notes that the Owner argued that only the cost approach should be used, and the County’s Cost Approach value was \$\$\$\$\$, while the income approach value was only \$\$\$\$\$. He held because he reconciled a cost and income approach at 50% each, the resulting value was \$\$\$\$\$, a reduced

³² Understood to be the listing price

value of \$\$\$\$ from the cost approach. For this reason he held the reconciled value did not include any business value of the Subject.

ANALYSIS

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide a sound evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue, under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer has raised an equalization argument, and to prevail must show that the County’s appraised value for the subject property deviates more than 5% from the assessed value of comparable properties. Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm’n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner’s assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner “singled out” for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

Main Arguments:

The Owner’s main argument does not concern fair market value, but instead equalization. The Owner’s primary request was that the Commission reduces the assessed value of the land based on an equalization argument; however, the Owner also argued the cost approach was the most appropriate valuation method, and that personal property should be removed when using the income approach. And the Owner said he does not know the value of the Subject. The County provided direct evidence to support the total assessed value, and to rebut the Owner’s equalization argument. The Commission will consider and address those arguments that are relevant to determining the fair market value of the Subject and the issue of equalization.

Fair Market Value:

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). As a general rule, valuations such as those from a county board of equalization are entitled to a “presumption of correctness.” See *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652, 656 (Utah 2000), quoting, *Utah Power & Light Co. v. Tax Comm’n*, 590 P.2d 332 (Utah 1979). “This presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission.” *Id.* In addition, Utah courts recognize that “the term ‘market value’ is at best an approximation.” *Rio Algom Corp. v. San Juan County*, 681 P.2d 184, 192 (Utah 1984).

The Commission will review each approach to value used by the County to support its assessed estimate of fair market value.

Cost Approach:

The County provided a cost approach to value for the land and the improvements. The Owner called into question if the Assessor had a standard method to determine market value and value land. The Appraiser provided evidence of development of a land guide³³, (also called a land guideline or land valuation guideline). The Commission takes administrative notice of the Property Tax Division’s website, and the Standards of Practice³⁴ published on the website. The Standard Six speaks to the development of a land valuation guideline³⁵.

Every appraisal program must have a written local land valuation guideline. This is a set of land valuation rates for each individual neighborhood, based on use classification, relative value type, size, frontage, or any other appropriate characteristic. It should also include adjustment factors for physical characteristics such as depth, shape, drainage and soil, street access, traffic,

³³A land valuation guide is a document typically produced by or for each county under standards set forth by the Property Tax Division of the State Tax Commission. The guide establishes procedures and values to be used in the mass appraisal process. See Commission Order 09-0444, pg 8. Commission orders can be found at <http://www.tax.utah.gov/commission-office/decisions>

³⁴The Commission notes that Standards of Practice are developed by the Property Tax Division for use by county offices as a guide for the purposes of achieving standard practices and procedures to ensure uniformity in the administration of real property and equity in taxation. The Commission further notes the intent of the standards is not to instruct in the details of appraising, but rather to emphasize those particular aspects of valuation that pertain to assessing in Utah.

³⁵ At page 33 of the link: <http://propertytax.utah.gov/library/pdf/standards/standard06.pdf>

utilities, topography, or any other characteristics for which an adjustment factor can be reasonably supported by available market data.

The Commission has verbal and written testimony from a general certified appraiser that he developed a land guideline. Further, the Commission has documents submitted from the County that are understood to be from the County's assessment records. It begins with the title "County Info Sheet" and gives the parcel number and name of the Subject. On page two is a title "Land and Buildings", and underneath that the description "LAND (Land Guide)". The columns show the land specifications, a base rate, a size adjustment, a section adjustment, and a parcel adjustment.

The land guideline prepared by the Appraiser was supported by four sales of land, one in 2002, two in 2010, and one in 2012, and sold for a price per square foot from \$\$\$\$\$ to \$\$\$\$\$, between the areas of ##### South and ##### North, and ##### West to STREET-1, with two of them being on STREET-1. The sale closest to the lien date was Sale #3, at ADDRESS-6 on DATE, which was a ##### acre lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per sf. This sale less than two and half months before the lien date would seem to corroborate the base value of \$\$\$\$\$ per sf used to value the Subject property. In addition, it is noted this is a sale that seems to be on the border of what the Owner argued was the area of the walking district. It was the County's position that property becomes more value in the central, more concentrated area of the walking district, and it was not rebutted that the Subject is on the main intersection in the middle of the walking district.

The County's land sales would appear to support a base value of \$\$\$\$\$. Based on the documents submitted, the Subject land received a ##### size and ##### parcel adjustment to the base value of \$\$\$\$\$ based on the land guide. Although it was not made clear in the hearing how these adjustments were determined it would reason they were based on the elements of physical characteristics as addressed in aforementioned Standards of Practice Six. There were no other sales provided to counter the land base value. The evidence shows that the Assessor has a system. The value of \$\$\$\$\$ per sf assessed value was not shown to be incorrect.³⁶

³⁶As previously noted, the Appraiser proffered there was a pending contract for a sale at ADDRESS-7, for a ### acre lot, at \$\$\$\$\$ /sf. As further noted in footnote 31, the Owner objected to the Commission's consideration of the sale under contract as it was not prior to the lien date in question. The Commission understands the Appraiser provided the sale under contract, which would be at least a year past the lien date in question, to support his position that the value of land sales had not declined with or due to the economic recession that became evident after 2008. It was further understood the sale under contract was provided to support the assessed sf value of the Subject. The Commission will consider post lien date information if it corroborates a trend; however, the Commission has already reached a conclusion the County has supported its sf assessed value for the Subject land, and there is no need to consider the information.

The County provided a cost approach to value for the land. The cost approach value of the Subject land, valued based on the county land guide line was supported by land sales provided by the Appraiser. These sales were used to support the County's land guide base amount which was applied to the Subject land.³⁷ No other sales were provided to rebut the County's sales.

The County provided Marshall and Swift data for the buildings. The cost approach value of the improvement was not refuted. There were not mistakes of fact regarding the buildings that were provided except the Owner wanted some of the buildings reclassified. As noted earlier, there was no information presented to support this request, and the issue was not placed squarely before the Commission. Therefore the Commission finds the County has provided enough evidence to support its cost approach to value.

Income Approach

In general, the Owner called into question the valuation of the Subject using the income approach to value and further the County's position that the Subject was operating as an economic unit and therefore an income approach to value should be considered. The Commission recognizes the income approach to value as the valuation method to value an economic unit. See commission orders 06-1653 pg3 and 10-0786 pg7 regarding valuation of motels³⁸. "Furthermore, for income-producing commercial properties, the Commission generally believes that the income approach is more reflective of value than other approaches." See Commission order 08-1575 pg8.

However, the Owner at the hearing, and in post-hearing documents, also called into question three specific items regarding the County's income approach to value.

First, the Owner called into the question overall the use of the RevPAR, but did not provide an alternative income approach to value. The Owner then called into question the use of a 3.6 multiplier, saying 3.5 was the industry standard for hotels like the Subject, but did not provide any information to document this. As such, the Commission declines to accept a 3.5 multiplier is more appropriate.

Second, the Owner has raised the issue that the assessed value of personal property for the Subject should be subtracted from the income value. The owner presented the figure of \$\$\$\$ as the assessed value of the personal property. The County did not refute that assessed

³⁷ The Commission notes the County's land sales fall between ##### North and ##### South, but it is not known what base land values other than the \$\$\$\$ per square foot were established in the County land guide from the sales and where they were applied. Neither is it clear if there is "a walking district" to which specific land guideline values apply.

³⁸ See also commission order 04-1603 pg2-3 finding an income approach is appropriate for an apartment complex, and commission order 10-2103 pg 3,5 where a shopping center was valued as an economic unit.

value of the personal property should be deducted. Although no document showing the assessed value of the Subject’s personal property was provided, the Owner has proffered an amount. The Commission has previously written that when calculating the income approach for motel and hotel properties, it is appropriate to subtract the assessed value of personal property. See Commission Orders 10-0786 pg 4, and 06-1652 pg 4.

The Commission will adjust the County’s income approach for the assessed value of the personal property for this appeal in the section titled “Revised Income Approach Value.”

Third, the Owner called into question the issue of the intangible value of the Subject’s franchise license, but the Commission holds the Owner needed to provide evidence the RevPAR calculation inherently captured the intangible value of the franchise license. In commission order 04-1347 pg.5, the commission found:

Intangible property is specifically exempt from property tax pursuant to Utah Code Sec. 59-2-102(26). However, the statute defines “intangible property” to be property that is capable of private ownership separate from intangible property. See Utah Code Sec. 59-2-102(18). Petitioner made an argument that Respondent’s value captured some intangibles, but made no attempt to show what or how much. The Commission would note that the income approach is routinely considered in appraisals of property, especially rental properties. In this case the witness for Respondent argued that there could be no value for intangibles in his income approach, because it was, in fact, lower than the cost value. **Whether or not Respondent’s value contained a value for intangibles would be a question of fact upon which Petitioner has failed to meet the evidentiary burden. (Emphasis added.)**

The Commission notes the Appraiser in this instant appeal made the same argument regarding intangibles as in the order quoted above. The Appraiser stated because the income approach value was substantially lower than the cost approach value, the business value would not be captured. The Commission agrees, and notes that the Owner said the franchise license could be several hundred thousand, but there was a difference of \$\$\$\$\$ between the County’s cost approach and the income approach.

Revised Income Approach Value

The Commission holds the recalculated value of the income approach value is as follows:

Appraiser’s Income Approach value	\$\$\$\$\$
Minus the Subject’s personal property -	\$\$\$\$\$
Equals a revised value of	\$\$\$\$\$ for the income approach

Revised Reconciliation of Value

While the Owner challenged the income approach to value, the Owner did not support by a preponderance of the evidence that the cost approach was incorrect, nor that a reconciled approach to value was incorrect. Therefore, the Commission calculates a revised reconciliation of value:

Revised Reconciliation of Value			
	Weighted Percent	Approach Value	Weighted Value
Cost Approach	%%%	\$\$\$\$\$	\$\$\$\$\$
Revised Income Approach	%%%	\$\$\$\$\$	\$\$\$\$\$
Revised Value			\$\$\$\$\$
Revised unit value			\$\$\$\$\$

The Commission notes had the Owner provided actual recent and relevant room sales and lease amounts, an income approach to value based on actual income could be the best indicator of value, or a basis for receiving the most weight in a reconciled value, but the Commission does not have the benefit of this information.

Sales Approach to Value:

When defending the original per unit value of \$\$\$\$\$ for the Subject, the County held it was higher because the Subject had two restaurants where most hotels or motels did not. These restaurants the Appraiser said, added to the total economic unit value, and thus the value per unit for the Subject was going to be higher than the Owner’s comparables.

To support this position, and the assessed value of the Subject, the County provided five hotel sales they said bracketed the assessed value per unit of the Owner’s comparable hotels, and supported the per unit value of the Subject would be higher. It was not clear how the County’s sales were comparable to the Subject and the Owner’s comparables as there was limited information provided on which had restaurants, but there were no other sales provided, and the Owner did not refute the County’s sales.

The Commission notes the Subject’s new per unit value of \$\$\$\$\$ (based on the Commission’s new reconciled value) is still \$\$\$\$\$ higher than the highest per unit value of \$\$\$\$\$ of the County’s hotel sales, but there was no other dispositive information provided to dispute that the Subject would yield a higher per unit value than nearby hotels, whose assessed values were bracketed by the County’s hotel sales. While the Owner held the restaurant value is not relevant and should not be included, the Commission notes the value the Appraiser added to the

estimated income for the restaurants was less than \$\$\$\$ which was only 1.2% of the estimated economic unit value. As noted earlier, the Appraiser stated he had to estimate the contributing value of the restaurants, so it is possible the contributing value of the restaurants to the economic unit is also undervalued.

Revised Fair Market Value

Based upon the preponderance of the evidence, the Commission finds the fair market value of the Subject should be reduced to \$\$\$\$.

Equalization:

While the Commission has found that the preponderance of the evidence supports the overall assessed fair market value of the Subject property, in *Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), the Utah Supreme Court found that even though a property’s assessed value may properly represent its “fair market value,” the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The Commission quotes *Mt. Ranch Estates v. State Tax Commission*:

“To win an adjustment in valuation under section 59-2-1006(4) without joining a battle over fair market value, a property owner must meet the clear statutory mandate of presenting multiple disparate comparable properties. The property owner cannot have both an absence of comparable properties and freedom from the constraints of the fair market value standard of valuation. (Emphasis added) Mt. Ranch Estates v. State Tax Comm’n, 100 P.3d 1206 (Utah 2004)

The Commission does not find the Owner has provided evidence that the Subject lot is comparable to the properties provided by the Owner. The Subject is ##### acres; however, the sizes of the properties provided by the Owner are #####, #####, #####, #####, #####, and ##### acres. Five properties were at least ##### acre smaller than the Subject, and one property was almost ##### acre larger. Based on size alone, the Commission does not believe the Owner has provided a property that is comparable.

While the properties the Owner provided are close to the Subject that does not necessarily make them comparable properties. A property’s value is determined by its characteristics, which may include, but not be limited to location, size, and shape, topography, zoning, and access, and other items that may be unique to the parcel. Even a property across the street that is comparable in terms of location does not automatically mean the values are the same.

The Subject was valued and assessed on a reconciled value of the income approach and the cost approach. The final value was then allocated between the value of the land and the value of the improvements. If the assessed value had been applied based only on the cost approach, then the component parts would be the value of the land and value of the improvements. The cost approach is in and of itself made up of component parts, therefore it is easier to make an equalization argument, which may be the reason the Owner argued that the Subject should only be valued on the cost approach.

In terms of the properties provided by the Owner in support of his equalization argument, although they are only one to two blocks away, the Commission does not know how they were valued, if or how they are comparable as economic units to the Subject, and how their overall value was allocated between the land and the improvements. It is possible the properties provided by the Owner would need to be adjusted upwards to make them comparable to the Subject for purposes of considering equalization. It is further possible the Subject land is under assessed as compared to the MOTEL. Finally, it is not inconceivable the Subject is the most valuable parcel in downtown CITY-1 and its assessed value should be higher than adjacent and surrounding properties.

The 2008 Appeal of the Subject Property

The Owner provided the Commission's order on the 2008 appeal of the Subject. In that appeal, the Petitioner also advanced an equalization argument, and the Commission reduced the land value based on equalization. The question could be asked, why the Petitioner does not prevail on an equalization argument for the same property in this appeal. In the 2008 appeal for the same Subject, the County advanced no case. The County provided no information to support the assessed value, and provided no evidence in how the Subject was valued. The County made limited argument to rebut the equalization argument. Based on the information presented for 2008 appeal, the Commission issued a ruling. The instant appeal before the Commission is a different appeal; the evidence and information provided and the arguments made were different.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2013 lien date. Further, the Commission takes no position on how the overall value should be allocated. The Assessor should provide to the County Auditor how the new value should be allocated. The RURAL 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