

15-1071

TAX TYPE: PROPERTY TAX

TAX YEAR: 2014

DATE SIGNED: 5-13-2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 15-1071</p> <p>Parcel No. PARCEL-1</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to the address listed near the end of this decision.**

**Presiding:**

Robert Pero, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER  
For Respondent: RESPONDENT-1, Appraiser Salt Lake County  
RESPONDENT-2, Appraiser Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 23, 2016, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) filed an appeal of the decision of the Salt Lake County Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The lien date at issue in this appeal is January 1, 2014.

3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$. The representative for the County requested that the value remain as set by the County Board of Equalization.

4. The property that is the subject of this appeal is parcel no. PARCEL-1 and is located at SUBJECT ADDRESS, CITY-1, Utah.

5. The subject property is #####-acres of land improved with a retail drugstore, which is located in the CITY-1 Town Center. The building has #####-square feet and was constructed in YEAR. The building is of construction class C and rental class B. This property is located in what the County has described as a community center and it is leased by STORE-1 and used as a STORE. The County notes that this is a retail shopping center with two anchor stores and a number of other stores.

6. The representative for the Property Owner had valued the subject property based on an income approach. He did not submit a traditional formal appraisal. It was his testimony that the actual lease rate of the subject building was \$\$\$\$ per square foot. He did not provide the lease, but indicated that the lease had been entered into in YEAR when the building was constructed. He did not know if there were escalation clauses in the lease. He had provided portions of a rent roll dated January YEAR and one dated January 1, YEAR, which showed the lease rate being \$\$\$\$\$. He also indicated he did not know if the lease was triple net, but he assumed it was. In his income approach he used the \$\$\$\$ per square foot lease rate, a 10% vacancy rate, 10% for expense and a capitalization rate of 8.5%. This indicated a value for the subject of \$\$\$\$.<sup>1</sup>

7. The representative argued that because the lease was a long term lease, a prospective buyer would take the lease into account in determining how much to pay for this property.

8. The Property Owner did not provide any lease comparables.

9. The representative for the Property Owner did provide three parcels which were assessed lower than the subject and argued that they supported a reduction on an equity basis. He did not provide the addresses for these equity comparables, but listed them by parcel number and name of the store occupying the property. His equity comparables were the following:<sup>2</sup>

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<sup>1</sup> Petitioner’s Exhibit 1.

<sup>2</sup> Petitioner’s Exhibit 1, pg. 9.

Parcel/Store	Assessed Value Per Square Foot	Effective Year	Build SF
Subject: PARCEL-1/ STORE-1	\$\$\$\$\$	YEAR	#####
PARCEL-2/STORE-2	\$\$\$\$\$	YEAR	#####
PARCEL-3/STORE-3, STORE-4	\$\$\$\$\$	YEAR	#####
PARCEL-4/STORE-5	\$\$\$\$\$	YEAR	#####

It was the conclusion of the Property Owner’s representative that these three equalization comparables averaged an assessed value per square foot of \$\$\$\$\$ and he argued that they suggested a value for the subject property at \$\$\$\$\$.

10. The representative for the Property Owner had provided a photograph of the exterior of these three equalization comparables but did not provide addresses or information to support that these comparables were in area comparable to the subject. For the STORE-2 property, the photograph did seem to appear that it was located in a center with some additional retail stores, but it was not shown that this property was located in a community center like the subject. The STORE-3/STORE-4 property was, however, located in a standalone center, which the County’s representative pointed out to not be comparable to the subject. The County pointed out that STORE-5 was located in a distressed area and was also a Class D rental.

11. The Property Owner has not provided sufficient evidence to show that these three equalization comparables were truly comparable to the subject property.

12. The County also did not present a traditional formal appraisal, but did submit the information prepared by a County Appraiser for the County Board of Equalization.<sup>3</sup> It was the County’s position that the Property Owner’s income approach was a lease fee value and that for property tax purposes, the property needed to be assessed based on a fee simple value. Therefore, the County did not rely on the actual lease rate of \$\$\$\$\$ per square foot because this was from a long term lease which had been entered into in YEAR. The County considered \$\$\$\$\$ to be a below market rate. The County’s income approach was based on a lease rate of \$\$\$\$\$ per square foot. The County provided four lease comparables to support this higher lease rate. These comparables were for properties located a considerable distance from the subject and were the following:

Address	Store	Lease Rate	SF	Year Built	Lease Date
Subject: SUBJECT ADDRESS	STORE-1	\$\$\$\$\$	#####	YEAR	YEAR

<sup>3</sup> Respondent’s Exhibit 1.

ADDRESS-1.	STORE-6	\$\$\$\$	#####	YEAR	DATE
ADDRESS-2	STORE-7	\$\$\$\$	#####	YEAR	DATE
ADDRESS-3	STORE-8	\$\$\$\$	#####	YEAR	DATE
ADDRESS-4	STORE-9	\$\$\$\$	#####	YEAR	DATE

13. In the County’s income approach, along with the lease rate of \$\$\$\$\$, the County allowed for a vacancy rate of only 5% and an expense rate of 6%, both of these factors were lower than those used by the Property Owner in its valuation. The County did apply the capitalization rate of 8.5%, which was the same rate used by the Property Owner. This indicated a value for the subject of \$\$\$\$\$.

14. Upon reviewing the facts submitted in this matter and that the burden of proof is on the Property Owner, the Property Owner has not demonstrated error in the value set by the County for the subject property. The Property Owner has not shown that the actual long term rate for this property at \$\$\$\$\$ per square foot was a market lease rate, as this lease had been entered into in YEAR. It was not proven that there were escalation clauses in the lease that might adjust for market factors. The Property Owner also did not provide support for a vacancy rate as high as 10% or for expenses as high as 10%.

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 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. . .

(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. (Utah Code Sec. 59-2-1006(1)&(5).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary basis upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

#### CONCLUSION OF LAW

1. Property tax is based on the property's "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. The value set by the County Board of Equalization has the presumption of being correct and to either raise or lower the value either party must demonstrate that the County Board's assessment contained error and provide a sound evidentiary basis for the new value. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). The Property Owner did not provide sufficient evidence to meet this burden.

3. The Property Owner has argued that a willing buyer for this property would take into account the fact that it is subject to a long term lease at \$\$\$\$ per square foot and this would factor into how much a buyer would be willing to pay for this property. The County argues that for property tax assessment purposes, which is a "fair market value" standard, the valuation must be based on fee simple ownership. The County's representative cites for support to Standard 6 of the Uniform Standards of Professional Appraisal Practices (USPAP) as well as the Utah State Tax Commission's Standards of Practice 6.2.1. Utah State Tax Commission Standards of Practice 6.2.1 provides, "For ad valorem tax purposes, properties are generally appraised as if all ownership rights and interests are attached, i.e., fee simple interest." The Commission has previously considered this question and concluded as the County has argued that the fair market value standard means the property is to be valued based on fee simple ownership. In *Utah State Tax Commission Initial Hearing Order Appeal No. 12-2733* (2013)<sup>4</sup> the Commission explained:

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the real issue before us. The evidence indicates that the lease is essentially a "below-market" lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor's interest is diminished, but the value of the lessee's interest is increased. See *The Appraisal of Real Estate* (10<sup>th</sup> Ed. 1992), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor's and the lessee's interest.

Regarding the fair market value evidence presented, the Property Owner did not provide evidence of fee simple value, and the County has supported its assessment with evidence of fee simple value.

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<sup>4</sup> This and other redacted decisions are available for review at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

4. The Property Owner has also made an argument based on equalization, providing three retail properties that are valued lower on a price per square foot basis than the subject. The Property Owner has not provided evidence that these are actually comparable to the subject or in comparable locations. Under Utah Code Sec. 59-2-1006, a property owner may appeal the assessment based on either fair market value or equalization. Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other commercial properties if the issue of equalization is raised and “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.” In reviewing an equalization argument the court has concluded, “Intentional and systematic undervaluation of property may violate the equal protection and due process rights of property owners not granted preferential treatment . . . (citations omitted).” “The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(5) was enacted to address. Its protection may be fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.” *Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004). The Property Owner has failed to provide properties that are truly comparable to the subject and were valued less, and certainly not shown an intentional and systematic undervaluation as noted by the Utah Supreme Court.

Considering the evidence and the applicable law in this matter, the value should remain as set by the Salt Lake County Board of Equalization.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2014, is \$\$\$\$\$. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code §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 §59-1-601 et seq. and §63G-4-401 et seq.