



This matter came before the Utah State Tax Commission for a Formal Hearing on September 20, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien dates January 1, 2003, January 1, 2004 and January 1, 2005. The appeal for tax year 2005 was included in this matter upon agreement by the parties.

2. The subject property is the real property at parcel no. #####-1 and is located at ADDRESS in CITY, RURAL COUNTY, Utah. For 2003 the County Assessor had set the assessed value for the property at \$\$\$\$\$. For 2004 the County Assessor had set the assessed value for the property at \$\$\$\$\$. For 2005 the assessed value was \$\$\$\$\$. The County Board of Equalization sustained the assessed value for all three years.

**Property Characteristics**

3. The subject property consists of 56.97 acres of land and the improvements thereon. The land is zoned for manufacturing. The improvements consist of a main building and three small outbuildings. The main building totals 74,819 square feet. There is a 55,465 square foot section for heavy industrial use that is rectangular in shape and has two ( WORDS REMOVED ) that extend the length of this section. This section has heavy-duty reinforced concrete footings, foundations and flooring. There are additional internal footings beneath the floor to support the ( WORDS REMOVED ) section. This section of the building has a high ceiling to allow clearance for ( WORDS REMOVED ). A second section of the main building is a 13,114 square foot office area. The office section and industrial section were constructed in 1998. Additionally there is a 6,240 square foot warehouse section that was added on to the main building in 2002. This warehouse is is for storing supplies, tools and products and has a loading dock on its west end. The three out buildings are a separate ( WORDS REMOVED ) storage building that is 840 square foot and two storage sheds which are

Appeal Nos. 03-1417, 04-1366 & 05-1470

open on one side, have concrete floors and are made of steel with covered in metal sheeting.

4. The property is currently being used by Petitioner ( WORDS REMOVED ). The buildings were originally designed by Petitioner for that specific use. However, even at the time of construction the building was not large enough for the optimal layout of this type of work, but had been scaled down some in size due to costs. When constructed the building was built to accommodate ( WORDS REMOVED ). ( SENTENCE REMOVED ). ( SENTENCE REMOVED ). PETITIONER REP. 2, Petitioner's Operations Comptroller, testified that if Petitioner were to construct a new building they would construct a building that could accommodate ( WORDS REMOVED ). He testified that Petitioner would not be interested in purchasing the existing structure which supports only ( WORDS REMOVED ), because it would not meet the current needs for ( WORDS REMOVED ).

5. Petitioners' business of ( WORDS REMOVED ) was of such a nature that there was only ( WORDS REMOVED ). ( SENTENCE REMOVED ). If Petitioner no longer operated at the subject facility the business would go with Petitioner to the new location.

6. The subject property was not being utilized to its full capacity. Petitioner had constructed the facility to operate on a "24/7" basis. However, it has not had sufficient business to operate fully at that capacity.

7. PETITIONER REP. 2 testified that Petitioner had owned other buildings it had constructed for the same heavy industrial use and that when sold they sold for less than cost. He provided uncontested testimony that buildings like the subject are built to the specifications of the user. This indicates that the initial investment for these buildings is at replacement or reproduction cost new. The buildings continue in the original use until they are no longer functionally or economically viable. At the end of their useful life, these buildings are sold at a heavy discount from book value. The evidence regarding Petitioner's prior facility in CITY 2, Utah, and Petitioner's other facilities around the country supported the position that the building has a

Appeal Nos. 03-1417, 04-1366 & 05-1470

useful life for the function for which it was originally designed for 15 to 20 years. After that they would be sold at a discount and used for some other purpose.

### **Appraisal Evidence**

8. Petitioner submitted an appraisal in this matter prepared by APPRAISER 1, MAI, SRA, and APPRAISER 2, MAI, of COMPANY B (“APPRAISAL 1”). It was the appraisal conclusion that the market value of the subject property for 2003 was \$\$\$\$\$, and for 2004 was \$\$\$\$\$. APPRAISER 2 relied primarily on the cost approach, but also considered a sales approach as a benchmark to support the appraisal conclusion. It was APPRAISER 2’s opinion that the highest and best use of the land if vacant was for light industrial or office warehouse use. However, APPRAISER 2 indicated that the highest and best use of the property as improved was to continue the current use of the improvements for heavy industrial, as the existing improvements did contribute substantially to the land.

9. APPRAISER 2 determined a value for the land based on sales and a value for the improvements based on the replacement cost new minus depreciation (“RCNLD”) method. The value conclusion from this method for 2003 was \$\$\$\$\$ and for 2004 was \$\$\$\$\$. The APPRAISAL 1 contained the following:

a. Land Value. For the cost approach in the APPRAISAL 1 a land value was determined from four land sales in the area that had sold for prices from \$\$\$\$\$ per acre to \$\$\$\$\$ per acre and one listing at \$\$\$\$\$ per acre. One of the sales was for 15 acres of usable land with 20.43 acres total. The other three sales were for 1 to 3-acre sized parcels. APPRAISER 2 made sizable frontage adjustments for all parcels as well as large size adjustments. It was his conclusion that the value for the subject land was \$\$\$\$\$ per acre, or a total of \$\$\$\$\$.

b. Improvement Cost. It was APPRAISER 2’s conclusion that the value should be based on the replacement cost rather than reproduction cost. In deter( X ) the cost he relied on Marshall’s

Appeal Nos. 03-1417, 04-1366 & 05-1470

Valuation Service. However, he did not value the building, as it actually existed on the lien date. In the cost approach APPRAISER 2 used a blended rate of heavy manufacturing and light industrial costs. Instead of determining the cost based on the 90% heavy manufacturing and 10% light, as was the actual breakdown for the main building, APPRAISER 2 calculated the cost new of the building as if it were 50% heavy manufacturing and 50% light industrial. The APPRAISAL 1 states the subject property shares characteristics of both classifications. However, in the oral testimony APPRAISER 2 stated that in the replacement cost he was considering a building of similar utility, for a “typical” user, and that there was no clear distinction between the two types of uses. Using this method it was the appraisal conclusion that the cost of the buildings was based on a blended base cost of \$\$\$\$\$ per square foot or \$\$\$\$\$ for the buildings and \$\$\$\$\$ for the site improvements for 2003. A small storage building was added for 2004 and replacement costs had increased to \$\$\$\$\$ per square foot for the main building. This increased the cost for 2004 for the buildings to \$\$\$\$\$ and the value for the site improvements remained at \$\$\$\$\$.

c. Physical Depreciation. In the appraisal deductions were made for both physical depreciation and economic obsolescence. For physical depreciation APPRAISER 2 used a straight line “modified” age/life method. He concluded for 2004 that the effective age of the buildings was 8 years and the life expectancy for Class “S” industrial was 42 years. He computed this to result in a 19% deduction for physical depreciation for 2004. For the 2003 year the deduction was 16.7%.

d. External Obsolescence. In addition APPRAISER 2 made a 25% adjustment for economic or external obsolescence, based on the theory that buildings in rural areas sell for less than the cost of construction. He considered two sales comparables, subtracted out a value for the land, and then computed a replacement cost new minus depreciation value for the buildings, arguing the calculation supported a twenty-five percent adjustment.

e. Other Obsolescence. In the appraisal APPRAISER 2 found that there was neither

Appeal Nos. 03-1417, 04-1366 & 05-1470

functional super-adequacy or obsolescence in the building, nor economic obsolescence found in the neighborhood.

10. From the sales comparison approach APPRAISER 2 determined a value of \$\$\$\$ for the 2003 year and \$\$\$\$ for the 2004 year.

a. The APPRAISAL 1 listed six sales comparables. Two were located in CITY 2, Utah, which is a neighboring town to the subject. One comparable was located in CITY 3 which is also a rural area, but in a different location. The remaining three comparables were located in CITY 4, which is an urban market.

b. The most similar of the sales comparables considered in the APPRAISAL 1, comparable no. 2, had been owned and used by Petitioner for its operations prior to Petitioner moving into the subject property. It was located in CITY 2, Utah and was a smaller property with considerably less land. Additionally it was located in an area that had become increasingly residential. The building was 44,651 square feet and the land size was 5.57 acres. This comparable property had sold for \$\$\$\$ in October 2002. The APPRAISAL 1 indicated this property was in average condition at the time of sale.

c. The appraisers made various adjustments for the differences between the comparables and the subject. Adjustments were made for size, effective age, quality, condition, percentage of office space, ceiling height and whether it was heavy or light manufacturing. One additional point of comparison, to determine an improvement value, Petitioners subtracted out the land value and calculated an improvement value per square foot. No support was given in the appraisal for how the land value was determined.

11. In the reconciliation, the APPRAISAL 1 gave the most weight to the cost approach and their final value conclusion was \$\$\$\$ for 2003 and \$\$\$\$ for 2004.

12. Respondent submitted an appraisal in this matter prepared by APPRAISER 3, Certified General Appraiser. It was APPRAISER 3 conclusion that the value of the subject property for January 1, 2003

Appeal Nos. 03-1417, 04-1366 & 05-1470

was \$\$\$\$ and for January 1, 2004 was \$\$\$\$\$. It was his opinion that the highest and best use of the property was for its current use as a ( WORDS REMOVED ). In his appraisal APPRAISER 3 prepared only a cost approach to value. He indicated he considered preparing a sales comparison approach but concluded that the available comparables were too dissimilar to provide reliable support for a value for the subject property. In his appraisal APPRAISER 3 determined a value for the land and the cost for replacing the buildings minus depreciation.

a. Land Value. To determine a value for the land APPRAISER 3 considered five comparable sales that sold for prices ranging from \$\$\$\$ to \$\$\$\$ per acre. All five sales were smaller in size than the subject, with one parcel being fifteen acres, one ten acres and the rest smaller. APPRAISER 3 made size adjustments from 35% to 50%. From these sales, and after making adjustments for other differences, APPRAISER 3 concluded that the value for the land was \$\$\$\$ for 2003 and \$\$\$\$ for 2004. This value is lower than the value determined in the APPRAISAL 1.

b. Building Value. Like the APPRAISAL 1, APPRAISER 3 used a replacement cost which he obtained from Marshall and Swift Commercial Estimator program. Additionally APPRAISER 3 looked at the actual construction costs of the building in 1998 and 2002 and considered COMPANY A's cost to construct a similar building. APPRAISER 3' Marshal and Swift cost value was higher than Petitioner's because he determined the cost based on the buildings as they existed on the lien dates with approximately 90% of the main building as heavy industrial and 10% of the main building as storage warehouse. APPRAISER 3 concluded that the result was a cost for the main building of \$\$\$\$ per square foot or \$\$\$\$\$, to which he added the costs of the outbuildings and other improvements for a total replacement cost new for the improvements of \$\$\$\$.

c. Other Cost Information. APPRAISER 3 notes that the Marshall and Swift estimate was lower than actual cost to construct the buildings multiplied by the cost index to bring the values forward.

Appeal Nos. 03-1417, 04-1366 & 05-1470

Most of the main building had been constructed in 1998 and the storage warehouse had been added in 2002. It was APPRAISER 3' conclusion from this method the actual costs for January 2003, as adjusted for time, indicates a value of \$\$\$\$\$. He states that some of this difference may be attributed to the fact that Petitioner had built more office area than was typical for the type of building. The cost for the typical amount of office area is included in the Marshal and Swift cost numbers for heavy industrial and storage warehouse. An additional amount would generally be added where office space exceeded this amount. However, based on the site inspection APPRAISER 3 noted that there was more office area than appeared to be needed by Petitioner or a prospective buyer of the property. For these reason he felt the office area was overbuilt or was a possible item of functional obsolescence. To account for this he did not add the additional amount indicated in Marshall and Swift for the extra office space.

d. Physical Depreciation. APPRAISER 3 concluded that the appropriate deductions for depreciation were a \$\$\$\$\$ adjustment for some curable physical depreciation and an adjustment for incurable physical depreciation in the amount of 10% for 2003 and 11% for 2004. Unlike the physical depreciation in the APPRAISAL 1, APPRAISER 3' amount was based on Marshal and Swift tables. Additionally, APPRAISER 3 concluded that based on the nature of the industry the building would have a shorter lifespan than the 45 typical for heavy industrial buildings. He used a building life of 35 years for his computation.

e. Functional Obsolescence. APPRAISER 3 made no adjustments for functional obsolescence in addition to the treatment of the excess office space discussed above. He indicates that in his opinion there was no other functional obsolescence, that the building was designed for its current use and appeared to be adequate for numerous types of ( WORDS REMOVED ).

f. External Obsolescence. APPRAISER 3 made no adjustment for external obsolesce. He noted the subject building is being operated "twenty-four/seven." He also indicated that Petitioner's competitor, COMPANY A, was in the process of doubling the size of their plant in Utah. He states that it was



Appeal Nos. 03-1417, 04-1366 & 05-1470

his opinion that if Petitioner vacated the subject property, there would be adequate demand for another company to purchase the facility and provide the same type of service.

#### **Commission's Value Conclusions**

13. The Commission finds the highest and best use of the subject property is as a heavy manufacturing facility operating in its present capacity, anticipating a future change to lighter industrial use.

14. The lack of comparable sales that were truly comparable to the subject property supported both appraisers conclusions that the value should be based primarily on a cost approach basis.

15. In reviewing the land sale evidence presented by the parties, APPRAISER 2's adjustment for frontage and access is not warranted. Furthermore, the availability of land and lack of sales in the immediate vicinity indicate a lower value. The Commission therefore adopts APPRAISER 3' estimate of land value.

16. Considering the cost of the improvements the major difference between the appraisers is the fact that APPRAISER 2 used a blended cost rate as if 50% of the building was heavy manufacturing and 50% light industrial, while APPRAISER 3' cost rate was based on the actual percentage of the heavy manufacturing and light industrial. Upon consideration of the blended cost approach in the APPRAISAL 1, the Commission finds that it compensates for the fact that if this building sold it would not be purchased for continued use in the ( WORDS REMOVED ) and likely would not be used for heavy manufacturing. Therefore, the prospective buyer would not pay for all additional costs incurred in constructing a heavy manufacturing building. Furthermore, the Commission feels that using an RCN based on a prospective and different use, most of the functional obsolescence attributed to the actual design is eliminated. For these reasons it is the Commission's conclusion that this blended approach is accounting for some functional or economic obsolescence and more accurately approximates the realities of the real estate market as discussed more fully below.

17. Despite APPRAISER 3' opinion to the contrary, upon review of all the evidence and

Appeal Nos. 03-1417, 04-1366 & 05-1470

testimony the Commission finds that the subject property has suffered more than physical deterioration. Although built in 1998, the subject property is already functionally obsolete due to the developments in the ( X ) industry and has obsolescence even for its current use. The unrebutted testimony was that PETITIONER would not purchase a similar property; rather it would purchase or construct a building according to the current functional and economic requirements.

18. Additionally there may be some economic obsolescence that was not considered by Respondent. Respondent assumed that if Petitioner left the building, another business entity would come in and operate the same type of business. However, the nature of Petitioner's business is that if Petitioner left the building it would take all of the business with it; there are barriers to entry into the industry performed at the subject property that were not considered by Respondent.

19. Evidence and testimony submitted by Petitioner indicates that for buildings constructed for the ( WORDS REMOVED ), including the building Petitioner had owned and operated in CITY 2, Utah, the general trend is that they have only a 20-year useful life for the intended purpose, then they are sold and used for light industrial use. Also the lack of relevant sales supports the position that these types of large manufacturing facilities rarely sell on the real estate market before their useful life in heavy manufacturing capacity is used up. According to the evidence provided by Petitioner, at that point they sell at a significant discount. With an actual age of 5 or 6 years, the subject property is approximately one-third of the way through its useful life as a heavy manufacturing facility.

20. Both appraisers estimated the effective age of the property to be 7 and 8 years for 2003 and 2004 respectively. The Commission is persuaded that the depreciation tables contained in the Marshall & Swift manual are more appropriate than the "modified age/life" or straight-line method used by APPRAISER 2. APPRAISER 2's method accounts for more than just physical deterioration, and might be more applicable to APPRAISER 3's cost estimate. By using a blended cost estimate, the Commission finds that APPRAISER 2

Appeal Nos. 03-1417, 04-1366 & 05-1470

has inherently accounted for additional depreciation beyond physical deterioration. Accordingly, in calculating the value the Commission will use the \$\$\$\$ for curable, and the 10% and 11% rates for incurable depreciation as determined by APPRAISER 3.

21. APPRAISER 3 provided testimony and calculations which indicated that APPRAISER 2's additional 25% adjustment for external obsolescence, based on his rural area theory, was unsupported and would not be an appropriate adjustment.

22. Based on the weight of the evidence submitted by all parties the Commission concludes that the only functional or external obsolescence adjustments that should be made in this matter are the adjustments inherent in the blended cost rates that the Commission has determined to rely on in this matter.

23. Using the factors as indicated above it is the Commission's conclusion that the value for the subject property for 2003 is \$\$\$\$ and for 2004 is \$\$. Based on the agreement of the parties to include the value for tax year 2005, noting there is not a substantial difference in values between the 2003 and 2004 tax years in the parties' appraisals, and having no other evidence specifically related to tax year 2005, the Commission concludes that it will value the property for 2005 at the same value as for 2004.

#### APPLICABLE LAW

1. 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 provide 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 Ann. Sec. 59-2-103.)

2. "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

Appeal Nos. 03-1417, 04-1366 & 05-1470

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 Ann. 59-2-102(12).)

3. 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. (Utah Code Ann. Sec. 59-2-1006(1).)

#### CONCLUSIONS OF LAW

1. Burden of Proof. The Utah Supreme Court has indicated that for a party to prevail in a locally assessed real property tax dispute, the party 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). The Courts have also considered and concluded that there is a presumption of correctness for the original assessed value. Although the case dealt specifically with centrally assessed property tax valuation, the Commission has concluded the presumption is applicable in locally assessed appeals. The Court stated when a taxpayer protests its property tax assessment, the Division “must present the available evidence supporting the original valuation” and “[o]nce that is done, the taxpayer . . . must meet its twofold burden of demonstrating “substantial error or impropriety in the [original] assessment,” and providing “a sound evidentiary basis upon which the Commission could adopt a lower valuation.” Utah Railway Co. v. Utah State Tax Comm’n, 5 P.3d 652, 655, 656 (Utah 2000), quoting, Utah Power & Light Co. v. Tax Comm’n, 590 P.2d 332 (Utah 1979). As a general rule, the “original valuation is entitled to a “presumption of correctness.”” Id. at 656. “This presumption does not arise, however, unless and until available evidence supporting the original

property valuation is submitted to the Commission.” Id. In this matter, Respondent abandoned the assessment methodology and submitted only the original assessment values. This is insufficient to establish a presumption of correctness in relation to the original assessed values. Clearly, Respondent is not entitled to the presumption of correctness in relation to its new, higher values, and would have the same burden of proof to establish an increase in value, as Petitioner has to establish a reduction in value. The Commission considers these burdens as it weights the evidence submitted by the parties.

2. Market Value. There was considerable discussion in this appeal regarding whether the property should be valued at its “use value” or by an “exchange value.” Utah Code Sec. 59-2-103 provides that property will be taxed at a uniform rate on the basis of its “fair market value.” “Fair market value” is defined at Utah Code Sec. 59-2-102(12) as “the amount at which property would change hands between a willing buyer and a willing seller.” Based on the express terms of the statute it is the Commission conclusion that its primary concern is to determine a valuation that represents a value in exchange.

#### DISCUSSION

Both appraisers performed reasonable, technically correct, and competent appraises, albeit with different underlying assumptions. Petitioner’s appraisal was based on the premise that a structure with the condition and age of the subject property would only have value in the real estate market as a combined manufacturing and light industrial use. In contrast, the County’s appraiser concluded that the market would recognize a continued use as a ( WORDS REMOVED ) facility, and therefore determined the cost on that basis.

In making its determination in this matter the Commission has considered the expert opinion of EXPERT, who testified that the value in use is always higher than value in exchange. However, Utah Code Sec. 59-2- 102(12) defines market value to be “the amount at which property would change hands between a willing buyer and a willing seller.” Therefore the Commission must determine the value for the property based

Appeal Nos. 03-1417, 04-1366 & 05-1470

on an exchange value. APPRAISER 4, MAI and Certified General Appraiser, critiqued the appraisal submitted by APPRAISER 3 and argued that an appraiser would never prepare only a cost approach in an appraisal unless the appraiser was preparing a “use value appraisal.” Although it is the Commission’s position that the value the Commission must attempt to determine is an exchange value, the Commission disagrees with APPRAISER 4’s opinion that estimating a building cost according to its actual use and construction components, without additional functional or economic obsolescence automatically results in only a use value. Therefore, the Commission finds that APPRAISER 3’ appraisal should not be rejected solely on the basis that that he performed only a cost approach. However, it is the Commission’s conclusion that APPRAISER 3’ appraisal has failed to fully account for obsolescence.

( PARAGRAPH REMOVED )

Furthermore, the County was unable to rebut PETITIONER REP. 2’ testimony that the Petitioner would not purchase a similar property. Rather a new building would be constructed according to current functional and economic requirements. In the absence of any reliable indications of functional or external obsolescence, the Commission concludes that the blended cost figures used by APPRAISER 2 more accurately approximate the realities of the real estate market for an exchange value.

However, the Commission disagrees with APPRAISER 2’s estimates for physical depreciation and other obsolescence. The straight-line depreciation accounts for more than just physical deterioration and the Commission finds that it is mismatched with APPRAISER 2’s cost figures. This type of deduction may be better suited to APPRAISER 3’ nonblended cost estimate.

The Commission concludes that neither appraiser separately estimated functional obsolescence. However, the Commission notes that additional obsolescence would need to be applied only to the heavy manufacturing costs, if the costs as advocated by APPRAISER 3 had been used. The Commission

Appeal Nos. 03-1417, 04-1366 & 05-1470

notes further, that the blended construction costs, applicable to a non-heavy manufacturer use, inherently accounts for functional inutility.

The Commission is not persuaded that additional economic obsolescence is justified. APPRAISER 3 adequately rebutted APPRAISER 2's methodology concerning the additional 25% deduction for economic obsolescence. APPRAISER 2 indicates the deduction is for the fact that the subject property is in a rural area and properties in rural areas tend to sell for less than costs. APPRAISER 3 provided the Commission sufficient information and recalculations to convince the Commission that this adjustment is not reliable. The Commission is not persuaded that a rural location inherently results in economic obsolescence. Furthermore, as previously alluded, the blended costs already account for some loss in value, including that caused by conditions external to the property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market values of the subject property as for the lien dates at issue are as follows:

2003	\$\$\$\$\$
2004	\$\$\$\$\$
2005	\$\$\$\$\$

It is so ordered. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

Appeal Nos. 03-1417, 04-1366 & 05-1470

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. Sec. 59-1-601 and 63-46b-13 et. seq.

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