

10-0786

TAX TYPE: PROPERTY

TAX YEAR: 2009

SIGNED: 12-19-2012

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 10-0786
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2009
	Judge: Marshall

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:

Michael Cragun, Commissioner

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE, for the Taxpayer.

For Respondent: RESPONDENT REPRESENTATIVE-1, Rural County Assessor
RESPONDENT REPRESENTATIVE-2, Chief Deputy Assessor for RURAL County
RESPONDENT REPRESENTATIVE-3, Appraisal Supervisor for RURAL County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 10, 2011, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et al. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The above named Petitioner (“Taxpayer”) is appealing the assessed value of the subject property as set by the RURAL County Board of Equalization (“County”) for the January 1, 2009 lien date.
2. The County assessed the subject property at \$\$\$\$\$, which the Board of Equalization sustained. The County is asking the Commission to reduce the value to \$\$\$\$\$. The Taxpayer requested the value be reduced to \$\$\$\$\$.
3. The subject property is PARCEL NUMBER 1, located at ADDRESS and CITY. It is a #####-acre parcel improved with a limited service PROPERTY TYPE 2. The economic unit for the PROPERTY TYPE 2 consists of two parcels; the subject property, which is ##### acres and PARCEL NUMBER 2, which is #####-acres. The County has placed the value of the improvements on the subject, and has valued parcel no. ##### as excess land.
4. The SUBJECT was built in the 1989, has ##### square feet, and ##### guest rooms in two separate buildings. (EXHIBIT). The larger building is two stories and does not have an elevator. The smaller building is three stories and has an elevator.
5. The Taxpayer’s representative submitted the following comparable sales (EXIBIT1):

	Subject	Sale #1	Sale #2	Sale #3	Sale #4
Address	ADDRESS	ADDRESS 1 CITY 1	ADDRESS 2 CITY 2	ADDRESS 3 CITY 3 STATE 1	ADDRESS 4 CITY 4
Lot Size	#####	#####	#####	#####	#####
Building Sq./Ft.	#####	#####	#####	#####	#####
Year Built	1989	1984	1985	1996	1961
# of Rooms	#####	#####	#####	#####	#####
Sale Date		SALE DATE 1	SALE DATE 2	SALE DATE 3	SALE DATE 4
Sale Price		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Price/Room		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

6. The Taxpayer’s representative stated that the sales were not very good comparables for the subject. He attributed this to the declining market and limited number of overall sales.

The Taxpayer’s representative stated they did not give any weight to the comparable sales in the overall opinion of value.

7. The Taxpayer submitted an income approach that determined a value of \$\$\$\$\$. The Taxpayer’s representative subtracted from that the value of the personal property and PARCEL NUMBER 1, to arrive at the value of \$\$\$\$\$, or \$\$\$\$\$ per room for the subject. Following is the Taxpayer’s income calculation (EXHIBIT 2):

Gross Room Receipts	\$\$\$\$\$
Other Income	\$\$\$\$\$
Total Gross Revenue	\$\$\$\$\$
Pro Forma Expenses @ 86.2% of Total Gross Revenue	\$\$\$\$\$
Total Operating Expenses	\$\$\$\$\$
Net Operating Income	\$\$\$\$\$
Indicated Cap Value of the Entire Concern @ 12.0%	\$\$\$\$\$
Less Personal Property	\$\$\$\$\$
Indicated Value of Real Property	\$\$\$\$\$
Less Value	\$\$\$\$\$
Indicated Value of Account	\$\$\$\$\$

8. The Taxpayer’s income approach is based on an average of actual income and expenses for 2006, 2007, and 2008.
9. The Taxpayer used a %%% capitalization rate based on information they received from a Realty Rates Investor Survey showing capitalization rates ranging from %%% to %%% for facilities.
10. The Taxpayer’s representative also included a cost approach that determined a value of \$\$\$\$\$. The value of parcel ##### was subtracted to arrive at a value of \$\$\$\$\$.
11. The Taxpayer used COMPANY 1 to determine the cost of a class “D” PROPERTY TYPE 2, built in 1989. The cost determined was \$\$\$\$ per square foot, using %%% good, the Taxpayer arrived at a depreciated cost of \$\$\$\$\$. The Taxpayer made an additional reduction of \$\$\$\$\$ for external obsolescence. (EXHIBIT 3).
12. To arrive at the economic obsolescence amount, the Taxpayer determined that a net operating income of \$\$\$\$\$ would be necessary to support the depreciated value of the subject property. They determined that the difference between that and the income received was \$\$\$\$\$, capitalized that by %%%, and attributed %%% of the total economic obsolescence to the improvements. (EXHIBIT 4).

13. The County’s representative disagrees with the expenses used in the Taxpayer’s income approach, which are %%%%. He stated that the expenses are not in line with market rates, which he believes are %%%%.
14. The County’s representative argued that the Taxpayer improperly included bank card fees and \$\$\$\$\$, in interest as expenses in their income approach. The Taxpayer’s representative agreed that these expenses were improper.
15. The County submitted a spreadsheet showing the assessed value of the subject compared to the following PORTION REMOVED, in the area (EXHIBIT 5):

	PROPERTY TYPE AND NAME	2009 Value	# of Rooms	Value /Room
Subject		\$\$\$\$	#####	\$\$\$\$
Comp #1	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #2	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #3	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #4	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #5	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #6	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #7	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #8	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #9	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #10	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #11	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #12	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #13	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$
Comp #14	(NAME REMOVED)	\$\$\$\$	#####	\$\$\$\$

*County believes these are the most comparable to the subject.

16. The County’s representative also submitted an income approach that determined a value of \$\$\$\$\$ for the property. When the value of the personal property and PARCEL NUMBER 2, are removed the value for the subject property is reduced to \$\$\$\$\$. Following are the County’s income calculations (EXHIBIT 6):

2008 Income	\$\$\$\$
Expenses	%%%
Net Operating Income	\$\$\$\$
Capitalization Rate	%%%
Indicated Value	\$\$\$\$\$
Personal Property	(\$\$\$\$\$)
Parcel No. #####	(\$\$\$\$\$)
Value for Subject Property	\$\$\$\$\$

17. The County used the 2008 income information provided by the Taxpayer at the Board of Equalization, as well as the Taxpayer’s suggested capitalization rate. The expense rate was taken from local data, information gathered from other assessor’s offices, and (PROPERTY TYPE I operating Statistics).

18. The County also submitted a cost approach that determined a value of \$\$\$\$ for the improvements. The value of PARCEL NUMBER 1, was added to arrive at a value of \$\$\$\$ for the subject property. (EXHIBIT 7).
19. The Taxpayer used COMPANY 1 to determine the cost for the subject of \$\$\$\$ per square foot. The County applied %%% physical and functional depreciation, and %%% external depreciation, to arrive at its improvement value of \$\$\$\$ (EXHIBIT 8).
20. The county determined the %%% external obsolescence by capitalizing the rent loss. They looked at the difference in the net operating income for the 2007 and 2008 years, and capitalized it at %%% to arrive at an external obsolescence amount of \$\$\$\$ (EXHIBIT 9).
21. The County also provided a copy of a current listing for the subject property. The asking price is \$\$\$\$\$, or \$\$\$\$ per room. The County noted that a listing is generally an indication of an owner's opinion of value, but that properties do not always sell for the asking price. Further, the County pointed out that the value determined in the Initial Hearing Decision was %%% to %%% of the current list price for the subject. (EXHIBIT 10).
22. In rebuttal, the Taxpayer stated that the subject property is the largest PROPERTY TYPE 1, in the area and the other PROPERTY TYPE 1, used by the County in its equalization approach are much smaller, and argued that economics of scale would show that the largest property would have the lowest price per room.
23. With regard to the County's income approach, the Taxpayer's representative stated they accept the County's revenue information, but disagree with the expense rate. He argued that national brand PROPERTY TYPE 1, have lower expenses than smaller PROPERTY TYPE 1 AND 2, the occupancy of the subject is %%% less, and the average daily rates of national brands are higher than the subject. He proposed an adjusted net operating income of \$\$\$\$\$, capitalized at %%%, for a value of \$\$\$\$\$. He indicated if the value of PARCEL NUMBER 2, and the personal property were subtracted from that, it would indicate a value of \$\$\$\$.
24. The Taxpayer's representative argued that the County based their cost approach on costs for a "PROPERTY TYPE 1" rather than a "PROPERTY TYPE 2". He noted that they used a wall height of ten feet, when the subject has a wall height of nine feet; argued that

the cost for the elevator should only be applied to the square footage of the smaller building; and stated that the County used a cost for the sprinklers that was higher than the range given in COMPANY NAME 1. He calculated that these differences attributed an additional \$\$\$\$ in value. The Taxpayer's representative further argued that the County calculated the external obsolescence incorrectly; and that they should have used actual net operating income, and not a net operating income calculated from its market expense rate.

25. The Taxpayer's representative stated that the subject property has been listed for the past four years, and that they have received only one offer during that period, for \$\$\$\$.

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 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.

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.

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. 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, 335 (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).

CONCLUSIONS OF LAW

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 an 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 and the County are relying on the income approach and cost approach in their respective requested values.

The parties both submitted cost approaches; the Taxpayer determined a value of \$\$\$\$\$ and the County determined a value of \$\$\$\$\$ for the subject property. The Taxpayer’s determination of the replacement cost new, less depreciation is more persuasive. The Taxpayer used the lien date as the effective date, had the property type as a PROPERTY TYPE 1 rather than a PROPERTY TYPE 2, used the actual age, and used appropriate multipliers. The parties agree that there is economic obsolescence. However, both of their calculations of the dollar amount attributable to the economic obsolescence are flawed.

The Taxpayer capitalized the difference between the actual net operating income and the net operating income required to support the cost approach value, citing “The Appraisal of Real Estate,” 9th ed., as its source.¹ This is the mathematical equivalent to subtracting the income approach value from the cost approach (after multiplying both numbers by the %%% adjustment) and attributing the difference to external obsolescence. The Taxpayer’s income statements for the years 2006 through 2008 and the direct capitalization calculations show that the only income loss was due to increased expenses, not lower revenues or occupancy rates, which were relatively stable over that period. It is unknown whether rates were lower than normal or lower than they were prior to 2006.

¹ The Taxpayer did not provide a copy of the referenced pages or table. The Commission; however, examined the relevant sections of the 11th, 12th, and 13th editions of *The Appraisal of Real Estate*, and found nothing similar to the Taxpayer’s representation. Instead, the texts base the calculation on a loss in NOI between stabilized and actual conditions. There is no indication that the loss of income should be based on the rent necessary to sustain the estimated costs.

The County's calculation of the external obsolescence was based on a comparison of the 2008 net operating income with the prior year's net operating income, rather than a stabilized net operating income. Comparing one year's income to the prior year is not an appropriate measure of external obsolescence. It only measures the change in income between two years, which can be due to a number reasons. More specifically, if external obsolescence already existed in 2007, the 2008 income would only measure the marginal change in obsolescence, not the total obsolescence.

While the Commission agrees with the parties that there is economic obsolescence, neither party properly calculated the dollar amount of the external obsolescence. Further, there is insufficient information in the record from which a stabilized net operating income can be derived, and thus the dollar amount of the external obsolescence. Thus, the Commission does not give weight to the cost approach.

The Taxpayer's representative verbally revised his income calculations during the hearing to \$\$\$\$\$, and the County determined a value of \$\$\$\$\$ using the income approach. The Taxpayer's representative stated that though they had originally used a three-year average, he accepted the County's income amount of \$\$\$\$\$, which was taken from the Taxpayer's 2008 income and expenses. Both parties have used a %%% capitalization rate; however there is disagreement as to the expense rate. The Taxpayer used %%%, which they argued represents a stabilized expense rate for 2006 through 2009. The County used %%% based on market data from other PROPERTY TYPE 1 and PROPERTY TYPE 2 in the area, a survey of other assessor's offices, and (PROPERTY TYPE 1, Operating Statistics).

The parties agreed at the hearing to use the 2008 actual income received for their income calculations. In this circumstance, the Commission would prefer to average the income for the 2006, 2007, and 2008 years. However, the 2008 income adequately represents that average, and will be used. The parties differ as to their expense rate, with the Taxpayer averaging actual expense rates from 2006 through 2009, and the County deriving a market rate. When using actual income, the Commission would typically use the actual expenses for the same year. However, the 2008 expenses, at %%%, appear to be an anomaly; and the 2007 and 2009 expenses fall outside of the range of expense rates found in the County's survey. Thus, the Commission finds that the 2006 expense rate of %%% is the best indication of a stabilized expense rate for the subject property. Using the %%% capitalization rate agreed upon by the parties, this indicates a value of \$\$\$\$\$. Subtracting out the value of the personal property, and PARCEL # 1, leaves a value of \$\$\$\$\$ for the subject property. The value should be reduced accordingly.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2009 lien date. The RURAL County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.