

12-2674
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2012
DATE SIGNED: 9-3-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN
RECUSED: R. PERO
DISSENTS: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-2674 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2012 Judge: Jensen
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This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the 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:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, for the Taxpayer
REPRESENTATIVE-2 FOR TAXPAYER, for the Taxpayer
Respondent: RESPONDENT-1, for the County
RESPONDENT-2, for the County
RESPONDENT-3, for the County

STATEMENT OF THE CASE

The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of RURAL COUNTY (the "County"). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on July 22, 2013. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at

issue in this matter is January 1, 2012. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization increased the value to \$\$\$\$\$.

At the hearing, the Taxpayer requested that the value be reduced to \$\$\$\$\$. The County requested that the value set by the board of equalization be sustained.

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 provide by law. Utah Code Ann. §59-2-103 (1).

“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. Utah Code Ann. §59-2-102(12).

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

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 requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained 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. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 590 P.2d. 332 (Utah 1979).

DISCUSSION

Construction and Use of the Subject Property

There is no dispute regarding the use or construction of the subject property or its use. The parties agree that subject property is parcel no. #####, located at SUBJECT ADDRESS in CITY-1, Utah. It consists of industrial buildings on a 56.97-acre site. It has four buildings as follows:

Main Structure (Service Facility)	#####-Square Feet	Constructed YEAR, additions YEAR , YEAR
West Storage (Bulk Oil Storage)	#####-Square Feet	Constructed YEAR
East Storage	#####-Square Feet	Constructed YEAR
Middle Storage	#####-Square Feet	Constructed YEAR

The parties agree that CITY-1, Utah is remotely located from population centers. CITY-1 is in RURAL COUNTY, which derives its name from plentiful coal deposits. There was no dispute that improving technologies have reduced the labor needed to mine coal or that this has caused RURAL COUNTY businesses to diversify activities into the industries of trade, services, and government. This diversification is aided by the location of the COLLEGE in RURAL COUNTY. The parties agree that this diversification is likely to continue and that this is expected to improve economic activity in RURAL COUNTY. The subject property is approximately #####-miles from HIGHWAY, a primary transportation route from the (X) to (Y) Utah. Even so, CITY-1 is some #####- miles distant from INTERSTATE, a major interstate highway. The RAILROAD-1 and RAILROAD-2 runs near the subject property and allows access to heavy transportation of items such as industrial and mining equipment.

Commercial development in the area of the subject property is primarily located on the HIGHWAY corridor. Areas more distant to HIGHWAY have less development. Much of the area is sparsely-populated with some residential development. The Taxpayer's appraiser stated, and the County did not dispute, that the area of the subject property is approximately five percent built-up. The subject property is surrounded primarily by vacant ground, although there is industrial development on its north side. The general area also includes coal operations.

There is no dispute that there has been little development within CITY-1 for the past few years. Most existing projects have been in place prior to 1980. The lack of development in the area of the subject property has attracted some heavy industrial users. The Taxpayer's appraiser indicated that the remote location away from residential development allows businesses to conduct operations that are often noisy with possible dirty emissions. The County did not dispute this, and was in general agreement that the remote location of the subject property could be of benefit to heavy industry. The parties agree that land values near the subject property are expected to remain stable.

The subject property is bounded on the north by BUSINESS-1, on the south and east by vacant land, and on the west by various coal operations. It is accessed on ROAD and #####- West, which are both asphalt paved with one travel lane in each direction and soft shoulders. All utilities are available at the subject property. Although the subject property is used for heavy industry, neither party presented reason to believe that there was reason to suspect environmental contamination.

The subject property is zoned M-1 (Manufacturing). This zoning has a minimum 20-foot setback from the street but no other setbacks. It allows for maximum site coverage of 60%. Although the stated purpose of M-1 zoning is "to provide in CITY-1 for light industrial uses," the parties do not dispute that the M-1 zone allows for a variety of both light and heavy manufacturing and warehousing uses or that the subject property complies with current zoning.

Photographs of the subject property show orderly development and construction on the subject property and vast nearby unimproved lands vegetated by sparse stands of rabbit brush and sage brush. Some photos show electrical facilities such as a transformer that appears to be dedicated to the subject property. Fencing and at least one automatic gate are evident. Office and conference room space appears clean, well-constructed, and well-decorated but not opulent. Manufacturing space appears spacious and well lit. Large ceiling beams and overhead cranes appear capable of moving heavy equipment. A 50-ton overhead trolley-mounted crane is evident as are multiple two-ton boom cranes.

Site photographs show large overhead doors leading from manufacturing space with substantial concrete-covered exterior storage areas. Separate storage sheds, labeled the east and middle storage sheds, do not appear to have as much ceiling space as the main facility. The East storage shed appears to have a roof and four walls with a door-space to enter on one side but without a door that would close off the area. The building labeled middle storage shed appears to have a roof and three walls. The building labeled west storage shed appears to have four walls with two large doors on one wall. It appears to be of block construction and appears to be a storage area for multiple metal drums and large plastic containers. Other exterior photographs show storage of what appear to be heavy industrial equipment stored outside a building identified as rear office space.

There is no dispute that the main building of the subject property has #####-square feet of office and is a single story structure of average Class "S" metal construction. There are no windows in the manufacturing and warehouse space. Most of the office space was built with the original construction, and an office addition added #####- square feet in YEAR in the rear of the structure. The office area is finished with carpeted floors, painted gypsum board, and suspended acoustical tile with recessed fluorescent lighting. Part of the office area is a break room.

There is no disagreement that the warehouse and manufacturing area is finished with concrete floors topped with diamond plate flooring in areas of heavy use. The metal walls are insulated as is generally true of ceilings. Warehouse and manufacturing areas generally have drop down mercury vapor fixtures. The ceiling clear height is 24 feet. The total count of cranes includes three ###-ton cranes, one ###-ton crane, and one ###-ton crane, as well as the ### ton boom cranes shown in building photographs. The County's appraiser described concrete floors that were 10 to 12 inches thick and up to 18 inches thick in some areas. The Taxpayer did not dispute this description.

The parties agree that the east and middle sheds are open sided and are used to store parts and machinery. They are Class "S" steel structures with metal siding. The foundations are concrete. The east shed has a portion of the fourth side enclosed and thus has less available light. It has electricity available

for lighting. The west shed is used for oil storage and a generator. It is a Class “C” concrete block structure and also has electricity available.

The County did not dispute the Taxpayer’s description of site improvements. These include asphalt paved parking areas on the north side and drive areas on the east, west, and south sides of the building. The asphalt paving for the north parking area is in good condition, with the other areas showing significant wear and cracking. The Taxpayer’s appraiser termed these areas in poor condition and the County did not raise a dispute regarding this issue. The Taxpayer’s appraiser also described modest landscaping in front of the office space. The Taxpayer’s appraiser noted that this is well maintained but that pole lighting was inoperable. The County did not disagree.

Both parties’ size figures put the site coverage ratio at approximately three percent. They agree that while this site coverage might be considered small for some operations, it made sense for many heavy industrial users with the need to handle large or heavy equipment. There is no dispute that several surrounding users have similar site coverage.

The appraisers for both parties would normally give Class “S” structures a 45-year life span. Although they used somewhat different methodologies to reach their depreciation for cost approach valuation, both accounted for heavy use that would be expected to shorten the life of the improvements from their full ###-year life span. The Taxpayer’s appraiser considered the buildings to have a remaining economic life of ### years; the County’s appraiser calculated a somewhat shorter life of ### years remaining as of the lien date. Both appraisers considered the highest and best use of the subject property to be as it was used on the lien date.

The parties have no dispute regarding the use of the property as of the lien date. The Taxpayer was used as a mining machinery service center. The building improvements are designed and constructed to support this use. The subject property is the Taxpayer’s regional service center for the (Z) United States, which generally means west of the RIVER. The Taxpayer repairs equipment shipped from as far north as FOREIGN COUNTRY and as far south as STATE-1. The County’s appraiser noted, and the Taxpayer did not dispute, that there are other companies that compete for the same types of services provided by the Taxpayer.

The County’s appraiser noted that the facilities on the subject property have been operating 7 days a week for 24 hours a day. The Taxpayer built the current improvements on the subject property when older facilities nearby became inadequate to meet demand for the Taxpayer’s services. The County’s appraiser noted that a competitor to the Taxpayer in nearby CITY-2, Utah recently doubled the size of its facility due to increasing demand for its services. The Taxpayer did not dispute this.

Appraisal and Valuation

While the parties are in general agreement regarding the description and use of the subject property, they have strong disagreement regarding valuation methodology. All of the issues that divide the parties relate to valuation rather than building description. The Taxpayer and its appraiser argued for valuation of the subject property using an income approach and a sales comparison approach to value. The County and its appraiser placed emphasis on a cost approach.

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Taxpayer provided an appraisal prepared by REPRESENTATIVE-2 FOR TAXPAYER. The Taxpayer’s appraiser completed an income approach to value and a sales comparison approach to value.

For an income approach to value, the Taxpayer’s appraiser relied on the rents of six comparable properties as follows:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6
Address	SUBJECT Address RURAL COUNTY	ADDRESS-1	ADDRESS- 2	ADDRESS -3	ADDRES S-4	ADDRESS -5	ADDRESS- 6
County	RURAL	COUNTY-1	COUNTY-1	COUNTY- 2	COUNTY -3	COUNTY- 1	COUNTY-2
Expense Basis	NNN	NNN	NNN	NNN	NNN	NNN	NNN
Date of Lease	N/A	Sep-10	Feb-11	Aug-11	Apr-11	Jul-11	Jan-12
Size	#####	#####	#####	#####	#####	#####	#####
Percent Office	18%	1%	3%	8%	11%	11%	3%
Effective Age	20	25	15	30	25	10	25
Condition	Average	Average	Average	Average	Average	Average	Average
Ceiling Height	24	22	25	16	18	23	30
Site Coverage Ratio	3%	53%	17%	28%	12%	44%	19%
Unadjusted Rent/Sq./Ft.		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Lease Terms		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Adjusted Rent/Sq./Ft.		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Conditions of Lease		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Adjusted Rent/Sq./Ft.		\$\$\$\$					
Date of Lease (Time)		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Adjusted Rent/Sq./Ft.		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Other Adjustments							
Location		-15%	-15%	-15%	-10%	-10%	-20%
Physical Characteristics							
Size		5%	0%	5%	-5%	0%	0%
Age and Condition		5%	-5%	10%	5%	-10%	5%
Quality/Appeal		5%	-5%	0%	0%	0%	0%
Ceiling Height		1%	0%	4%	3%	0%	-3%
Office Percentage		17%	15%	10%	7%	7%	15%
Site Coverage Ratio		20%	5%	10%	5%	15%	10%
Amenities/Use		10%	10%	0%	10%	10%	10%
Total Other Adjustments		48%	5%	24%	15%	12%	17%
Adjusted Rate/Sq./Ft./Year		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

Average/Sq./Ft.	\$\$\$\$\$
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The Taxpayer’s appraiser made adjustments to account for differences between the rent comparables and the subject property for factors such as location, size, office percentage, and site coverage ratio. After these adjustments, the appraiser calculated an average adjusted rent per square foot of \$\$\$\$\$. Although the Taxpayer’s appraiser listed the adjusted amounts as rents per year, it is evident that they are adjusted rents per square foot per month and need to be multiplied by 12 to arrive at annual rents per square foot.

The Taxpayer’s appraiser capitalized expected rent at 9% capitalization on the basis of the sales of eleven comparable properties as follows:

Sale	Location	Sale Date	Size	Year Built	Cap Rate	
S-1	ADDRESS-7 CITY3	DATE	#####	YEAR	9.27%	
S-2	ADDRESS-8 CITY-3	DATE	#####	YEAR	10.00%	
S-3	ADDRESS-9 CITY-3	DATE	#####	YEAR	9.10%	
S-4	ADDRESS-10 CITY-3	DATE	#####	YEAR	9.82%	
S-5	ADDRESS-11 CITY-4	DATE	#####	YEAR	9.84%	
S-6	ADDRESS-12 CITY-5	DATE	#####	YEAR	7.40%	
S-7	ADDRESS-12 CITY-6	DATE	#####	YEAR	8.73%	
S-8	ADDRESS-14 CITY-7	DATE	#####	YEAR	7.42%	
S-9	ADDRESS-15 CITY-3	DATE	#####	YEAR	9.85%	
S-10	ADDRESS-16 CITY-3	DATE	#####	YEAR	8.14%	
S-11	ADDRESS-17 CITY-3	DATE	#####	YEAR	9.00%	
			Average	8.96%	High	10.00%
			Median	9.10%	Low	7.40%

The Taxpayer’s appraiser indicated that investors would typically view buildings in secondary or tertiary locations as more risky than buildings nearer metropolitan areas and that this factor would tend to favor a higher capitalization rate than usual. As a counteracting factor to this, however, the Taxpayer’s appraiser noted that the relatively new age of the subject property would offset some of the higher risk of the location of the subject property. On the basis of all of the factors that would tend to influence capitalization rates, the Taxpayer’s appraiser used a concluded capitalization rate of 9.0%. The Taxpayer’s appraiser did not add a separate load for the effect of property taxes. This appears reasonable since the rent comparables were all NNN leases in which the tenant would pay property taxes.

The Taxpayer’s appraiser reached a rounded value of \$\$\$\$\$ using the income approach to value as follows:

Income Capitalization Summary			
Gross Income			
Rent:	##### sq.ft. x \$\$\$\$\$	=	\$\$\$\$\$
Less: Vacancy	5%		(\$\$\$\$\$)
Effective Gross Income			\$\$\$\$\$

Operating Expenses			
Management	3.0%	of EGI	(\$\$\$\$\$)
Reserves	2.0%	of EGI	(\$\$\$\$\$)
Total Operating Expenses			(\$\$\$\$\$)
Net Operating Income			\$\$\$\$\$
Overall Rate			9.00%
Income Approach to Value Estimate			\$\$\$\$\$
Rounded To			\$\$\$\$\$

For a sales comparison approach to value, the Taxpayer’s appraiser relied on the sales of four comparable properties as follows:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4
Address	SUBJECT ADDRESS	ADDRESS-18	ADDRESS-19	ADDRESS-20	ADDRESS-21
City	RURAL COUNTY	CITY-8	CITY-9	CITY-6	CITY-3
Sales CITY-10	N/A	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Size	#####	#####	#####	#####	#####
Bldg. to Land Ratio	3%	12%	36%	47%	23%
Office Finish	18%	29%	5%	8%	9%
Construction	Class ‘S’	Class ‘C’	Class ‘C’	Class ‘C’	Class ‘S’
Year Built	YEAR	YEAR	YEAR	YEAR	YEAR
Clear Height	###-Feet	###-Feet	###-Feet	###-Feet	###-Feet
Effective Age	YEARS	YEARS	YEARS	YEARS	YEARS
Date of Sale	N/A	DATE	DATE	DATE	DATE
Adjustments					
Sales CITY-10/Sq./Ft.		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Property Rights		0%	0%	0%	0%
Adjusted CITY-10		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Financing Terms		0%	0%	0%	0%
Adjusted CITY-10		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Conditions of Sale		0%	0%	0%	0%
Adjusted CITY-10		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Expenditures After Purchase		0%	0%	0%	0%
Adjusted CITY-10		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Market (Time) Adjustment		0.0%	0.0%	0.0%	0.0%
Market CITY-10/Sq./Ft.		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Location		-20%	-10%	-10%	-15%
Physical Characteristics					
Size		0%	15%	5%	0%
Age & Condition		7%	10%	10%	10%
Quality		-10%	-5%	-10%	0%
Office Finish Ratio		-11%	13%	10%	9%
Clear Height		6%	1%	4%	0%
Site Coverage Ratio		5%	10%	15%	8%
Amenities		10%	10%	10%	0%
Use		0%	0%	0%	0%
Net Adjustment		-13%	44%	34%	12%
Adjusted Value		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Average CITY-10 Per Sq./Ft.		\$\$\$\$\$			

The Taxpayer’s appraiser made adjustments to account for differences between the comparable sales and the subject property for factors such as location, size, office finish, and site coverage ratio. After making these adjustments, the Taxpayer’s appraiser arrived at adjusted values per square foot that he reconciled to \$\$\$\$ per square foot. The Taxpayer’s appraiser multiplied this by #####-square feet for a rounded value of \$\$\$\$\$. The Taxpayer’s appraiser reconciled this with the income approach to value of \$\$\$\$\$ to arrive at a final concluded value of \$\$\$\$\$. The Taxpayer’s appraiser calculated a replacement cost for the subject property of \$\$\$\$\$ which he depreciated to \$\$\$\$\$ as of the lien date. He did not add a land cost to this figure or otherwise develop it as a component of value because he did not find replacement cost a good indicator of value for the subject property.

The County provided an appraisal, prepared by RESPONDENT-3. The County’s appraiser opined that data for an income approach or a sales comparison approach to value would be of such low quality that the results would not be good indicators of value for the subject property. On that basis, the County’s appraiser completed a cost approach to value. To value the land in the cost approach, the County’s appraiser relied on the sales of four comparable properties near the subject property in RURAL COUNTY as follows:

	Subject	Sale #1	Sale #2	Sale #3	Sale #4
CITY-10 Per Acre	--	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Property Rights Adjustment CITY-10 Per Acre	Fee Simple --	Fee Simple 0% \$\$\$\$\$	Surface 0% \$\$\$\$\$	Surface 0% \$\$\$\$\$	Fee Simple 0% \$\$\$\$\$
Terms Adjustment CITY-10 Per Acre	Cash --	Cash 0% \$\$\$\$\$	Cash 0% \$\$\$\$\$	Cash 0% \$\$\$\$\$	Cash 0% \$\$\$\$\$
Condition of Sale Adjustment CITY-10 Per Acre	Arms Length --	Arms Length 0% \$\$\$\$\$	Arms Length 0% \$\$\$\$\$	Arms Length 0% \$\$\$\$\$	Distressed 75% \$\$\$\$\$
Market Conditions Adjustment CITY-10 Per Acre	Mar-12 --	May-10 0% \$\$\$\$\$	Apr-10 0% \$\$\$\$\$	Sep-11 0% \$\$\$\$\$	Feb-11 0% \$\$\$\$\$
Preliminary Adjusted Value CITY-10 Per Acre	--	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Location/Proximity Adjusted Value	Average --	Average 0%	Average 0%	Fair 25%	Average 0%
Size (Acres) Adjustment	##### --	##### -50%	##### -35%	##### -50%	##### -50%
Access/Frontage Adjustment	Average --	Good -5%	Average 0%	Average 0%	Good -5%
Zoning Adjustment	l-1 --	l-1 0%	l-1 0%	RR-1 0%	l-1 0%
Utilities	All Available	All Available	All Available	All Available	All Available

Adjustment	--	0%	0%	0%	0%
Net Adjustment	--	-55%	-35%	-25%	-55%
Suggested Value	--	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

The County’s appraiser reconciled the adjusted values per acre to a land value of \$\$\$\$ per acre or \$\$\$\$ for the #####-acre site.

For the building component of the cost approach, the County’s appraiser relied on figures from Marshall and Swift Commercial Estimator as follows:

Item	Unit	Cost	Total
Total Main Building:	#####	\$\$\$\$	\$\$\$\$
Bulk Oil Storage Building:	#####	\$\$\$\$	\$\$\$\$
East Storage Shed:	#####	\$\$\$\$	\$\$\$\$
West Storage Shed:	#####	\$\$\$\$	\$\$\$\$
Total All Buildings:			\$\$\$\$
Driveways, Parking & Landscaping	#####	\$\$\$\$	\$\$\$\$
Total Improvements:		\$\$\$\$	\$\$\$\$

The County’s appraiser deducted \$\$\$\$ for physical depreciation to arrive at a rounded improvement value of \$\$\$\$\$. To this, he added \$\$\$\$ for land value to arrive at a final rounded indicated value of \$\$\$\$\$.

The County cited *Federal Reserve Bank of Minneapolis v. State of Minnesota*, 313 N.W.2d 619 (Minn. 1981) as a case in which a court applied the special purpose doctrine. In *Federal Reserve Bank*, the court concluded that a specially-constructed bank was unlikely to be sold and would have a large gap between construction cost and resale cost because it had extensive building features such as heavily reinforced floors that would not translate well to other buyers. The court determined that a cost approach to value was a valid or even a preferred measure of value for a special purpose property.

The Taxpayer disputed the County’s methodology as not in keeping with the definition of fair market value in Utah Code Ann. §59-2-102(12). The Taxpayer also cites Utah Administrative Rule R884-24P-62 (Rule 62) for the principle that a yield capitalization income indicator of value is a preferred method of valuing property. The Taxpayer argued that the subject property is over-improved and that subsequent buyers would be unwilling to pay for a property based on what the Taxpayer spent improving it since a buyer would not be likely to need reinforced floors and heavy industrial improvements. While these improvements had sufficient desirability to cause the Taxpayer to pay to have them constructed, the Taxpayer argued that they would contribute to obsolescence in the eyes of most, if not all, prospective buyers.

Analysis and Conclusions

The Taxpayer is correct in stating that the measure of value under Utah law is “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” as set forth in Utah Code Ann. §59-2-102(12).¹ At first blush, this would seem to favor a sales comparison approach to value. However, the requirement of a willing buyer requires that the Commission assume a hypothetical buyer that would have a use for the property. This requirement matches well with the description of a special use property as described in *Federal Reserve Bank of Minneapolis v. State of Minnesota*, 313 N.W.2d 619 (Minn. 1981) (noting that special use doctrine is necessary to prevent owner of distinctive, yet highly useful, building to escape full property tax liability)². It is also consistent with the International Association of Assessing Officers’ (IAAO) definition of a special purpose property as “a property adapted for a single use” and its determination that “the cost approach tends to be most appropriate in the appraisal of special-purpose properties, due to the distinctive nature of such properties and the general absence of adequate sales or income data.”³

In addition to statutory definition, the Commission also considers the quality of evidence available. The County’s appraiser included statements in his report indicating that there were few or no relevant improved properties that sold or rented that would form a basis for a sales comparison or income approach to value. The comparable properties on which the Taxpayer’s appraiser relied seem to bear this out. None are in RURAL COUNTY. All are in more developed and higher populated counties such as COUNTY-3, COUNTY-2, and COUNTY-1. Through no fault of either appraiser appearing in this matter, the available comparable properties for an income or a sales comparison approach to value are poor indicators of value. The information available for the cost approach, on the other hand, is strong and reliable. The County presented land comparables near to the subject property. The Taxpayer did not challenge the validity of these comparables. The Taxpayer presented cost figures that are remarkably similar to the Marshall and Swift figures presented by the County’s appraiser.

Considering all of the evidence presented, the quality of evidence available, as well as the character of the subject property as a special purpose property as described in *Federal Reserve Bank of Minneapolis v. State of Minnesota*, support the conclusion that the County has adequately supported the

¹ Rule 62 applies to unitary properties and is thus not applicable to this case that deals with a property that is not a unitary property.

² Other states have followed *Federal Reserve Bank of Minneapolis*. See, e.g. *Dinner Bell Meats v. Cuyahoga County Board of Revision*, 466 N.E. 909 (Ohio 1984) and *Daniel v. Canterbury Towers, Inc.*, 462 So.2d 497 (Florida 1985).

³ International Association of Assessing Officers, Standard on Mass Appraisal of Real Property, approved January 2012. <http://www.iaao.org/uploads/StandardOnMassAppraisal.pdf>, pp. 11-20.

board of equalization value and that the Taxpayer has not met the burden of proof of showing error in that value.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission sustains the \$\$\$\$ value as determined by the board of equalization for the subject property as of January 1, 2012. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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

Michael J. Cragun
Commissioner

RECUSED
Robert P. Pero
Commissioner

COMMISSIONER DIXON DISSENTS

I respectfully dissent from my colleagues. I hold while the Taxpayer did not provide a sound evidentiary basis to reduce the BOE value to its requested value, the Taxpayer provided enough information to show substantial error in the BOE value. Further, the County did not provide enough convincing information to support the BOE value. Therefore I hold the Commission must therefore determine the value of the Subject based on the testimony and the preponderance of the evidence.

The Commission has two appraisals, both completed by certified general appraisers. The appraisals provide opinions of value with different underlying assumptions. While there are two appraisals, the record is limited on rebuttal by each party to the appraisal provided and the statements made by the opposing party. The elements of fact of which the parties appear to agree are shown in the attached Table I.

The hearing record seems to indicate there was some discussion on the highest and best use of the Subject. It is understood from the record that the County's position is that the highest and best use of the Subject is its current use which is as an industrial property used as a repair facility for large machinery and/or equipment, and that would be the continued use with a new user.⁴ It is also understood that the Taxpayer's position is that the highest and best use is for a continuation of its existing industrial use, but the Taxpayer holds that its current use would not continue and therefore there would be additional obsolescence as it would be over improved for the market.⁵ While the terms "heavy industrial use" and "heavy industrial buildings" were used by the parties, there was not a clear description of what characterizes or distinguishes between heavy industrial versus industrial.

The record also indicates there was a discussion on the principle of value in use. RESPONDENT-3, the County's appraiser held that the Subject was a special purpose property that required it be valued at its value in use. There is evidence in the record that RESPONDENT-3 asked the Taxpayer's appraiser, REPRESENTATIVE-2 FOR TAXPAYER "when is value in use ok?" and that REPRESENTATIVE-2 FOR TAXPAYER replied "when there are no comparables in the market." The record seems to indicate REPRESENTATIVE-2 FOR TAXPAYER did not disagree with the calculations performed by RESPONDENT-3 in his cost approach, only that the cost approach was not market.

In addition to differing opinions on the method to use to value the Subject, the parties disagree on the effective age and useful life of the Subject, and whether depreciation can account for obsolescence. It was not disputed the Subject is ##### years old, however, REPRESENTATIVE-2 FOR TAXPAYER held its effective age was ##### years, while RESPONDENT-3 held it was ##### years. It was not disputed that based on Marshall and Swift the useful life would be ##### years; however, REPRESENTATIVE-2 FOR TAXPAYER held the useful life of the Subject was ##### years, while RESPONDENT-3 said it was ##### years. REPRESENTATIVE-2 FOR TAXPAYER held there was too much subjectivity in estimating depreciation for obsolescence to use the cost approach. RESPONDENT-3 held the only obsolescence was only the office space, and it could be accounted for with depreciation.

⁴ Pages 31 and 34 of the County appraisal.

⁵ Pages 14 and 15 of the Taxpayer's appraisal.

In terms of obsolescence the County's appraiser acknowledged possible changes in the mining industry⁶, but held the 24/7 operation of the Subject did not show economic obsolescence. In rebuttal, NAME-1, employed with BUSINESS-2 said #####-years had passed since the main portion of the Subject had been built and "the market is not what it was when it was built". REPRESENTATIVE-2 FOR TAXPAYER, held the crane rails were an over improvement and the only way to determine obsolescence is to compare to the market. In response to RESPONDENT-3 statement that the properties used in REPRESENTATIVE-2 FOR TAXPAYER'S appraisal were not comparables, REPRESENTATIVE-2 FOR TAXPAYER replied that some of his comparables could be used as heavy industrial, but the Subject would not if it was sold.

ANALYSIS

The information provided by the Parties does not convincingly support the requested values. By Utah Code, the Commission's role is to determine the fair market value between a willing buyer and willing seller as of January 1, 2012.

The County provided an appraisal based on the cost approach to value, while the Taxpayer provided an appraisal using a sales and income approach to value.⁷ The following considers the information provided and statements made by the Parties regarding all three approaches.

Cost Approach:

Physical Obsolescence:

RESPONDENT-3 discussed in depth in his appraisal a competitor to the Taxpayer building a new building in CITY-10. He also discussed another competitor building a new building in CITY-2, located in COUNTY-4. The record is void as to the type of specifications the competitors built or are building their new structures.

RESPONDENT-3 held the Subject was built to be a heavy industrial facility, and had additional elements to support the heavy industrial use.⁸ The record does not show that the Taxpayer disputed these

⁶ County appraisal page 51: "In my opinion, the subject building's life may be a little shorter than other heavy industrial buildings. The [subject] is used specifically for repairing machinery used in the coal industry. This type of machinery is likely to change over time. The machinery may get larger or possibly smaller. Any significant changes could increase the rate of functional depreciation and shorten the life span of the building."

⁷ It is noted that REPRESENTATIVE-2 FOR TAXPAYER determined his sales approach using the #####-sf of the main structure holding that the sales bracketed the main structure of #####-sf, and as size increases the CITY-10 per sf decreases (REPRESENTATIVE-2 FOR TAXPAYER appraisal, pages 25-26). RESPONDENT-3 reconciled his cost approach using the #####-sf of all the structures, and giving all the structures the same depreciation (RESPONDENT-3 appraisal, pages 48, and 53-54). See Table I for details of the structures.

elements; however, there is no specific information to support the competitors built the new structures to the same specifications of the Subject. Further there is no evidence to suggest that a buyer would buy the Subject based on a reproduction cost. In support of this, the County Appraiser did not do a reproduction cost, he did a replacement cost.⁹ Further, REPRESENTATIVE-2 FOR TAXPAYER provided enough information to rebut RESPONDENT-3 position that the only significant obsolescence in the Subject was the office space.

Both parties discussed that the Taxpayer sold its building in CITY-10 and built its current facility, the Subject. It was noted that the Taxpayer decided to build the Subject at its current location because at its previous location the noise when servicing the mining equipment was causing problems with nearby neighbors. It is not clear if the Competitor located in CITY-10 has similar noise level issues, and if so, why the Competitor has not needed to move to a more isolated area similar to where the Subject is located to address sound levels. RESPONDENT-3 noted there was a similar competitor in CITY-2, in COUNTY-4, but did not state if the facility was located close or away from a city. It is not clear if the technology has changed so there is now less noise from equipment, and whether a remote location further outside city limits is no longer necessary. The hearing record is void on whether it was rebutted that the Subject operates 24/7, but it was not clear what operations were occurring at the Subject 24/7 and whether these activities created any noise.

The information on where competitors are located also suggests that servicing equipment is not dependent on where a repair facility is geographically located. RESPONDENT-3 noted the competitors in CITY-10 and CITY-2. In addition, it is understood that both parties agree the Subject receives mining equipment from all the western states, from the plain states as far away as the RIVER, and from as far north and south as FOREIGN COUNTRY-1 and FOREIGN COUNTRY-2 respectively. This information seems to suggest that customers will have equipment transported long distances to obtain the services of the Taxpayer, and further, that if the Taxpayer sold the Subject, the customers would follow the Taxpayer if the same level of services could be provided. Based on the testimony, it is not dispositive that the Subject's location is a preferred location or an advantage, and therefore a reason a buyer would continue the current use of servicing mining equipment at the Subject.

⁸ The County appraiser described these as heavy duty footings, foundations and flooring internal footings noted to support the cranes and heavy equipment, two-phase high voltage, diamond flooring, insulated metal walls and ceiling, ceiling height of 29 feet, two cranes rails on the ceiling to support ###, ###, ### and ### ton cranes.

⁹ RESPONDENT-3 held the only obsolescence was too much office area that was physically incurable, but that the functional obsolescence of the overbuilt office was accounted for with a replacement cost new instead of a reproduction calculation. REPRESENTATIVE-2 FOR TAXPAYER said there is physical deterioration as the floor is worn down and should be replaced, and there is functional obsolescence as it is over improved for market.

RESPONDENT-3 stated the Subject's floor plan and design are quite typical of heavy industrial buildings and could be converted to another similar heavy industrial use with little expense; however, RESPONDENT-3 argument was understood to be that its current use of servicing mining equipment would be continued. Further, there was no information provided to support the position that another heavy industrial user would retrofit and use the building. REPRESENTATIVE-2 FOR TAXPAYER argument was understood to be that the Subject would not continue at its current use, as it would have obsolescence, and thus would be considered by a buyer looking for an industrial facility.

The Subject is #####- years old, and according to Marshall and Swift would have a useful life of 45 years; however, RESPONDENT-3 held the effective age of the Subject was ##### years, and had a useful life of ##### years, while REPRESENTATIVE-2 FOR TAXPAYER held its effective age was ##### years, with a useful life of ##### years. The information and evidence seems to support that facilities used for the servicing and repair of mining equipment have a shorter useful life. This would seem to support that over a shorter period of time there is more obsolescence, and after a certain period of time due to obsolescence, for an entity to continue use of a facility for servicing and repairing mining equipment, additions or changes need to be made or a new structure built. The totality of the information seems to support that the building's highest and best use changes over time due to obsolescence, and the highest and best use changes to industrial use.

External Obsolescence (or economic obsolescence):

The preponderance of the information suggests that the market needs of the mining repair and servicing industry is always changing, and facilities are being sold or adapted to fit or serve those needs. While there is no specific information on the changes to mining equipment and industry demands for repair and servicing, the information suggests that the market is dynamic and the mining servicing industry is susceptible to those market changes. It is not clear if the market changes are driven by regulatory requirements, competition or changes in demand. RESPONDENT-3 wrote equipment may go smaller or larger, and REPRESENTATIVE-2 FOR TAXPAYER stated an overhead crane system is over improvement. NAME-1, who appears to be employed by the Taxpayer and thus would seem to be knowledgeable of the mining industry stated the market has changed since the Subject was built. This testimony was not rebutted by the County.

Conclusion: There was evidence to suggest that the Subject would not be reproduced. The information is not dispositive that if sold, the Subject would continue to be operated at its current use. The totality of the information seems to support that using only the cost approach may not fully consider or capture

obsolescence, and thus may overvalue the property; however, there was evidence that industrial properties were being built, and there was no dispositive information to refute that an interested party would consider building, especially if a certain element was desired, therefore the cost approach appears to be an approach a buyer would consider.

Sales:

REPRESENTATIVE-2 FOR TAXPAYER provided enough information to show there are comparable industrial properties in the market. The fact the Subject was argued to have some special features does not necessarily make the sales approach unusable. There was not enough information or rebuttal to show that the unique features noted have a value in the current market, or that the features were so unique as to not be available in the market.¹⁰ RESPONDENT-3 said he looked at sales, but did not find them comparable; however, the hearing record does not show RESPONDENT-3 provided alternative comparables or specifically rebutted elements of the Taxpayer's comparables. The record indicates RESPONDENT-3 held the Taxpayer's sales were not comparables; the record also seems to show that RESPONDENT-3 indicated there were more similar comparables in COUNTY-5. This is not enough for the Commission to find the comparables used in REPRESENTATIVE-2 FOR TAXPAYER appraisal are not comparable to the Subject based on the highest and best use argument advanced by REPRESENTATIVE-2 FOR TAXPAYER. As noted in the analysis of the cost approach, there is evidence to suggest it is applicable to go outside the CITY-1, CITY-10 and RURAL COUNTY area to consider comparables. The County appraiser even stated that comparables from COUNTY-5 would have been better.

It is not dispositive that the location of the Subject in the industrial park outside CITY-1 is a superior location to other locations in the market, or that the Subject's location is beneficial to the services provided by the Taxpayer. Again, both parties stated that the Subject receives mining equipment to repair from all the western states, from states as far east as the RIVER, and then as far north as FOREIGN COUNTRY-1, and as far South as FOREIGN COUNTRY-2 (it reasons the equipment would arrive by rail or truck (no maritime options)). This suggests that it is the servicing of the equipment that is important, not to where the equipment is being shipped. The information suggests that if the Taxpayer sold the Subject, and moved to another location, the business customers would likely follow the Taxpayer. There is not enough information to show there would be enough demand in the market for a

¹⁰ The flooring components were not shown to be needed, nor was the crane system in a warehouse shown to be unavailable in the comparables provided.

new buyer to purchase the Subject and continue its current use. Further there is no dispositive information that a buyer would purchase the Subject based solely on a cost to build the same type of facility at its current location, or that the current location is a preferable location.

The information supports that the highest and best use of the Subject would change, that willing buyers would not just consider the CITY-1 Industrial Park, and that there are industrial properties for sale in the market. The only sales comparables provided were those provided by the Taxpayer's Appraiser.

Conclusion:

The evidence suggests the highest and best use of the Subject is an industrial use, and moving to a more general industrial use. Further, the sales comparables provided were stated to be usable for industrial use, and were not specifically rebutted as to why they were not comparable to the Subject moving to a general industrial use¹¹. Further the evidence suggests that there are sales comparable to the Subject, including those with overhead crane rails, and the Subject would be competing with other comparables in the market outside the immediate area of the Subject because it was not dispositive that location is a determining factor for a willing buyer.

Income:

While it was shown that industrial properties are on the market for rent, there was more evidence to suggest a willing buyer would purchase it to own and occupy, than to own and lease. It was stated the Subject is not designed to serve several tenants, and both parties stated that a likely new user would be a single owner occupant.

Conclusion:

The use of the income approach was not as supported as the other two approaches; however, the leased comparables did at least again show there are other comparables in the market, including one with overhead crane rails.

Reconciliation:

¹¹ It was further not rebutted how the sales provided were not comparable to the Subject at its current use.

The totality of the information calls into question if the Subject would continue to be operated at its current use. The most convincing information suggests the highest and best use of the Subject would move to a general industrial use. It was not dispositive that the Subject's location is a preferable location or an advantage in the market, therefore the more convincing information is that the Subject would be considered alongside other comparables outside the immediate area of the Subject. The sales provided were not specifically rebutted as to why they were not comparable to the Subject moving to a general industrial use.

The sales approach has been accepted by the Commission as the method that best indicates the value between a willing buyer and willing seller and most accurately shows the decisions of those in the market place, and REPRESENTATIVE-2 FOR TAXPAYER effectively called into question whether the County's cost approach fully accounted for obsolescence of the Subject; however, the cost approach was not fully rebutted by REPRESENTATIVE-2 FOR TAXPAYER, as RESPONDENT-3 provided information to show that new industrial buildings were being constructed by competitors near the Subject. Therefore the evidence supports that costs to build to certain specifications would be considered by an industrial user.

REPRESENTATIVE-2 FOR TAXPAYER as a certified general appraiser did a reconciliation of the sales and income approach. He weighed the sales approach 50% and the income approach 50%. The hearing record did not indicate RESPONDENT-3 disputed a reconciliation of values. Neither the cost approach nor the sales approach was shown to be completely unreasonable. The preponderance of the evidence supports a reconciliation of the cost and sales approach values as provided by the Parties, both weighed at 50% each. Therefore, a reconciliation of the values would be as follows:

County Cost approach: \$\$\$\$\$	50%	\$\$\$\$\$
TP's Market approach \$\$\$\$\$	50%	\$\$\$\$\$

		\$\$\$\$\$

Value in Use vs. Value in Exchange:

The Commission has previously addressed for this same Subject Property the issue of "value in use" versus "value in exchange." In Commission order 03-1417, 04-1366 and 05-1470 for years 2003, 2004 and 2005, the Commission determined that properties must be valued on their value in exchange.¹² The Commission wrote in its Conclusions of Law, number two:

¹²03-1417, page 13. Redacted commission orders can be <http://www.tax.utah.gov/commission-office/decisions>

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. (Emphasis added)**

I find there is not enough evidence to depart from this Commission position.

It is not clear if the cost approach continued to be utilized after the appeals for the Subject Property for years 2003, 2004 and 2005, but usually with a cost approach, the value of an older building gradually declines. I take administrative notice that the assessed value of the Subject for 2011 was \$\$\$\$¹³; however, the value of the Subject, which is ##### years old, and both parties agree has a higher effective age¹⁴, increased 57% in value under the cost approach employed by the County for 2012. This instinctively raises question as to whether physical depreciation and economic and functional obsolescence were adequately addressed in the county cost approach.

Although determining a value based on the cost approach is an accepted appraisal methodology, it is generally considered to be a more reliable approach for newer construction due to the need to determine physical depreciation and the subjectivity of accurately accounting for functional or economic obsolescence. It is possible for fair market value to be derived from a cost approach, but there is more to the approach than calculating a cost new for the buildings based on the square footage and cost tables and applying the straight line age based depreciation. The County's cost approach does not adequately account for the functional or economic obsolescence.

While there may be circumstances where the Commission may value an individual property solely on the basis of its cost, I hold the Commission should be cautious in adopting the special use / special purpose doctrine espoused in the case cited by the County. The facts of this appeal do not lend themselves to giving clear guidance to others (the counties, appraisers, or taxpayers) as to when using the cost approach alone may be applicable. The cost approach may be employed to assess a new property where the owner has recently paid an amount for the property that approximates the cost approach value; however, for an older property, it is not always certain that the owner would build the same improvements, if the owner was replacing them. When the age of the improvements is considered in concert with the lack of other buyers that would pay for the over improvements reflected in the cost

¹³ 2010 was \$\$\$\$ and 2009 \$\$\$\$\$. See county appraisal page 14.

¹⁴ See page 14 of this order

approach, exceptional circumstances do not exist to consider the doctrine advanced by the County to support use of the cost approach alone to value the Subject.

The facts of this case do not support the majority adopting the special purpose doctrine espoused in the case cited by the County. As noted earlier, the Commission has previously addressed this specific property and dealt with the County's arguments in a different appeal, and I am not convinced that the Commission should change its prior position¹⁵.

CONCLUSION

I hold the evidence supports a willing buyer would consider both costs and sales, and as such a reconciliation of those approaches is not an unreasonable method for determining a value between a willing buyer and willing seller. I hold the value should be set at \$\$\$\$\$.

Finally, I hold the court decision cited by the County in support of its approach to value is not applicable to the appeal before us.

D'Arcy Dixon Pignanelli
Commissioner

Attachment to Commissioner Dixon's Dissent

Table I Elements of Fact for the Subject

Land: ##### acres
Land ratio: 3% structures to land

Improvements:
% of use: 82% open warehouse space and 18% office
Type: Class S industrial / warehouse/ manufacturing
Construction: Class 6 metal construction

¹⁵ The Commission has similarly addressed the issues of the appropriateness of the cost approach to valuing property in 10-0065, 07-0168 which can be found at <http://www.tax.utah.gov/commission-office/decisions>

	Sq feet	Year built	
Main structure			
Service area	#####	YEAR	
Office	#####	YEAR	
Office	#####	YEAR	
Warehouse	#####	YEAR	
Storage	#####	YEAR	covered, but partially open

Sub-total	#####		
Detached storage structures			
East	#####	YEAR	lean to
Middle	#####	YEAR	three walls
West	#####	YEAR	bulk oil storage

Sub-total	#####		
Total sf	#####		

Specifics of Main Structure:

- Insulated metal walls and ceiling
- Two crane rails on the ceiling in service/manufacturing area
- Ceiling height 29 feet in the service/manufacturing area
- Footings and foundations to support crane railings
- Two-phase high voltage
- Diamond flooring

Note: The Taxpayer's appraiser noted that the Taxpayer owned three ###, one ###, one ### and several ### ton cranes (considered personal property) that can be used on the overhead crane rails.