

13-757  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2012  
DATE SIGNED: 2-28-2014  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

---

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-757</p> <p>Parcel Nos. #####</p> <p>Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Phan</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative by Telephone  
For Respondent: RESPONDENT, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on December 3, 2013, in accordance with Utah Code §59-1-502.5. There are four separate parcels at issue in this appeal. Each parcel is TAXPAYER'S STORE and each is at a different location in Salt Lake County. The lien date at issue in this appeal is January 1, 2012. The values originally assessed for each parcel by the Salt Lake County Assessor's Office, then as set by the

County Board of Equalization (“the County”) and as requested by the Taxpayer at this hearing are as listed below. At the hearing the representative for the County asked the Commission to sustain the County Board of Equalization values for each parcel.

Parcel No.	Address	Original Assessment	BOE Value	Taxpayer’s Request
#####	PROPERTY-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	PROPERTY-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	PROPERTY-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	PROPERTY-4	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

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

- (1) All tangible personal property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.
- (5) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
  - (a) the issue of equalization of property values is raised; and
  - (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. To prevail, a party must 1) demonstrate that the value established by the County

contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

Although all four parcels at issue in this appeal are at different locations in Salt Lake County, the parties offered the same comparables and arguments for all of these parcels. The one difference in the information, both parties were in agreement that the PROPERTY-2 had a lower value on a per square foot basis than the other properties, but they continued to be in disagreement as to what that value was. For the other three parcels each party argued for a value per square foot that was similar for each building, although they were in disagreement with each other as to what that value was. The parties also had a difference of opinion regarding the square footage of each of the properties, but this disagreement was fairly small. The Taxpayer did submit an Architects Certification as to the size of each of these buildings to support its contention regarding the square footage. The County did not submit any information regarding the size of these buildings. Information for each parcel is as follows:

Location	Year Built	Square Footage Per TP/County	Requested Value Per Taxpayer	Per Square Foot Per County <sup>1</sup>
PROPERTY-2	YEAR	#####	\$\$\$\$\$	\$\$\$\$\$
PROPERTY-1	YEAR	#####	\$\$\$\$\$	\$\$\$\$\$
PROPERTY-3	YEAR	#####	\$\$\$\$\$	\$\$\$\$\$
PROPERTY-4	YEAR	#####	\$\$\$\$\$	\$\$\$\$\$

The PROPERTY-2 parcel was different from the other properties as it had originally been a DEPARTMENT STORE which had operated in that location for many years. When the DEPARTMENT STORE went out of business, TAXPAYER assumed the lease at this location as well as a number of other DEPARTMENT STORE properties around the country in a bulk transaction. The lease rate was \$\$\$\$\$ per square foot. However, the representative for TAXPAYER argued that as part of the bulk transaction TAXPAYER assumed the existing lease and it was too high. This store location was not ideal and sold less per square foot in retail sales than the other three properties at issue. The other TAXPAYER’S properties had been built as TAXPAYER stores at locations chosen by TAXPAYER.

---

<sup>1</sup> This is calculated based on the County Board of Equalization’s value divided by the Taxpayer’s square footage.

The Taxpayer did not submit an appraisal of the subject property. The Taxpayer's requested reduction was based on an income approach primarily, but the Taxpayer also submitted sales comparables. In the income approach the Taxpayer's representative argued the appropriate lease rate for the PROPERTY-2 should be \$\$\$\$ per square foot and for the other three properties \$\$\$\$ per square foot. He stated that during the last two years, TAXPAYER had entered into five new leases for new properties at an average rate of \$\$\$\$ per square foot. These properties were located throughout the United States and none were in Utah. He also noted that TAXPAYER had entered into new leases for three existing properties at an average rate of \$\$\$\$ per square foot. These properties were located in STATE-1, STATE-2 and STATE-3. The County provided information that the actual lease rates of several of the TAXPAYER'S Utah properties were at \$\$\$\$ per square foot. However, it was the Taxpayer's contention that these were based on leases that were several years old and lease rates were going down. It was also the Taxpayer's argument that the fair market value for these TAXPAYER properties should be determined as if TAXPAYER had moved out, the property was vacant and being sold to a second generation tenant.

The representative for the Taxpayer provided as lease comparables five Utah listings for retail space and represented that they averaged an asking rate for of \$\$\$\$ per square foot. These properties were all 'second generation' properties, or properties that had been built as retail space, but the original store had moved from that location and the building had become vacant. Included in this group of listing comparables were a former GROCERY STORE with ##### square feet. This property had been built in 1998 and the asking rate was \$\$\$\$ per square foot. The County argued that this store was not at a viable location. Another comparable, located at ADDRESS-1, had been a RETAIL STORE-1. RETAIL STORE-1 vacated the property and a HARDWARE STORE went into the property, then vacated. This building had ##### square feet and an asking rate of \$\$\$\$ per square foot. This was a 1994 construction. A property at PROPERTY-4 had ##### square feet and an asking rate of \$\$\$\$ per square foot. The final two lease rates were located in CITY-3, were around ##### square feet in size and had asking rates of \$\$\$\$ and \$\$\$\$ per square foot. The Taxpayer's representative stated that assuming an industry standard of %%% discount from asking rates, he felt that this supported rental rates of \$\$\$\$ to \$\$\$\$ per square foot.

The representative for the Taxpayer also argued that this lease rate would be supported by an acceptable cost range of %%% to %%% of retail sales. Based on retail sales at the various locations it would indicate a lease rate even lower than the \$\$\$\$ or \$\$\$\$ he was requesting for these properties.

The Taxpayer’s representative calculated his income value using the lease rates of \$\$\$\$\$ for the PROPERTY-2 store and \$\$\$\$\$ for the other locations. He had applied a vacancy and collection loss of %%%% providing several publications on general vacancy in Salt Lake County, expenses of %%%%, reserves of \$\$\$\$\$ per square foot, which he stated was the average reserve requirement documented in Realty Rates Investment Survey. The capitalization rate chosen by the Taxpayer’s representative was %%%%. He did argue average retail cap rates were %%%% as reported by Realty Rates Investor Survey and measured cap rates %%%% according to BANK’S Commercial’s Retail Market report. These factors resulted in the value for the building of \$\$\$\$\$ per square foot for the PROPERTY-2 and \$\$\$\$\$ for the other three properties.

The Taxpayer also considered six sales comparables and he concluded from that the sales indicated a value of \$\$\$\$\$ per square foot. He stated that he looked for sales that sold as properties without a lease in place, as he argued if there was a lease the purchase price was for the income stream and not the property. It was his argument that the six property sales had an average sale price of \$\$\$\$\$ per square foot and he noted the midpoint of the range would be about \$\$\$\$\$ per square foot which was what he was requesting. His sales comparables were the following:

Address	Size	Year Built	Sale Date	Price	Price Per Square Foot
ADDRESS-4	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-5	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-6	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-7	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$ <sup>2</sup>
ADDRESS-8	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-9	#####	YEAR	DATE	\$\$\$\$\$	\$\$\$\$\$

The County also did not submit an appraisal and was asking that the Commission sustain the value as set by the County Board of Equalization. The County’s representative, RESPONDENT, is a Certified General Appraiser. He disagreed with the Taxpayer’s approach to determining a value for the subject based on ‘second generation’ comparables. RESPONDENT relied primarily on first generation comparables. It was his contention that the Taxpayer’s approach was getting to a value as if TAXPAYER had vacated the store and it was dark and vacant. He also argued that generally if a national tenant pulled out of a location and left it vacant, it was because it was a poor location for a store. He pointed as an example of this to the Taxpayer’s lease comparable at ADDRESS-2, which had an asking rate of \$\$\$\$\$ per square foot. RETAIL STORE-1 had pulled out at this location; HARDWARE STORE went in and also ended

---

<sup>2</sup> Both the Property Owner and the County’s representatives indicated that this was a below market sales as a deep discount was given to get DEPARTMENT STORE-2 into this mall.

up pulling out from this location. It was his opinion that this was just a poor location for retail. The County argued that all of the Taxpayer’s Utah lease comparables were distress properties. He noted that unlike the vacant and empty buildings used as comparables by the Taxpayer, as of the lien date, TAXPAYER was open and operating from these locations and it was the County’s contention that TAXPAYER would not vacate a property unless it was not a viable location.

The County’s representative had calculated an income indicator for value using a lease rate of \$\$\$\$ per square foot for the PROPERTY-2 store and \$\$\$\$ per square foot for the other properties. He supported these rates as market rent with sixteen lease comparables located in Salt Lake County. All leases were higher than the \$\$\$\$ or \$\$\$\$ requested by the Taxpayer. Some of the leases were from newer construction and others were older buildings. The County’s lease comparables are as follows:

Address	Year Built	Lease Rate <sup>3</sup>	Size	Tenant
ADDRESS-10	YEAR	\$\$\$\$	#####	STORE
ADDRESS-11	YEAR	\$\$\$\$	#####	STORE
ADDRESS-12	YEAR	\$\$\$\$	#####	STORE
ADDRESS-2 (Subject)	YEAR	\$\$\$\$	#####	TAXPAYER
ADDRESS-13	YEAR	\$\$\$\$	#####	STORE
ADDRESS-14	YEAR	\$\$\$\$	#####	STORE
ADDRESS-15	YEAR	\$\$\$\$	#####	STORE
ADDRESS-16	YEAR	\$\$\$\$	#####	STORE
ADDRESS-17	YEAR	\$\$\$\$	#####	STORE
ADDRESS-18	YEAR	\$\$\$\$	#####	STORE
ADDRESS-19	YEAR	\$\$\$\$	#####	STORE
ADDRESS-20	YEAR	\$\$\$\$	#####	STORE
ADDRESS-21	YEAR	\$\$\$\$	#####	STORE
ADDRESS-22	YEAR	\$\$\$\$	#####	TENNANT
ADDRESS-23	YEAR	\$\$\$\$	#####	STORE
ADDRESS-24	YEAR	\$\$\$\$	#####	TENNANT

The County’s representative did conclude a value higher than that set by the County Board using the \$\$\$\$ or \$\$\$\$ per square foot lease rates. However he did not offer this information to raise the value, but instead asked that it remain at the level set by the County Board of Equalization. In his approach, RESPONDENT applied a %%% vacancy rate and it was his opinion that properties like the subject generally were not vacant and the lower rate was appropriate. He allowed %%% for expenses and applied an %%% capitalization rate. This resulted in a value for the subject of \$\$\$\$ per square foot for PROPERTY-2 and approximately \$\$\$\$ per square foot for the other properties. The values set by the County

---

<sup>3</sup> Most leases were presented were Triple Net, for a few of the leases that were not, for comparison purposes the County had converted the lease rate to the triple net equivalent.

Board had been \$\$\$\$ per square foot for the PROPERTY-2 and around \$\$\$\$ per square foot for the other properties. RESPONDENT did provide some capitalization rate information to support the %%% rate and it was his contention that there were fewer risks with these properties and this lower rate was appropriate.

The County's representative provided ninety national chain properties that had sold across the country. He also provided seventeen Utah comparable sales of retail stores. After eliminating the four that had sold as distress properties, the average price per square foot from the thirteen remaining sales comparables was \$\$\$\$ per square foot. These were properties that had sold for prices ranging from \$\$\$\$ to \$\$\$\$ per square foot.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County, but also provide a sound evidentiary basis to support a new value. Although neither side submitted an appraisal of this property, the burden is on the Taxpayer to establish a value lower than that set by the County Board of Equalization. The Taxpayer has argued a lower value based on the assumption that value is to be determined as if TAXPAYER had moved out and the subject property was dark and vacant, using as comparables distressed properties. He also argues that his approach is valuing the property on a fee simple basis and that the County has concluded a leased fee value. The County argued the property should be valued as is; a STORE leased to a first generation tenant that is operating in a viable location. The County compares the property to other properties that are in the similar situation as the subject. The County's method is consistent with how other properties in the County are assessed.

Upon review of the evidence submitted in this case, the subject is not a vacant, distressed STORE as of the lien date and should not be valued as such. The County has submitted numerous sales and support for a lease rate that indicates the County's value for the subject is conservative. Even an income approach using actual lease rates of other Utah TAXPAYER properties would indicate a value higher than that set by the County Board of Equalization. The Taxpayer has not supported a lower value for the subject and the value should remain as set by the County Board of Equalization for each of the parcels at issue. Although the Taxpayer has substantiated a slightly smaller square footage, given that the County Board's value is already conservative, no downward adjustment is supported.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject parcels as of the January 1, 2012 lien date are as follows:

#####	\$\$\$\$
#####	\$\$\$\$
#####	\$\$\$\$
#####	\$\$\$\$

It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner



