

APPEAL # 13-782

TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED

TAX YEAR: 2012

DATE SIGNED: 12/16/2015

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1 COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 13-782 Parcel Nos. #####, #####, ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman
---	---

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:¹

John L. Valentine, Commission Chair

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney

PETITIONER'S REP-2, Appraiser

For Respondent: RESPONDENT'S REP-1, COUNTY-1 County Chief Deputy Attorney

RESPONDENT'S REP-2, from the COUNTY-1 County Assessor's Office

STATEMENT OF THE CASE

¹ Former Commissioner D'Arcy Dixon Pignanelli also presided at the April 23, 2015 Formal Hearing. However, she was not present for closing arguments on May 15, 2015, and she is not one of the Commissioners who have deliberated and made this Formal Hearing decision.

This matter came before the Utah State Tax Commission for a Formal Hearing on April 23, 2015. The parties presented their Formal Hearing closing arguments on May 15, 2015. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax year at issue is 2012, with a lien date of DATE.

3. At issue is the fair market value of three parcels that comprise a private equity golf and country club known as TAXPAYER, which is located at STREET-1 in CITY-1, Utah. The three parcels at issue are identified as Parcel No. ##### (“Parcel 43”), Parcel No. ##### (“Parcel 5”), and Parcel No. ##### (“Parcel 21”). Collectively, the three subject properties will be referred to as the “subject property.”

4. The TAXPAYER is the owner of the subject property and will be referred to herein as “Petitioner,” “TAXPAYER,” or “taxpayer.” The taxpayer brings this appeal from a decision of the COUNTY-1 County Board of Equalization, which will be referred to herein as the “Respondent” or “County BOE”.

5. The Commission held an Initial Hearing in this matter and issued its Initial Hearing Order on May 14, 2014. The taxpayer timely requested to proceed to a Formal Hearing.

6. The County BOE sustained the \$\$\$\$\$ total value at which the three subject properties were assessed for the 2012 tax year. The taxpayer asks the Commission to reduce the total value of the three parcels to \$\$\$\$\$, while the County BOE asks the Commission to sustain the properties’ current values. The following chart shows the total value proposed by each party, as well as each property’s parcel number and value that the County BOE established for it:

Parcel No.	County BOE Value	Taxpayer’s Proposed Value ²	County’s Proposed Value
Parcel 43	\$\$\$\$\$		\$\$\$\$\$
Parcel 5	\$\$\$\$\$		\$\$\$\$\$

² The taxpayer did not indicate how any reduction should be allocated between the three parcels.

Parcel 21	\$\$\$\$\$		\$\$\$\$\$
Total Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

7. The subject property consists of ##### acres of land containing an 18-hole championship golf course built in YEAR, a clubhouse, and five maintenance/storage buildings. There are also two restroom buildings on the course and pump houses that pull water from on-site ponds for irrigation.³

8. The clubhouse was built in YEAR and contains approximately ##### square feet of space on the main floor and somewhere between ##### and ##### square feet of space in the basement level.⁴ The clubhouse contains the pro-shop, management offices, a restaurant bar and grille, a dining room, banquet rooms, locker rooms, a snack bar, and cart and bag storage areas. The five maintenance/storage buildings are generally used for storage and repair of the grounds maintenance equipment. Three of the maintenance/storage buildings were built in YEAR and are approximately ##### square feet in size. The other two maintenance/storage buildings were built in YEAR and are approximately ##### square feet in size. A swimming pool is located adjacent to the clubhouse.⁵

9. The subject property is zoned LR (Large Residential) and LS (Large Suburban) under the jurisdiction of CITY-1 City. These are both single-family residential zones that allow minimum lot sizes of half-acre and one-acre, respectively.⁶ The subject property is abutted by residential subdivisions.⁷

10. The Constitution and Articles of Incorporation of TAXPAYER provide that it is operated as a non-profit club.⁸ All evidence suggests that the subject property will continue to be operated as a private equity golf and country club into the foreseeable future.

Original Assessment

³ Petitioner's Exhibit 3 ("Exhibit P-3"), pp. 8-10 and 15.

⁴ Exhibit P-3, p. 10; Respondent's Exhibit 5 ("Exhibit R-5"), p. 10. The basement square footage shown by the parties differs by ##### square feet. The square footage of the clubhouse's basement, however, has no effect on the Commission's decision.

⁵ Exhibit P-3, pp. 10-12.

⁶ Exhibit P-3, p. 9.

⁷ Exhibit R-1.

⁸ Exhibit P-1, p. 2.

11. RESPONDENT'S REP-2, an appraiser in the County Assessor's Office, testified on behalf of the County BOE. RESPONDENT'S REP-2 has not inspected the subject property, but has reviewed the appraisals submitted by both parties. RESPONDENT'S REP-2 discussed the values at which the subject properties were assessed for the 2012 tax year and which the County BOE sustained. He stated that the County assessed the subject property using the cost approach. The County submitted tax roll information showing the values at which the County assessed the subject's land, its clubhouse, and its maintenance sheds for 2012.⁹ This information confirms RESPONDENT'S REP-2 statement that the County assessed the subject's land at \$\$\$\$ per acre (\$\$\$\$ for the three parcels' land).¹⁰ It also shows that the County assessed the subject's improvements at \$\$\$\$ for the clubhouse and at \$\$\$\$ for the five maintenance/storage sheds (\$\$\$\$ for the three parcels' improvements). The total value at which the land and improvements of all three subject parcels were assessed is \$\$\$\$.

12. The County submitted an appraisal to support the subject's current value of \$\$\$\$\$, while the taxpayer submitted an appraisal to support a value of \$\$\$\$ for the subject property. Each of the appraisals will be discussed below.

County's Appraisal

13. The County's appraisal was prepared by APPRAISER-1, a certified general appraiser who works in the County Assessor's Office. APPRAISER-1 did not testify at the Formal Hearing. In his appraisal, APPRAISER-1 estimated the fair market value of the subject property to be \$\$\$\$ as of the DATE lien date.¹¹ The County did not ask the Commission to increase the subject's 2012 value to \$\$\$\$.

On the basis of its appraisal, the County asks the Commission to sustain the subject's current value of \$\$\$\$.

⁹ Respondent's Exhibit 3 ("Exhibit R-3"). This document was received for the limited purpose of showing the three subject properties' tax roll values.

¹⁰ The County proffered evidence to show that it valued the land of other golf courses in COUNTY-1 County at a similar per acre rate for the 2012 tax year. Exhibit R-4.

¹¹ Exhibit R-5.

14. In his appraisal, APPRAISER-1 determined that the subject's highest and best use as if vacant would be residential use and that its highest and best use as improved is the continuation of its golf course use.¹²

15. The only method that APPRAISER-1 used in his appraisal to value the subject property is the cost approach. APPRAISER-1 explained that the cost approach is the most reliable approach where there is limited market data available and where the improvements, like the subject's clubhouse, are relatively new. He also explained that he used the cost approach because of the unique use of the subject property, because of the lack of sales data for a sales comparison approach, and because actual income and expenses for the subject property were not available for an income approach.¹³

16. In his appraisal, APPRAISER-1 explained that the cost approach to value is based on the justification that an informed investor or purchaser would pay no more for the subject property than it would cost to produce a substitute offering the same utility.¹⁴

17. For his cost approach, APPRAISER-1 considered the value of the subject's land together with the replacement cost less depreciation of its improvements.¹⁵ APPRAISER-1 determined that the value of the subject's land would be \$\$\$\$\$\$ (rounded) and that the replacement cost less depreciation of the subject's improvements would be \$\$\$\$\$\$ (rounded).¹⁶

18. To obtain the value of the subject's land, APPRAISER-1 compared the subject property to four comparable land sales located in COUNTY-1 County. The comparables sold between YEAR and 2012 for prices ranging between \$\$\$\$\$\$ and \$\$\$\$\$\$ per acre. APPRAISER-1 did not adjust any of the sales for time of sale. However, after adjusting the comparables for location, size, and shape/topography, he derived adjusted sales prices of \$\$\$\$\$\$, \$\$\$\$\$\$, \$\$\$\$\$\$, and \$\$\$\$\$\$ per acre. On the basis of these adjusted sales prices, APPRAISER-1 determined that a value range for the subject's land would be from

¹² Exhibit R-5, p. 4.

¹³ Exhibit R-5, p. 10.

¹⁴ Exhibit R-5, p. 24.

¹⁵ Exhibit R-5, pp. 25 and 36.

¹⁶ Exhibit R-5, pp. 34 and 40-42.

\$\$\$\$\$ to \$\$\$\$\$ per acre. In the appraisal, APPRAISER-1 stated he gave the most weight to the \$\$\$\$\$ per acre value at the low end of the range and concluded that this price per acre should be the value of the subject's land. When APPRAISER-1 applied this \$\$\$\$\$ per acre rate to the subject's acreage, he derived a land value of \$\$\$\$\$, which he rounded to \$\$\$\$\$.¹⁷

19. APPRAISER-1 used the COMPY-1 to estimate the total replacement cost of the subject's improvements to be \$\$\$\$\$.¹⁸ Next, APPRAISER-1 determined the physical depreciation amount for the subject's improvements to be \$\$\$\$\$, based on estimates of effective age and COMPANY-1 reported economic life of the improvements.¹⁹ As a result, the total replacement cost less depreciation amount that APPRAISER-1 derived for the subject's improvements is \$\$\$\$\$, which he rounded to \$\$\$\$\$.

20. On the basis of the \$\$\$\$\$ value of the land and the \$\$\$\$\$ replacement cost less depreciation of the subject's improvements that APPRAISER-1 derived, he estimated the subject's cost approach value at \$\$\$\$\$, which is also his final estimate of the subject's value.²⁰

21. APPRAISER-1 did not deduct external (or economic) obsolescence when he determined the subject's value. APPRAISER-1 stated in his appraisal that "[g]iven the current conditions found in the subject area, there is no apparent external obsolescence."²¹ Because APPRAISER-1 did not testify at the hearing, he could not explain further how he concluded that the subject property was not affected by external or economic obsolescence. From the statement in the appraisal, it appears that APPRAISER-1 may have considered current conditions in the subject's "area" when reaching his conclusion that no external or economic obsolescence was present. However, it is not clear if he considered current conditions affecting the subject property itself.

¹⁷ Exhibit R-5, pp. 30-33.

¹⁸ Exhibit R-5, pp. 36 and 40-41. The replacement cost of \$\$\$\$\$ is the sum of the replacement costs of \$\$\$\$\$ for the subject's clubhouse, \$\$\$\$\$ for its swimming pool, and \$\$\$\$\$ for its maintenance sheds.

¹⁹ Exhibit R-5, pp. 37-38 and 40-41. APPRAISER-1 showed the economic life and age calculations for the subject's buildings, but not for the swimming pool.

²⁰ Exhibit R-5, p. 43.

²¹ Exhibit R-5, p. 39.

22. RESPONDENT'S REP-2 testified that he has reviewed APPRAISER-1 appraisal. RESPONDENT'S REP-2 admitted that APPRAISER-1 did not include any test for obsolescence in his appraisal. He explained that APPRAISER-1 did not perform such a test because he included only one valuation approach in his appraisal.

23. RESPONDENT'S REP-2 stated that APPRAISER-1 did not use the income approach in his appraisal because the County does not have access to that type of information. Upon questioning, RESPONDENT'S REP-2 admitted that the Utah Supreme Court has found that the income approach is preferable in determining the value of commercial properties, but stated that golf courses will not give that type of information to the County. RESPONDENT'S REP-2 admitted, however, he did not know if the County had attempted to get income information from the taxpayer. He also admitted that the County could have performed an income indicator of value if it had called some golf courses and obtained information like the taxpayer's appraisers had done.

24. In his appraisal, APPRAISER-1 did not discuss Utah Code Ann. §59-2-301.1(2) and how it may have affected his appraisal choices. Section 59-2-301.1(2) requires several factors to be considered when assessing the fair market value of a golf course, including the "value that transfers to neighboring property because of the presence of the golf course. . . ." RESPONDENT'S REP-2, however, testified that he presumes that APPRAISER-1 was aware of this statute when he prepared his appraisal. RESPONDENT'S REP-2 also testified that he believes that the County has complied with the statute in its assessment of the subject property.

Taxpayer's Appraisal

25. The taxpayer's appraisal was prepared by PETITIONER'S REP-2 and PETITIONER'S REP-3, in which they estimated the subject's 2012 value to be \$\$\$\$.²² The taxpayer asks the Commission to reduce the subject's 2012 value to PETITIONER'S REP-2 \$\$\$\$ estimate of value.

²² Exhibit P-3. PETITIONER'S REP-2 was the only one of the taxpayer's appraisers who testified at the Formal Hearing. As a result, any further reference in the decision to "PETITIONER'S REP-2" will be referring to PETITIONER'S REP-2. For ease of reference, the taxpayer's appraisal may also be referred to as the "PETITIONER'S REP-2 appraisal."

26. PETITIONER'S REP-2 is a certified general appraiser who holds the MAI membership designation. He testified at the hearing and indicated that he has appraised a large number of golf courses. PETITIONER'S REP-2 testified that he appraised the subject property as a golf course without determining whether its land could have a different highest and best use, specifically as residential land. By so doing, he stated that he incorporated the provisions of Section 59-2-301.1(2) into his appraisal. PETITIONER'S REP-2 testified that when a golf course is built, the value of the land around it is enhanced, which transfers some of the costs of the golf course to the surrounding land.

27. PETITIONER'S REP-2 appraisal and his \$\$\$\$\$ value estimate are subject to two hypothetical conditions, specifically:

A) The COUNTY-1 County policy for assessing golf courses located in the county involves valuing the land as open space. The subject land is currently zoned residential allowing for minimum half-acre and one-acre lots. However, the property currently operates and is assessed as a golf course. Therefore, for purposes of this report, a hypothetical condition is invoked that the land is open space and a higher density zoning use cannot be obtained.

B) The TAXPAYER is a private country club that is owned by its members and operates as a Utah Non-Profit Organization. As such, the purpose of the organization is to operate at or near break-even revenues. It is common for private equity golf clubs to not be profitable, but instead the target is to be self-sustainable. The primary method for valuing golf courses is by the income approach based on their income producing capability. Given that the subject operates as a non-profit near break-even revenues, valuation based on income potential is challenging. Therefore, we have valued the subject under the hypothetical condition that it is being operated as a public daily fee golf course.²³

28. In his appraisal, PETITIONER'S REP-2 determined that the "[h]ighest present land value, if vacant, is through continued use as open space." As improved, he determined that the "[h]ighest and best use is for continuation of the golf course use."²⁴

29. The primary method that PETITIONER'S REP-2 used to value the subject property is the income approach to value. He also developed a cost approach to value. He did not develop a sales comparison approach to value because he was aware of only one golf course sale in the state of Utah over

²³ Exhibit P-3, Page One and Page Two.

²⁴ Exhibit P-3, pp. 15-16.

the last ##### years (specifically the sale of a course in southwestern Utah that has a much longer playing season than the subject), because of the additional challenges in adjusting sales that occur outside of Utah, and because market participants indicate that buyers do not use a sales comparison method in making purchase decisions.²⁵

30. PETITIONER'S REP-2 estimated the subject's value at \$\$\$\$\$ with the cost approach and at \$\$\$\$\$ with the income approach. When he reconciled these values, he used the income approach value to estimate a final value of \$\$\$\$\$ for the subject. He explained that he did so because the income approach is generally given the heaviest weight when evaluating investment properties and because golf courses are often purchased as an investment, with buyers making purchasing decisions almost exclusively on income potential. He also indicated that there is strong evidence in the market to suggest that investors are unwilling to pay the costs of acquiring land and constructing improvements due to poor economics. As an example, he explained that the STATE-1 golf course that he uses as a comparable in his income approach cost in excess of \$\$\$\$\$\$ million to build in YEAR, yet sold for \$\$\$\$\$\$ million in YEAR.²⁶

31. PETITIONER'S REP-2 Income Approach. In his appraisal, PETITIONER'S REP-2 explained that historically, a method for valuing golf courses by the income approach has been to use the direct capitalization method where net operating income ("NOI") is estimated and capitalized by an overall rate considered attractive to a prudent investor. PETITIONER'S REP-2 further explained, however, that according to several participants that are active in both buying and selling golf courses, buyers were not making purchasing decisions based on NOI and an appropriate capitalization rate as of the 2012 lien date.²⁷ PETITIONER'S REP-2 explained that because the recent economic downturn has

²⁵ Exhibit P-3, pp. 2-3.

²⁶ Exhibit P-3, pp. 38-39.

²⁷ To obtain information for his income approach, PETITIONER'S REP-2 indicated in his appraisal that he had spoken to or had interviewed: 1) EMPLOYEE-1, a real estate agent with COMPANY-2 that specializes in marketing golf courses; 2) EMPLOYEE-2, principal of COMPANY-3; 3) EMPLOYEE-3 with COMPANY-4; and 4) EMPLOYEE-4 with COMPANY-5. PETITIONER'S REP-2 also indicated that he had obtained income information from the COMPANY-6 and the COMPANY-7. Exhibit P-3, pp. 29, 34, 36-37.

resulted in people spending less on recreational goods, it has also resulted in a decline in demand for golf related activities with many courses currently struggling to earn a profit. For these reasons, capitalization rates either show an unreliably large range or are not possible to extract.²⁸

32. PETITIONER'S REP-2 explained that instead of using the direct capitalization income approach, buyers are making purchasing decisions based on a multiple of gross revenue, or an Effective Gross Income Multiplier ("EGIM"). This involves applying an EGIM to the gross revenue the course is producing at the time of sale.²⁹ For the subject property, PETITIONER'S REP-2 has estimated its hypothetical total revenues as a public daily fee golf course because the subject is not a for-profit enterprise. He estimated the revenues that the subject property could anticipate as a public daily fee golf course at \$\$\$\$\$, which he multiplied by an EGIM of %%%%%%%%% to derive an income approach value of \$\$\$\$\$ (rounded to \$\$\$\$).³⁰

33. PETITIONER'S REP-2 estimated that as a public daily fee golf course, the subject property would likely generate \$\$\$\$\$ of revenues from green fees, based on ##### 9-hole equivalent rounds with green fees of \$\$\$\$ per 9-hole round (or \$\$\$\$ per 18-hole round).³¹ PETITIONER'S REP-2 estimated that another \$\$\$\$ of revenues would likely be generated from other sources, such as cart rentals, food and beverage sales, driving range sales, pro-shop, tournaments, golf lessons, equipment rentals, etc.³² The total of the revenues from green fees and other sources is \$\$\$\$.

34. PETITIONER'S REP-2 derived his EGIM of %%%%%%%%% by considering the EGIM's he observed from ##### sales of golf courses in the United States. ##### of the sales occurred in YEAR, while the ##### sale occurred in YEAR. The EGIM's of these ##### sales were %%%%%%%%%, %%%%%%%%%, %%%%%%%%%, and %%%%%%%%%. One of the YEAR sales was for a golf course in STATE-1, which sold for a %%%%%%%%% EGIM. Otherwise, the remaining sales in YEAR are in the

²⁸ Exhibit P-3, p. 28.

²⁹ Exhibit P-3, pp. 28-29.

³⁰ Exhibit P-3, pp. 29 and 38.

³¹ Exhibit P-3, pp. 29-32 and 38.

³² Exhibit P-3, pp. 33-35 and 38.

eastern portion of the United States. The YEAR sale was for a golf course in CITY-2, Utah, which sold for a %%%%%%%%% EGIM. PETITIONER'S REP-2, however, did not use the %%%%%%%%% EGIM from the Utah sale because the market continued to decline between YEAR and YEAR and because the sale included personal property. The sale with the %%%%%%%%% EGIM included personal property. As a result, PETITIONER'S REP-2 determined that these higher EGIM's would need to be adjusted downward to reflect an EGIM for the subject's real property alone. For these reasons and based on recommendations of professionals in the business of buying and selling golf courses, PETITIONER'S REP-2 determined that an EGIM of %%%%%%%%% should be used to estimate a value for the subject property.³³ When PETITIONER'S REP-2 multiplied his \$\$\$\$\$\$ estimate of revenue by an EGIM of %%%%%%%%%, he derived his income approach value of \$\$\$\$\$ (rounded to \$\$\$\$\$).

35. PETITIONER'S REP-2 Cost Approach. For his cost approach, PETITIONER'S REP-2 explained that he considered the replacement cost of the subject's land together with the replacement cost of its improvements, less depreciation from physical, functional, and economic causes.³⁴ PETITIONER'S REP-2 determined that the replacement cost of the subject's land would be \$\$\$\$\$ and that the replacement cost of the subject's improvements would be \$\$\$\$\$.³⁵ As a result, PETITIONER'S REP-2 estimated a total replacement cost of \$\$\$\$\$ for the subject property.

36. To obtain the replacement cost of the subject's land, PETITIONER'S REP-2 considered open space land sales having development potential similar to the subject's. PETITIONER'S REP-2 explained that he expanded his search both geographically and in terms of time (date of sale) because of the unique nature of open space parcels. PETITIONER'S REP-2 used ##### comparable sales to estimate the subject's land value at \$\$\$\$\$ per acre. ##### of the comparables are located in COUNTY-2 County, while one is located in COUNTY-1 County and another in COUNTY-3 County. The comparables sold between YEAR and YEAR for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. PETITIONER'S

³³ Exhibit P-3, pp. 35-37.

³⁴ Exhibit P-3, p. 22.

³⁵ Exhibit P-3, p. 28.

REP-2 adjusted the comparables for time of sale to arrive at “market prices per acre” ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. He determined that the four comparables that adjusted to market prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre were inferior to the subject’s land and that the two comparables that adjusted to market prices of \$\$\$\$\$ and \$\$\$\$\$ per acre were superior. On this basis, he estimated the subject’s land to have a replacement cost of \$\$\$\$\$ per acre. When he applied this per acre rate to the subject’s acreage, he derived his land replacement cost of \$\$\$\$\$.³⁶

37. PETITIONER’S REP-1 used the COMPANY-1 to estimate the total replacement cost of the subject’s improvements to be \$\$\$\$\$.³⁷ Next, he determined the physical depreciation for the subject’s improvements to be \$\$\$\$\$, based on estimates of effective age and COMPANY-1 reported economic life for each building improvement.³⁸ As a result, the replacement cost less depreciation amount that PETITIONER’S REP-2 derived for the subject’s improvements is \$\$\$\$\$.

38. The replacement cost of the subject’s land and improvements less depreciation that PETITIONER’S REP-2 derived for the subject property is \$\$\$\$\$ (the land replacement cost of \$\$\$\$\$ plus the improvements replacement cost less depreciation of \$\$\$\$\$).³⁹

39. PETITIONER’S REP-2 replacement cost less depreciation amount of PETITIONER’S REP-2 (rounded to \$\$\$\$\$) is very similar to the \$\$\$\$\$ cost approach value that APPRAISER-1 derived in the County’s appraisal. As a result, the two parties would have reached similar cost approach values for the subject property but for one difference. PETITIONER’S REP-2 determined that the subject property is affected by a significant amount of external (or economic) obsolescence, whereas APPRAISER-1 did not.

³⁶ Exhibit P-3, pp. 16-22.

³⁷ Exhibit P-3, pp. 22-24 and 28. PETITIONER’S REP-2 replacement costs are higher than the replacement costs that APPRAISER-1 derived, in part, because PETITIONER’S REP-2 included replacement costs associated with constructing the 18-hole golf course, which APPRAISER-1 did not include.

³⁸ Exhibit P-3, pp. 24, 26 and 28.

³⁹ Exhibit P-3, pp. 26 and 28.

40. PETITIONER'S REP-2 explained that "external obsolescence" is ". . . a diminution in value caused by negative externalities and generally incurable on the part of the owner, landlord, or tenant."⁴⁰ PETITIONER'S REP-2 points out that golf courses are generally not economically feasible to construct and concludes that the subject golf course improves the value of surrounding properties and the feasibility of development of the surrounding area as a whole, but by itself would not be economically feasible to construct. He also concludes that the substantial economic obsolescence exists because the income approach value of \$\$\$\$\$ that he derived for the subject property is less than half of the subject's replacement cost less depreciation value of \$\$\$\$\$.⁴¹

41. To justify a cost approach value of \$\$\$\$\$, PETITIONER'S REP-2 concluded that about ##### 9-hole equivalent rounds would have to be played at the subject property. Given the subject's location and relatively short playing season, PETITIONER'S REP-2 determined that it would not be possible to achieve this number of rounds played at the subject property. PETITIONER'S REP-2 explained that the playing seasons for daily fee courses in the area are generally from MONTH through MONTH (i.e., about ##### months). He determined that about ##### golf rounds would have to be played per day to achieve ##### 9-hole equivalent rounds. Because daily fee golf courses considered comparable to the subject offer between about ##### and ##### tee times per day and assuming that all tee times are filled with ##### players, the maximum number of 9-hole equivalent rounds that could be played in one day would range between ##### and #####, lower than the required number of #####. Furthermore, he noted that even ##### to ##### rounds is unlikely as the majority of play occurs on weekends and tee times offered can be reduced by weather, especially for "fringe" months.⁴²

42. PETITIONER'S REP-2 also indicated that ##### rounds played is not supported by the comparables he presented in his income approach, which showed that ##### 9-hole equivalent rounds

⁴⁰ Exhibit P-3, p. 25 (citing Dictionary of Real Estate Appraisal, 5th Edition, Appraisal Institute, 2010, p. 85). This definition is similar to the one also found in the County's appraisal at Exhibit R-5, p. 39.

⁴¹ Exhibit P-3, pp. 25-26.

⁴² Exhibit P-3, pp. 26-27.

could reasonably be played at the subject property. Because the ##### 9-hole equivalent rounds that could reasonably be played at the subject is %%%%%%%%% lower than the ##### rounds required to justify a value of \$\$\$\$\$\$, PETITIONER'S REP-2 estimated extraordinary economic obsolescence at %%%%%%%%%. To account for this economic obsolescence, PETITIONER'S REP-2 deducted %%%%%%%%% of the replacement costs less depreciation of \$\$\$\$\$\$ that he had derived for the subject's improvements, which equates to an economic obsolescence deduction of \$\$\$\$\$\$.⁴³

43. Once PETITIONER'S REP-2 deducted the \$\$\$\$\$\$ of economic obsolescence from the \$\$\$\$\$\$ replacement cost less depreciation amount he derived for the entire subject property, his final cost approach estimate of value is \$\$\$\$\$\$ (rounded).⁴⁴ PETITIONER'S REP-2 indicates that this cost approach value lends support to the income approach value he derived and on which he relied to estimate the subject's value.

Analysis of Parties' Appraisals

44. Challenges exist with both parties' appraisals. The County's appraisal is challenging because it relies only on the cost approach and does not incorporate other appraisal methods to test whether the value shown by its cost approach is a reasonable reflection of the subject's "fair market value." APPRAISER-1 explained in his appraisal that the cost approach method is based on the justification that an informed investor or purchaser would pay *no more* for the subject property than it would cost to produce a substitute offering the same utility. However, APPRAISER-1 has not used other valuation methods to test whether an informed investor or purchaser would most likely pay *less* for the subject property than the cost to produce a substitute because of its income potential or because of obsolescence. PETITIONER'S REP-2 contends that golf courses often sell at prices below their costs to construct and provided at least one example of this occurring for a golf course in a neighboring state in YEAR. The County has not shown that any golf course sells for a price as high as the cost to produce a

⁴³ Exhibit P-3, pp. 26-27.

⁴⁴ Exhibit P-3, p. 28.

substitute. For these reasons, the County has not shown that the subject property, much less any golf course, would sell for its cost approach value.

45. On the other hand, PETITIONER'S REP-2 appraisal is challenging because it is dependent on a hypothetical condition that the subject property is being operated as a public daily fee golf course. The subject property, however, is not being operated as a public daily fee golf course. It is being operated as a country club. PETITIONER'S REP-2 appraisal appears to concentrate on the price that a potential buyer would pay for the subject property if it were no longer used for a country club. The definition of "fair market value" not only considers the price at which a willing buyer would be willing to purchase a property, but also considers the price at which the seller (i.e., in this case the taxpayer) would be willing to sell the subject property. All evidence suggests that the taxpayer will continue to have a demand to use the subject property as a country club into the foreseeable future and that the taxpayer enjoys a benefit from operating the subject property as a country club. As a result, it seems that the revenues generated by the country club itself would also have been useful in determining the subject property's value.

46. That being said, the Commission must also consider that the County has not performed its own income approach to value or provided any income information to refute the value that PETITIONER'S REP-2 derived with his hypothetical income approach methodology. Had the County believed that the subject's actual income and expenses would have produced a better income approach value for the subject property, it could have discovered this information from the taxpayer and performed such an income approach for the Commission to consider. It did not.

47. In addition, the County did not provide any income information to refute any of the components and conclusions found in PETITIONER'S REP-2 hypothetical income approach. RESPONDENT'S REP-2 stated that he was not comfortable with the PETITIONER'S REP-2 income approach. However, the County did not argue that PETITIONER'S REP-2 use of a multiple of gross revenue income approach ("EGIM approach") was an improper income approach methodology. Nor did

the County show that any component of PETITIONER'S REP-2 EGIM approach was erroneous. The County did not argue or show that more than ##### 9-hole equivalent rounds could reasonably be played on the subject property. Nor did it argue or show that the anticipated green fees would be more than \$\$\$\$ per 9-hole round. Furthermore, the County did not effectively challenge the "other revenue" that PETITIONER'S REP-2 estimated.⁴⁵ Finally, the County did not challenge PETITIONER'S REP-2 use of a %%% EGIM to apply to his estimate of revenue to arrive at his income approach value.

48. Furthermore, as explained earlier, both parties' cost approaches would support the subject's current value if economic obsolescence is not considered to be present and deducted. As a result, the only critical matter about the parties' respective cost approaches that needs to be discussed is whether or not PETITIONER'S REP-2 obsolescence deduction is convincing. At the hearing, RESPONDENT'S REP-2 stated that the County did not perform an obsolescence test because it only used one valuation method to estimate the subject's value. This explanation is not convincing. The County further argued that it does not believe that a hypothetical appraisal should be used to gauge obsolescence. This argument would have been more convincing had the County shown that any component of PETITIONER'S REP-2 obsolescence test was inappropriate or had the County prepared an obsolescence test to refute PETITIONER'S REP-2 conclusions about obsolescence. But, it did not even attempt to do either of these things.

49. Finally, PETITIONER'S REP-2 relied on his income approach value of \$\$\$\$ to estimate a final value for the subject property. PETITIONER'S REP-2 used his cost approach value of \$\$\$\$ as *support* of his income approach value, but gave this higher value no weight when determining his final

⁴⁵ Upon being asked if PETITIONER'S REP-2 used the right comparables, RESPONDENT'S REP-2 stated the comparables would be good if the subject were a public course, thus seeming to imply that they were not good for the subject country club. RESPONDENT'S REP-2 specifically referred the Commission to the "Glendale" comparable and stated that it was not comparable to the subject property. Even if this comparable were eliminated from PETITIONER'S REP-2 income approach, it would not appear to have any effect on the income approach value he derived. First, the Glendale comparable was only used to derive one of the components that PETITIONER'S REP-2 used in his income approach, specifically his estimate of "other sources of revenue" (i.e., income other than green fees). Second, it was only one of ##### comparables that PETITIONER'S REP-2 used to determine his estimate of the subject's other sources of revenues. Exhibit P-3, p.33.

value. It is arguable that PETITIONER'S REP-2 should have given some weight to his cost approach, which incorporates the subject's actual costs, when reconciling the subject's final value instead of relying entirely on his hypothetical income approach. However, the County did not make this argument.

50. In his appraisal, PETITIONER'S REP-2 explained how he gave effect to Section 59-2-301.1(2) when estimating a value for the subject property. It appears that the County also gave some effect to Section 59-2-301.1(2) when valuing the subject property because it has valued the subject property as a golf course instead of valuing it as land with the potential for immediate residential development. Nevertheless, in its appraisal, the County did not address Section 59-2-301.1(2) and the effect it had in its determination of the subject's "fair market value," whereas PETITIONER'S REP-2 did address these matters in his appraisal.

51. The County contends that the subject's current value of \$\$\$\$\$ and its appraisal's \$\$\$\$\$ estimate of value are supported by a Deed of Trust, which shows that the taxpayer borrowed \$\$\$\$\$ on the subject property in MONTH YEAR.⁴⁶ The County implies that a lender would not have loaned \$\$\$\$\$ on the subject property had it not been worth at least this much. It appears that the loan may have been associated with building the taxpayer's clubhouse, which was built in YEAR. Regardless, the YEAR date of the Deed of Trust is more than seven years prior to the 2012 lien date. In addition, since YEAR, the recent economic crisis of the late YEAR occurred, which PETITIONER'S REP-2 indicates in his appraisal to have had a negative effect on the values of golf courses.⁴⁷ The County has not refuted PETITIONER'S REP-2 claim. As a result, the Deed of Trust does not support the subject's current value of \$\$\$\$\$. On the basis of PETITIONER'S REP-2 unrefuted claim, the Deed of Trust may instead support a value that is less than \$\$\$\$\$.

52. Because of the challenges with both parties' appraisals, it is not easy to decide which party's appraisal is a better indicator of the subject's "fair market value." Nevertheless, based on the

⁴⁶ Exhibit R-7.

⁴⁷ Exhibit P-3, pp. 28-29 and 36-37.

foregoing, PETITIONER'S REP-2 appraisal offers a more complete examination of the subject property's value than the County's appraisal. In addition, the County has not shown that the subject's "fair market value" can be reasonably estimated with the cost approach alone or shown that the appraisal choices PETITIONER'S REP-2 made in his appraisal are incorrect. By a preponderance of the evidence, PETITIONER'S REP-2 appraisal is a more convincing indicator of the subject's "fair market value" than the County's appraisal. PETITIONER'S REP-2 appraisal provides a sound evidentiary basis to show that the subject's current value of \$\$\$\$ is incorrect and that its 2012 value should be reduced to \$\$\$\$.

APPLICABLE LAW

1. Article XIII, Section 2(1) of the Utah Constitution provides for the taxation of tangible property in the state, as follows:

(1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be:

- (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
- (b) taxed at a uniform and equal rate.

2. Utah Code Ann. §59-2-103(1) provides that "[a]ll 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."

3. 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.

4. UCA §59-2-301.1(2)⁴⁸ provides factors for a county assessor to consider when assessing the fair market value of a golf course or hunting club, as follows:

⁴⁸ In 2010, the Legislature added Subsection (2) to Section 59-2-301.1 in House Bill 265 ("HB 265").

(a) In assessing the fair market value of a golf course or hunting club, a county assessor shall consider factors relating to the golf course or hunting club and neighboring property that affect the fair market value of the golf course or hunting club, including:

- (i) value that transfers to neighboring property because of the presence of the golf course or hunting club;
- (ii) practical and legal restrictions on the development potential of the golf course or hunting club; and
- (iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future.

(b) The valuation method a county assessor may use in determining the fair market value of a golf course or hunting club includes:

- (i) the cost approach;
- (ii) the income capitalization approach; and
- (iii) the sales comparison approach.

5. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, with pertinent parts as follows:

(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. . . .

. . . .

(4) 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.

. . . .

6. Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the County BOE. For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 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).

CONCLUSIONS OF LAW

1. The County BOE sustained the subject property's YEAR assessed value of \$\$\$\$\$, which the County BOE asks the Commission to sustain as well. As a result, the taxpayer has the burden of proof to show that the subject's current value is incorrect and to provide a sound evidentiary basis to reduce the subject's value to the \$\$\$\$\$ amount it proposes.

2. For the YEAR tax year at issue, Section 59-2-103(1) provides for the subject property to be taxed on the basis of its "fair market value" as of January 1, 2012. Section 59-2-102(12) defines "fair market value" as "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."

3. Section 59-2-301.1(2) provides additional guidance when establishing the "fair market value" of a golf course. Subsection 59-2-301.1(2)(a) provides that "[i]n assessing the **fair market value** of a golf course . . . , a county shall consider factors relating to the golf course . . . and neighboring property that affect the **fair market value** of the golf course. . . ." (emphasis added). Even though "factors" are to be considered when determining a golf course's value, it is clear that the Legislature still requires a golf course to be assessed at its "fair market value," as defined in Section 59-2-102(12). Section 59-2-301.1(2) does not provide a partial exemption from taxation at "fair market value" for golf courses, nor does it provide an "alternative" assessment such as that found in the Utah Farmland Assessment Act for land actively devoted to agricultural use.⁴⁹ Accordingly, the Commission must consider the strengths and weaknesses of the parties' evidence to determine which party has better shown "the amount at which [the subject] 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" (i.e., the subject's "fair market value") and to establish "fair market value."

⁴⁹ Exceptions to assessing a property at its "fair market value" are authorized in the Utah Constitution. There is no such exception for golf courses.

4. The Commission is tasked with applying Section 59-2-301.1(2), which is a relatively new provision and which the Commission has had little opportunity to address.⁵⁰ As a result, it may be useful for the Commission to address the statute in more detail. Subsection 301.1(2)(a) also provides for certain factors to be considered when assessing the value of a golf course, as follows:

- (a) In assessing the fair market value of a golf course or hunting club, **a county assessor shall** consider factors relating to the golf course or hunting club and neighboring property that affect the fair market value of the golf course or hunting club, **including**:
 - (i) value that transfers to neighboring property because of the presence of the golf course or hunting club;
 - (ii) practical and legal restrictions on the development potential of the golf course or hunting club; and
 - (iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future. (Emphasis added).

The Legislature's use of the word "shall" in this subsection means that the factors that are listed must be considered when assessing or valuing a golf course. Nevertheless, other factors relating to the golf course and neighboring property that affect the fair market value of the golf course may also be considered because of the Legislature's use of the word "including." The presence of the word "including" before listing specific factors to be considered means that the list is not exclusive. Furthermore, although the statute specifically states that "a county assessor" shall consider these factors when determining the fair

⁵⁰ The Commission is aware of two other cases where it has considered a golf course's value after Section 59-2-301.1(2) became effective. The first case is *USTC Appeal No. 11-2144* (Initial Hearing Order Dec. 11, 2012), in which a county had assessed a golf course using the cost approach. In this case, the property owner argued that the county had failed to consider the factors found in Section 59-2-301.1(2) and argued that the county should have valued its golf course with the income approach, as it had done for years prior to 2010. The county explained that it used the cost approach because its appraiser who had expertise with valuing golf courses with the income approach had retired. Regardless, the Commission denied the property owner's request to value the subject property with an income approach because it had not provided an income approach calculation or proposed a capitalization rate. This case is not particularly helpful in deciding the instant matter because TAXPAYER has provided an income approach to value that is complete.

The second case is *USTC Appeal No. 12-1634* (Initial Hearing Order Apr. 26, 2013). In this case, a county also assessed a golf course using the cost approach. The property owner asked the Commission to reduce the subject's value based on the amount at which its golf course *business* had recently sold or based on the rental rate at which the golf course had recently leased. The Commission did not find the taxpayer's evidence to be convincing. Again, this case is not particularly helpful in deciding the instant matter. TAXPAYER has submitted different information to contest the value of its golf course.

Redacted copies of these and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

market value of a golf course, the Commission finds that it, too, is required to consider these factors when establishing the fair market value of a golf course in the appeals process.

5. Subsection 59-2-301.1(2)(b) provides that “[t]he valuation method a county assessor **may** use in determining the fair market value of a golf course or hunting club **includes**: (i) the cost approach; (ii) the income capitalization approach; and (iii) the sales comparison approach” (emphasis added). The Legislature’s use of the word “may” is permissive. As a result, a party may use any or all of the valuation methods that are specifically listed to value a golf course. However, no party need use all three of the listed valuation methods or any specific one of the listed methods. It is noted that neither of the parties to this appeal used all three of the valuation methods to estimate a value for the subject property. The taxpayer suggested that the Legislature wanted the income approach to be used to value a golf course. However, the use of the permissive “may” suggests that a golf course may be valued with a valuation method other than the “income capitalization approach” that is specifically listed or with a valuation method other than an income approach.

6. Furthermore, it is noted that the taxpayer did not use the “income capitalization approach” that is specifically listed in Subsection 59-2-301.1(2)(b) to value the subject property. PETITIONER’S REP-2 used a multiple of gross revenue income approach, or EGIM approach. Nevertheless, PETITIONER’S REP-2 use of a valuation method not specifically listed in Subsection 301.1(2)(b) to value the subject property is allowable. The Legislature has used the word “includes” in Subsection 301.1(2)(b) before listing the three specified valuation methods. As a result, the list of three specified valuation methods is not an exclusive list.

7. Regardless of what valuation method a party uses to value a golf course, the critical inquiry is whether a party’s methodology establishes “fair market value” and, for the party who bears the burden of proof, whether that party has provided a sound evidentiary basis to adjust the value established by the County BOE. While it remains unknown whether PETITIONER’S REP-2 methodology to value the subject property is optimal, the Commission, nevertheless, finds that he better utilized the various

appraisal methodologies to establish the “fair market value” of a golf course and was more thoughtful in considering the factors found in Section 59-2-301.1(2) when determining the subject property’s “fair market value.” For these reasons, the Commission finds that PETITIONER’S REP-2 appraisal provides the best evidence of the subject’s “fair market value” and that it provides a sound evidentiary basis to reduce the subject’s 2012 value to \$\$\$\$\$.

8. That being said, the Commission is not ruling that all country clubs or golf courses in Utah should be valued with the methodologies found in PETITIONER’S REP-2 appraisal. As explained earlier, the Commission is concerned as to whether PETITIONER’S REP-2 hypothetical approach is the best way to value a country club or any golf course. It is also concerned with his decision not to give his cost approach any weight in the reconciliation process. It is also possible that individual country clubs or golf courses have specific characteristics that would require individual valuation considerations. Furthermore, it is possible that there are valuation methodologies that would better consider the factors found in Section 59-2-301.1(2) and better determine the “fair market value” of a country club or golf course.

9. Regardless, the taxpayer has met its burden of proof in this case. Accordingly, the Commission should reduce the three subject properties’ total current value of \$\$\$\$\$ to \$\$\$\$\$ for the 2012 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the total value of the three subject parcels should be reduced to \$\$\$\$ for the 2012 tax year. COUNTY-1 County may allocate this value among the three subject parcels as it sees fit. The COUNTY-1 County Auditor is ordered to adjust its records in accordance with this decision.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code 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.