15-161
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 8-28-2015
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 15-161 Parcel Nos. PARCEL-1; PARCEL-2 PARCEL-3; PARCEL-4 PARCEL-5; PARCEL-6 PARCEL-7 Tax Type: Property Tax / Locally Assessed Tax Year: 2014 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:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
For Respondent: RESPONDENT, from Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decisions of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 8, 2015.

At issue are the fair market values of seven commercial condominiums located on ADDRESS FOR SUBJECT PROPERTIES in CITY-1, Utah, as of the January 1, 2014 lien date. The County BOE sustained the value at which each of the condominiums was assessed for the 2014 tax year. The taxpayer asks the Commission to reduce the values of all seven subject properties, while the County asks the Commission to sustain the values that the County BOE established for all seven properties. For each condominium, the chart below shows its parcel number, its square footage, the County BOE's 2014 value (which is also the County's proposed value), the County's value on a square foot basis, the taxpayer's proposed value, and the taxpayer's proposed value on a square foot basis:

Parcel No.	Square Footage	County BOE Value	County's Value (per sq. ft.)	Taxpayer's Proposed Value	Taxpayer's Value (per sq. ft.)
PARCEL-1	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-2	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-3	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-4	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-5	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-6	#####	$$$$$	$$$$$	$$$$$	$$$$$
PARCEL-7	#####	$$$$$	$$$$$	$$$$$	$$$$$
Total	#####	$$$$$		$$$$$	

APPLICABLE LAW

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

UCA §59-2-102(12) defines "fair market value" to mean "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."

UCA §59-2-301.4 provides for a county assessor to consider certain prior valuation reductions when assessing a property, as follows:

> (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:

(a) within the three years before the January 1 of the year in which the property is being assessed; and
(b) by a:
(i) county board of equalization in a final decision;
(ii) the commission in a final unappealable administrative order; or
(iii) a court of competent jurisdiction in a final unappealable judgment or order.
(2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
(a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
(b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
(3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

UCA §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 . . . ."

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).

DISCUSSION

The subject condominiums comprise seven of the eight retail condominiums located in two adjacent buildings. The parties agree that the seven subject condominiums are operated as a unit similar to a retail strip mall. The parties also agree that the subjects' location is not a highly desirable retail area because there are no shopping centers near the subject properties and because they are located in an area with a number of industrial properties. The subject properties were built in YEAR. Four of the subject properties are #####-square feet in size, while the remaining three units are #####-square feet in size. Together, the seven units are #####-square feet in size. Cumulatively, about 40% of the subject units' space is finished retail space, while the remaining 60% is unfinished warehouse space. The seven subject properties' current values range from $$$$$ to $$$$$ per square foot, the average of which is $$$$$per square foot.

During all of 2013, six of the seven subject properties were leased. However, the seventh subject property (one of the smaller #####-square foot units) had been vacant for several years until it was finally leased in May 2014. Thus, as of the 2014 lien date, the subject property was approximately 87% leased and 13% vacant (based on rentable square footage).

The taxpayer essentially leases the properties on a triple net basis, where all expenses incurred by the taxpayer, including property taxes, are passed on to the tenants through separate common area maintenance ("CAM") charges and property tax charges. If a unit is vacant, the taxpayer is responsible for the expenses apportioned to that unit. The taxpayer broke out its expenses for garbage, insurance, landscaping, management fees, maintenance and repairs, property taxes, snow removal, and utilities and stated that all of these expenses are reimbursed by the tenants to the taxpayer. The taxpayer further broke out its maintenance and repairs expenses into fencing repairs, HVAC maintenance/repairs, electrical, plumbing, roofing, glass, graffiti, concrete, and miscellaneous carpentry. The taxpayer stated that the tenants also reimbursed all of these maintenance and repair expenses, including the fencing repairs and roofing expenses, which the taxpayer characterized as unusual expenses that did not occur on a regular basis.

I. Taxpayer's Evidence.

Income Approach. The taxpayer primarily relied on an income approach to value the seven subject properties as a unit. In its income approach, the taxpayer used its actual rents and expenses, as shown on its 2013 profit and loss statement. With this information, the taxpayer derived a net income amount of $$$$$, which it capitalized at 8.75% to arrive at a total income approach value of $$$$$ for the seven subject properties. The taxpayer then apportioned this unitary value between the subject properties on a square footage basis. With this approach, the taxpayer derived a value of $$$$$ for each of the four smaller units and a value of $$$$$ for each of the three larger units. The taxpayer asks the Commission to reduce the subjects' 2014 values to these amounts. The taxpayer's income approach may underestimate the subjects' total fair market value because: 1) two of the larger units' actual rents are based on relatively older leases and are lower than a similarly-sized unit that was leased on the January 1, 2014 lien date; 2) the taxpayer experienced actual vacancy of 13% during the 2013 tax year, which appears to have been temporarily higher than the 10% retail market vacancy rate that the County obtained from commercial publications and the 0% vacancy rate the taxpayer experienced during the majority of 2014; and 3) the taxpayer's expenses include an amortization expense, which should not be included in the income approach, and two other expenses (for fencing repairs and roofing) that are not annual expenses. Each of these concerns will be addressed in more detail below.

Rental Rates. Of the three units that are #####-square feet in size, one of them leased on the January 1, 2014 lien date for $$$$$ per square foot. In comparison, the other two larger units were leased in 2011 and 2012 (when the economy was still recovering from the recent economic recession) for rents of $$$$$ and $$$$$ per square foot. As a result, using these older rents as market rents in an income approach could undervalue the subject properties. For these reasons, the $$$$$ per square foot rental rate is a reasonable rental rate to use for the three larger properties.

All four of the smaller subject properties were leased within seven months of the 2014 lien date (between June 2013 and May 2014). Two of the smaller units leased together for $$$$$ per square foot, while the other two smaller units leased for $$$$$ and $$$$$ per square foot. The average of these three rental rates is $$$$$ per square foot. It is noted that one of these smaller units' prior tenants renewed its lease for $$$$$ per square foot in October 2013, two months prior to the lien date. This lease rate appears anomalously higher than the other lease rates that the taxpayer was able to negotiate in 2013 and 2014. Furthermore, less than six months after the prior tenant renewed at $$$$$ per square foot, the smaller unit that was vacant leased for $$$$$ per square foot. It is likely that the market rental rate of the smaller units is somewhere in between these two rates. Based on this information, it would seem reasonable to use a market lease rate of $$$$$ per square foot in an income approach for all seven subject properties.

Vacancy Rate. During 2013, the subject property experienced a 13% vacancy rate, which the taxpayer has incorporated into its income approach. The County, however, indicated that the average vacancy rate of retail properties in Salt Lake County was 10% during 2013. If it were expected that the taxpayer's "stabilized" vacancy rate would remain at 13% into perpetuity, using a 13% vacancy rate in the income approach would be appropriate. However, the taxpayer's vacancy rate was 13% from 2010 to 2013, a period when many properties were in distress and when the economy was still recovering from the recent recession. Furthermore, the subject properties have experienced a 0% vacancy rate since May 2014. For these reasons, the 13% vacancy rate the taxpayer experienced in 2013 may be too high to estimate the subjects' value based on future income, which could underestimate the subjects' value. For these reasons, use of a stabilized vacancy rate of 10% should be used in an income approach to determine the subjects' 2014 value.

Expenses. The taxpayer indicated that its tenants pay all of the expenses it incurs in regards to the subject properties. As a result, one could exclude expenses from the income approach entirely if the subject property were expected to remain leased at 100% into perpetuity. However, because this is unlikely to occur, the taxpayer will have to pay the expenses apportioned to any vacant space. Earlier, it was determined that a 10% vacancy rate should be used in the income approach, which assumes that the subject property will be 10% vacant in any future year. This also assumes that the taxpayer will be responsible for 10% of the subjects' expenses in any future year. Accordingly, it would be appropriate to deduct 10% of the anticipated expenses, including property tax expenses, from the subjects' revenues to arrive at net operating income ("NOI").

For 2013, the taxpayer showed that its total expenses for the seven subject properties were $$$$$. However, three of the expenses used to derive this total should be eliminated because one of them is not the type of expense usually used in an income approach and because two of them were unusual expenses that do not occur each year. First, the "amortization" expense in the amount of $$$$$ should be eliminated. The taxpayer did not know what this expense was for. In addition, the County stated that amortization expenses, like depreciation and interest expenses, are not included in an income approach for purposes of valuing a property. Second, the $$$$$ of fencing repairs and $$$$$ of roofing included in the maintenance and repairs expenses should be eliminated. The taxpayer admitted that these two expenses were unusual and do not occur on an annual basis. For these reasons, including these expenses as perpetual expenses could underestimate the subjects' value. Instead, a reserves expense of 3% is typically included in an income approach to account for capital expenditures that do not occur on an annual basis. Eliminating the three expenses discussed above would reduce the total expense amount from $$$$$ to $$$$$, 10% of which is $$$$$. Accordingly, it would be expected that the annual expenses for which the taxpayer will be responsible (i.e., those associated with a stabilized vacancy rate of 10%) would be $$$$$. As a result, the taxpayer's income approach should be revised to reflect annual expenses of $$$$$.

Revised Income Approach. Applying a rental rate of $$$$$ per square foot to all seven subject properties and deducting a stabilized vacancy rate of 10% would result in effective gross income of $$$$$. If a 3% reserves expense were deducted from this amount, as well as another $$$$$ of expenses the taxpayer is expected to pay each year, the resulting NOI is $$$$$. If this NOI is capitalized at the 8.75% rate recommended by the taxpayer, the total value of the subject properties as a unit would be approximately $$$$$. This value is marginally higher than the total value of $$$$$ that the County BOE established for all seven subject properties. Accordingly, the taxpayer's income approach information is insufficient to show that the total value of the subject properties should be reduced.

Sales Comparison Evidence. The taxpayer also proffered four comparable sales of two retail condominiums and two industrial condominiums. This evidence, however, is insufficient to show that the subjects' current average value of $$$$$ per square foot is too high. In fact, three of the taxpayer's four unadjusted comparables suggest that the subjects' current total value may even be low. The taxpayer's two retail condominiums sold for prices of $$$$$ and $$$$$ per square foot, and its two industrial condominiums (which generally sell for less than retail properties) sold for prices of $$$$$ and $$$$$ per square foot. The taxpayer did not make adjustments to the comparables' sales prices to estimate a value per square foot for the subject properties, and the information about the comparables was insufficient to make meaningful adjustments. For example, it was unknown how much of each comparable's square footage was finished office or retail space and how much was unfinished warehouse space. For these reasons, this sales comparison evidence does not show that the subject properties are overvalued for the 2014 tax year.

Conclusions about Taxpayer's Evidence. The taxpayer's income approach, once revised as described above, supports the subjects' current total value of $$$$$. Furthermore, the taxpayer's sales comparison evidence does not show that the subjects' current total value is too high. If anything, the taxpayer's four comparable sales suggest that the subjects' total value may be low. Before the Commission makes a final determination of the subjects' value, however, it should also consider the County's evidence.

II. County's Evidence.

The County proffered an appraisal prepared by NAME-1 and RESPONDENT, who are County appraisers. RESPONDENT was present at the Initial Hearing. In the appraisal, the County used both the income approach and the sales comparison approach to derive total values for the seven subject properties together, as of the January 1, 2014 lien date. The County derived a total value of $$$$$ with the income approach and $$$$$ with the sales comparison approach. The County gave slightly more weight to the sales comparison approach when it reconciled the two values and estimated a final total value of $$$$$ for the subject properties. The County did not ask the Commission to increase the $$$$$ current total value of the subject properties. On the basis of its appraisal, the County asks the Commission to sustain the current values of all seven subject properties.

<u>County's Income Approach</u>. To derive its market rental income, the County used rents of $$$$$ per square foot for the three larger units and $$$$$ per square foot for the four smaller units. It then added CAM charges the taxpayer was expected to receive from its tenants to its market rental income to derive potential gross income ("PGI") of $$$$$. From this PGI, the County deducted 10% for vacancy, 3% for reserves, and the CAM charges it had added to the rental income to derive an NOI amount of $$$$$. Next, the County capitalized the NOI at 9.37% (the sum of an 8.00% capitalization rate and a 1.37% property tax rate) to derive an income approach value of $$$$$ for the subject properties (which it rounded to $$$$$).

At the hearing, the County stated that it mistakenly used the subject's 2013 property tax rate of 1.37% instead of its 2014 property tax rate of 1.45% for its capitalization rate. Changing the property tax rate to 1.45% would result in the $$$$$ of NOI being capitalized at 9.45%, which would produce a total value of approximately $$$$$ for the subject properties. However, there are three concerns with the County's income approach, two of which would decrease the County's value estimate and one which would increase the estimate.

Market Rents. First, the County used the $$$$$ per square foot rate at which one of the four smaller units leased in October 2013 to estimate the market lease rate for the other three smaller units, even though these other three units were leased in 2013 and 2014 for significantly lower values. The taxpayer proffered that the subject properties had different amounts of finished retail space versus unfinished warehouse space, which could help explain the differences in the actual lease rates that the taxpayer was able to obtain for smaller subject units in 2013 and 2014. As a result, it would be preferable to use a rental rate for the smaller units that better reflects the rates at which they were all leased in 2013 and 2014, such as the $$$$$ per square foot rate used earlier when revising the taxpayer's income approach.[1] For these reasons, the County's income approach should be revised to reflect a rental rate of $$$$$ per square foot for all seven units.

Capitalization Rate. Second, the County used a capitalization rate of 8.00% in its income approach for the subject properties, even though the area in which the subject properties are located is not considered a highly desirable retail area and even though three well-known publications showed the average 2013 capitalization rate of retail properties in Salt Lake County to be 8.33%, 8.39%, and 8.12%. It is likely that the capitalization rate for properties that are not in a highly desirable retail area and surrounded by a number of industrial properties would have a capitalization rate at the higher end of these published averages or maybe even higher. As a result, the 8.75% capitalization rate proposed by the taxpayer is more convincing than the

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1 The County proffered four rent comparables that it adjusted to support a rental rate of $$$$$ per square foot for the subject properties. Three of the four lease comparables were for multi-tenant retail buildings (not condominiums) that leased at rates ranging between $$$$$ and $$$$$ per square foot, which are significantly higher than the $$$$$ to $$$$$ per square foot rates at which the subject's smaller units leased in 2013 and 2014. Although the County adjusted the three comparables' rental rates downward, the retail comparables are not "bracketed" to show whether the County's downward adjustments are adequate. As a result, the actual lease rates at which the subject units leased in 2013 and 2014 are a better indication of their market lease rates than a rate derived from these comparables.

8.00% rate used by the County.[2] For these reasons, the County's income approach should be revised to reflect the 8.75% capitalization rate (before adding the property tax rate) that the taxpayer proposed.

Property Tax Expense. Third, the County added the subjects' 2014 property tax rate of 1.45% to the capitalization rate, which typically occurs when the property owner (not the tenant) is responsible for 100% of the subject properties' property taxes. The taxpayer, however, indicates that its tenants pay the property taxes. As a result, increasing the capitalization rate by the property tax rate applicable to the subject properties could undervalue the subject properties. Furthermore, the Commission is aware that the property tax rate is usually *not* added to the capitalization rate for triple net income approaches (where the tenant pays all expenses), whereas the property tax rate is usually added to the capitalization rate for full service income approaches (where the property owner pays all expenses).[3] For these reasons, the County's income approach should be revised to remove the property tax rate from the capitalization rate.[4]

If these three revisions are made to the County's income approach (one of which is completely removing the property tax rate from the capitalization rate), the County's revised income approach would result

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2 The County proffered the capitalization rates at which 10 retail properties throughout Salt Lake County sold in 2012, 2013, and 2014. The average of these 10 capitalization rates is 7.75%. However, this information is not as persuasive as the averages shown in the publications because the County did not know if its comparables were located in desirable retail areas and because the County did not know if the comparables were 100% finished retail space (as opposed to the subjects' 40% finished retail space and 60% warehouse space). For the reasons, the average of the capitalization rates at which 10 retail properties that may or may not be similar to the subject properties sold is not persuasive.

3 *See USTC Appeal No. 14-892* (Initial Hearing Order Mar. 30, 2015), where the Commission discussed how the property tax expense is treated differently in a triple net income approach and a full service income approach. Redacted copies of this and other selected decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

4 As discussed earlier when the taxpayer's income approach was revised, the 10% stabilized vacancy rate used to value the subject properties assumes that 10% of the subject's space will be vacant in any one year. Because the property owner is responsible for the expenses associated with this vacant space, the taxpayer will, arguably, pay 10% of the property taxes each year. As a result, it would not seem unreasonable that one-tenth of the 1.45% property tax rate, or 0.145%, should be added to the capitalization rate to reflect the property taxes for which the taxpayer is expected to be responsible.

in a total income approach value of approximately $$$$$ for the subject properties. If this income approach was further revised to add one-tenth of the property tax rate to the capitalization rate (to reflect the 10% of property taxes for which the taxpayer would be responsible if the properties are 10% vacant), the County's revised income approach would result in a value of approximately $$$$$ for the subject properties. Either of these revised income approaches would support the subjects' current total value of $$$$$.

County's Sales Comparison Approach. The County used four comparable sales to estimate the subjects' value at $$$$$ per square foot (which equates to $$$$$). This $$$$$ per square foot value is about 7% higher than the subjects' average current value of $$$$$ per square foot (based on its current total value of $$$$$). Two of the County comparables were industrial condominiums that sold for prices of $$$$$ and $$$$$ per square foot. The other two County comparables were retail condominiums that sold for prices of $$$$$ and $$$$$ per square foot.

The County considered the two industrial comparables inferior to the subject properties because they were both located in an area that was even more industrial in nature than the subjects' area and because one of the comparables was not located on an "artery" road. The County adjusted the prices at which these two comparables sold to adjusted sales prices of $$$$$ and $$$$$ per square foot. The County considered its two retail comparables superior to the subject properties because they were 100% finished retail spaces located in shopping centers. The County adjusted the prices at which these two comparables sold to adjusted sales prices of $$$$$ and $$$$$ per square foot. Because these four adjusted sales prices have a mean of $$$$$ per square foot and median of $$$$$ per square foot, the County estimated the subjects' value at $$$$$ per square foot.

Using the sales comparison approach to value the subject properties is challenging because there appear to be no other commercial properties exactly like the subject properties. The subject properties have some characteristics of retail properties and some characteristics of industrial properties because more than 60% of their space is, on average, warehouse space. Furthermore, the subject properties are in an area of mixed industrial and retail properties. In comparison, all of the comparables appear to be entirely industrial or retail in nature and are located in areas that are primarily comprised of industrial properties or retail properties. Nevertheless, the County's argument that the subject properties would be more valuable than the $$$$$ and $$$$$ per square foot prices at which the purely industrial properties sold is convincing. As a result, these two sales support the subjects' current value of $$$$$ per square foot better than they support the taxpayer's proposed value of $$$$$ per square foot. For these reasons, the County's sales comparison approach also lends support to the subjects' current total value.

III. Conclusions about Subjects' 2014 Values.

As discussed earlier, the taxpayer's evidence does not support a reduction to the subjects' current total value of $$$$$. In addition, the County's evidence supports this total current value for the subject properties. As a result, the subjects' current total value of $$$$$ is a reasonable reflection of their 2014 fair market value.

One could argue that the $$$$$ current value of one of the four smaller units (specifically PARCEL-1) is too high in comparison to the $$$$$ value at which each of the other three smaller units is currently valued. However, both parties relied on a unitary approach to value all seven subject properties together. For this reason and because the taxpayer has not met its burden to show that the total current value of the subject properties is too high for 2014, the Commission should sustain the value at which each of the subject properties is currently assessed.

IV. Reductions in Value for Prior Years.

One last issue should be addressed. The taxpayer also believes that the 2014 current total value of $$$$$ for the seven subject properties is too high because the Commission reduced the total value of the seven subject properties to $$$$$ for the 2012 tax year and $$$$$ for the 2013 tax year. Section 59-2-301.4(2)(b) provides that when assessing a property subject to a valuation reduction within the three years prior to the year at issue, the county assessor shall consider whether the reasons for the valuation reduction continue to influence the fair market value of the property.

Section 59-2-301.4 became effective January 1, 2013 and, thus, is applicable to the 2014 tax year at issue in this appeal. As a result, it should be considered whether the reasons for any valuation reductions for 2011, 2012, and 2013 (i.e., the three years prior to 2014) continue to influence the subject properties' values for 2014. The taxpayer did not present any evidence of a valuation reduction for 2011.[5] Accordingly, only the valuation reductions that the Tax Commission made to the subject properties for 2012 and 2013 will be further discussed.

2012 Tax Year. In *USTC Appeal No. 13-576* (Initial Hearing Order Apr. 9, 2014), the Commission reduced the 2012 values of the seven subject properties, as follows:

Parcel No.	2012 County BOE Values	Commission's 2012 Values
PARCEL-1	$$$$$	$$$$$
PARCEL-2	$$$$$	$$$$$
PARCEL-3	$$$$$	$$$$$
PARCEL-4	$$$$$	$$$$$
PARCEL-5	$$$$$	$$$$$
PARCEL-6	$$$$$	$$$$$
PARCEL-7	$$$$$	$$$$$
TOTAL	$$$$$	$$$$$

5 The subject properties' 2011 values were not appealed to the Tax Commission. Furthermore, the valuation history of only one of the seven subject properties was available on the County Assessor's website at http://slco.org/assessor/, specifically the valuation history for PARCEL-1. This information shows that the County BOE reduced the $$$$$ value at which the County had originally assessed this parcel for the 2011 tax year to $$$$$. If the County BOE similarly reduced the 2011 values of the other six subject properties, it might explain why no appeal was filed at the Tax Commission for that year. Regardless, the Commission has no information as to the reasons why the County BOE reduced the 2011 value of PARCEL-1. For this reason and because the taxpayer did not ask the Commission to address the 2011 tax year, it should not be considered any further.

A review of the 2012 Initial Hearing Order shows that the Commission reduced the subjects' total 2012 value to the $$$$$ value requested by the County, not the $$$$$ value requested by the taxpayer for that year. Both of these requested values were derived with income approaches. The Commission found the income approach the County proffered for that hearing to be more convincing because it was based on a stabilized vacancy rate of 10%. The Commission did not find that the income approach the taxpayer submitted to be convincing because it was based on its actual 2011 vacancy rate of 21% and because the taxpayer did not convincingly show that the subjects' vacancy rate would remain at 21% into perpetuity. As a result, the Commission reduced the subjects' total 2012 value to the amount shown on the County's income approach.

The Commission's 2012 decision appears to be consistent with the conclusions reached in this decision for the 2014 tax year. In both cases, the Commission determined that a stabilized vacancy rate should be used in an income approach to determine the subjects' total value. It should also be noted that the total 2012 value that the Tax Commission established for the subject properties is only 7% less than the total 2014 value determined earlier in this decision. It would not be surprising that values have increased 7% between the 2012 and 2014 lien dates. For these reasons, the valuation reduction for 2012 does not show that the subjects' total value for 2014, as derived earlier in this decision, is incorrect.

2013 Tax Year. In *USTC Appeal No. 14-138* (Initial Hearing Order Jun. 7, 2014), the Commission reduced the 2013 values of the seven subject properties, as follows:

Parcel No.	**2013 County BOE Values**	**Commission's 2013 Values**
PARCEL-1	$$$$$	$$$$$
PARCEL-2	$$$$$	$$$$$
PARCEL-3	$$$$$	$$$$$
PARCEL-4	$$$$$	$$$$$
PARCEL-5	$$$$$	$$$$$
PARCEL-6	$$$$$	$$$$$
PARCEL-7	$$$$$	$$$$$

TOTAL	$$$$$	$$$$$

A review of the 2013 Initial Hearing Order shows that the Commission reduced the subjects' total 2012 value to the $$$$$ value requested by the taxpayer for that year, which was based on an income approach. For that hearing, the County asked the Commission to sustain the County BOE's total value of $$$$$, even though the County had submitted its own income approach showing a total value of $$$$$ for the subject properties. The County asked the Commission to sustain the higher County BOE value, arguing that it was supported by the prices per square foot at which 23 commercial condominiums had sold. The Commission found, however, that the County's unadjusted comparable sales[6] were superior to the subject properties because the County admitted that few of them were located in a strip mall setting and because the County admitted that even the comparables located in strip malls were in areas that were superior to the subjects' area. For this reason and because both parties' income approaches produced similar values that were significantly less than the total value the County BOE had established for 2013, the Commission established a value consistent with both parties' income approaches.

Earlier, the Commission primarily relied on the income approach to determine a total 2014 value for the subject properties, which is consistent with the Commission's 2013 decision. Between the 2013 and 2014 lien dates, however, four of the seven subject properties were leased for rates that would impact the 2014 value. These rental rates may be higher than the rental rates that existed prior to 2013, which, if so, would result in a higher income approach value for 2014.[7]

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6 Unlike the appeal for the 2014 year, the County did not prepare a formal appraisal in which it estimated the subjects' total value in the appeal for the 2012 tax year.

7 Because the income approaches the parties submitted in the 2013 appeal showed values that were nearly identical, it was unnecessary to discuss the factors used in those approaches in detail in the Commission's 2013 decision. As a result, the 2013 decision does not provide details about rental rates, vacancy rates, and capitalization rates that the parties relied on for that year.

The total value the Commission derived for 2013 is 15% less than the total value derived earlier in this decision for 2014. However, the Commission's decision for any particular year is dependent on the information the parties submit. For 2014, the County submitted an income approach that showed an income approach value for the subject property that was significantly higher than the value shown by its 2013 income approach. Because the parties' 2014 income approaches, unlike their 2013 income approaches, did not produce similar values, significant effort was spent earlier in the decision to analyze the factors on which each party relied in their respective approaches. This analysis suggests that the taxpayer's income approach underestimates the subjects' total value and, after revisions, would support the County BOE's total 2014 value.

In conclusion, although the Commission has reached different values for the subject property for the 2012, 2013, and 2014 tax years, this 2014 decision appears to have been made in a manner consistent with the decisions it made for 2012 and 2013. The 2012 and 2013 decisions were dependent on evidence submitted for those years that is different from the evidence submitted for the 2014 year. For these reasons, the subjects' current total value of $$$$$ should be sustained for the 2014 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value established by the County BOE for each of the seven subject properties for the 2014 tax year should be sustained. 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _________ day of ________________________, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner