

15-319
TAX TYPE: PROPERTY TAX
TAX YEAR: 2014
DATE SIGNED: 6-13-2016
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
RECUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 15-319</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Robert Pero, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Representative
REPRESENTATIVE-2 FOR TAXPAYER, MAI
For Respondent: RESPONDENT-1, Appeals Supervisor, Salt Lake County
RESPONDENT-2, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 16, 2016, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) filed an appeal of the decision of the Salt Lake County Board of Equalization regarding the fair market value of the subject property as set for property tax purposes. The appeal proceeded to this Formal Hearing before the Utah State Tax Commission.

2. The lien date at issue in this appeal is January 1, 2014.

3. The County Assessor had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$. The representative for the County requested that the value remain as set by the County Board of Equalization.

4. The property that is the subject of this appeal is parcel no. ##### and is located at SUBJECT ADDRESS, CITY-1, Utah.

5. The subject property is #####-acres of land improved with an industrial-light manufacturing building. The building is #####-square feet in size and had been constructed in a number of different sections with the original section of the building constructed in YEAR-1 and the most recent section in YEAR-2. The weighted average date of construction for the building was YEAR-3. The clear height of the ceiling is 24 feet. The finished office space is 4.8% of the building total. The building has 29 dock-high doors and three grade-level doors for loading and shipping which is a favorable amount for this type of building.¹

6. The building is owner occupied by PETITIONER and is used for manufacturing of the product, warehousing and distribution.

7. The building has a land to building ratio of only 1.93:1. REPRESENTATIVE-2 FOR TAXPAYER, MAI, appraiser for the Property Owner, testified that the land to building ratio reduced the functionality of the building as it was difficult to drive the semi trucks around the building to get to the loading docks and also there was not sufficient parking. The aerial photographs of the parcel of property provided by the parties show that the building covers much of the land of this property.²

8. RESPONDENT-2, the appraiser for Salt Lake County, testified that he had walked through the building and he did not notice any difference in floor levels or ceiling heights as he walked

¹ Petitioner’s Exhibit 1, pg. 61.

² See Respondent’s Exhibit 4, pg. 2 and Petitioner’s Exhibit 1, pg. VII. These two aerial photographs have a parcel overlay which purports to outline the parcel at issue, but the one provided by the Property Owner includes more land than the one provided by the County.

through the different sections of the building. He also stated that there were large openings or doorways between the various sections so they were not separate on the interior. He stated that there was no apparent structural uniqueness to the building, that the building could be used for either manufacturing, warehousing or both. He indicated the manufacturing elements of the subject building were more personal property items that could be removed easily to accommodate a different use. RESPONDENT-2 provided photographs of the interior of the subject building³ which support these facts and they were not refuted by the Property Owner.

9. The Property Owner was requesting a reduction to \$\$\$\$\$ which was the appraisal conclusion from the appraisal prepared by REPRESENTATIVE-2 FOR TAXPAYER, MAI & Utah Certified General Appraiser, with the effective date of January 1, 2014. This appraisal was received as an exhibit at the hearing and REPRESENTATIVE-2 FOR TAXPAYER was present at the hearing and testified about his appraisal conclusions.⁴ REPRESENTATIVE-2 FOR TAXPAYER considered both a sales comparison approach and an income approach in this appraisal. It was his conclusion from the sales comparison approach that the value for this property was \$\$\$\$\$ (\$\$\$\$\$ per square foot). His conclusion from the income approach was \$\$\$\$\$ (\$\$\$\$\$ per square foot). He reconciled the approaches by giving 75% of the weight to the sales comparison approach and 25% to the income approach. His final value conclusion was \$\$\$\$\$ (\$\$\$\$\$ per square foot).

10. In explaining his sales comparables, REPRESENTATIVE-2 FOR TAXPAYER testified that because there were so few buildings of the size of the subject, the buildings were valued based on a regional market that included Utah, STATE-1 and STATE-2. He considered five comparable sales. Two were located in the general CITY-1 area, one near CITY-2, Utah, one in STATE-2 and one in STATE-1. He made appraisal adjustments for the market conditions as of the date of sale to adjust up to the market conditions of the lien date at issue. These adjustments indicated that it was his opinion that the market was increasing from 2011 through the lien date at issue in this appeal, which was January 1, 2014. He made considerable adjustments for building size. He combined the factors of age, quality and condition together and made a combined adjustment for these facts. There was also an adjustment for clear height, office percentage and land to building ratio. His sales comparables and the adjusted price per square foot he concluded from the comparables are the following:

³ Respondent's Exhibit 4, pgs. 5-9.

⁴ Petitioner's Exhibit 1.

Location	Sale Price/Price PSF	Sale Date	Build SF	Year Built	Office	Clear Height	LtoB Ratio	Adj. Price PSF
Subject: CITY-1, UT			#####	YEAR-1 ⁵	4.8%	20	1.92:1	
1) CITY-3, S-1	\$\$\$\$/\$\$\$\$	8/13	#####	YEAR	5%	28	2.49:1	\$\$\$\$
2) CITY-2, UT	\$\$\$\$/\$\$\$\$	1/13	#####	YEAR	1%	26	6.36:1	\$\$\$\$
3) CITY-4, UT	\$\$\$\$/\$\$\$\$	12/12	#####	YEAR	4%	32	3.94:1	\$\$\$\$
4) CITY-1, UT	\$\$\$\$/\$\$\$\$	12/12	#####	YEAR	14%	12	1.80:1	\$\$\$\$
5) CITY-5, S-2	\$\$\$\$/\$\$\$\$	5/11	#####	YEAR	24%	20	5.21:1	\$\$\$\$

It was REPRESENTATIVE-2 FOR TAXPAYER's conclusion that the average price per square foot from these sales was \$\$\$\$ and his conclusion from the sales comparison approach was a value of \$\$\$\$ per square foot.

11. In his appraisal REPRESENTATIVE-2 FOR TAXPAYER had made an adjustment for building size based on the premise the larger the size the lower the price per square foot. His adjustments for this ranged from a negative 30% adjustment to a positive 15% adjustment depending on the size of the comparable.

12. In his income capitalization approach, REPRESENTATIVE-2 FOR TAXPAYER looked at six lease comparables to determine a market lease rate for the subject building. Four of the six comparables were located within Salt Lake County, and two were in CITY-6, Davis County, which is some distance from the location of the subject. REPRESENTATIVE-2 FOR TAXPAYER's lease comparables were the following:⁶

Address	Lease Rate PSF/Month	Date	Build SF	Year Built	Office	Clear Height	Term (Yrs)	Months Free Rent
Subject: SUBJECT ADDRESS			#####	YEAR-1 ⁷	4.8%	20		
1) ADDRESS-1	\$\$\$\$	8/11	#####	YEAR	4.6%	26	10	10
2) ADDRESS-2	\$\$\$\$	7/13	#####	YEAR	4.7%	24	3	1
3) ADDRESS-3	\$\$\$\$	5/11	#####	YEAR	11%	28	11	0
4) ADDRESS-4 ⁸	\$\$\$\$	7/10	#####	YEAR	2.5%	32	15	9
5) ADDRESS-5	\$\$\$\$	8/13	#####	YEAR	1.0%	23	7	3
6) ADDRESS-6	\$\$\$\$	8/12	#####	YEAR	1.3%	22	3	2

⁵ The County refuted this as the year built. The first section of this building had been constructed in YEAR-1 and other sections as late as YEAR-2. It was the County's position that the building had a weighted average date of construction of YEAR-3. See Respondent's Exhibit 3.

⁶ Petitioner's Exhibit 1, pgs. 67-70.

⁷ The County refuted this as the year built. The first section of this building had been constructed in YEAR-1 and other sections as late as YEAR-2. It was the County's position that the building had a weighted average date of construction of YEAR-3. See Respondent's Exhibit 3.

⁸ In his appraisal, pg. 69, REPRESENTATIVE-2 FOR TAXPAYER listed this as being located in CITY-1. This is an error as this property is located in CITY-6, Utah.

REPRESENTATIVE-2 FOR TAXPAYER concluded from these comparables that the market lease rate for the subject would be \$\$\$\$ per month per square foot, or \$\$\$\$ per year per square foot, based on a triple net lease rate.

13. Removing the two CITY-6 properties, which are in a different County and market area, the average lease rate per square foot per month is \$\$\$\$, which equates to \$\$\$\$ per square foot per year. REPRESENTATIVE-2 FOR TAXPAYER did not make appraisal adjustments to his lease comparables for differences between the comparables and subject, therefore the Commission considers the actual lease rates provided.

14. REPRESENTATIVE-2 FOR TAXPAYER's income calculation in his appraisal was based on taking the lease rate of \$\$\$\$ per square foot per year, subtracting a 10% vacancy rate and a \$\$\$\$ management fee,⁹ for a net operating income of \$\$\$\$.

15. REPRESENTATIVE-2 FOR TAXPAYER presented five capitalization rate comparables, four from the CITY-1 area and one from CITY-7, Utah. The CITY-1 properties had sold with capitalization rates ranging from 7% to 9.27%. He also considered investor surveys and performed a band of investment analysis. It was his conclusion that a capitalization rate of 8.5% was appropriate for the subject property. Applying this rate to the net operating income resulted in a capitalized income value for this property of \$\$\$\$.

16. REPRESENTATIVE-2 FOR TAXPAYER then subtracted from his capitalized income value \$\$\$\$ as "Lease-up Costs."¹⁰ This estimate, as noted by REPRESENTATIVE-2 FOR TAXPAYER in his appraisal at page 78, was "speculative." The subject is currently owner occupied and there is no indication that it would have been vacated around the lien date. However, it was REPRESENTATIVE-2 FOR TAXPAYER's assumption that if this property were to be vacated, it would be vacant for one year. He also asserted that if he was appraising the property for a bank, he would make this type of adjustment. He calculated this adjustment based on the rent loss for the one year period, expenses, concessions and other costs to get the property leased up. The County argued that this adjustment was not appropriate in property tax assessment.

17. The County did not submit a formal appraisal in this matter but did submit a valuation analysis¹¹ with both a sales comparison and income approach. The County had concluded from the comparable sales a value of \$\$\$\$ and from the income approach a value of \$\$\$\$. It was the County's

⁹ See Petitioner's Exhibit 1, pg. 71. REPRESENTATIVE-2 FOR TAXPAYER had added actual expenses incurred for common area maintenance, property and liability insurance, real estate taxes as well as the projected management fee for a total of \$\$\$\$ in expense. However, he had added back \$\$\$\$ of this as "reimbursed income" as his lease rate was developed as a triple net rate. The difference was the \$\$\$\$ listed as "Management Fees" and the management fees were in effect the only amount subtracted as an expense in this approach.

¹⁰ Petitioner's Exhibit 1, pg. 78.

¹¹ Respondent's Exhibit 4.

position that the value for the subject property should remain at the \$\$\$\$ which was sustained by the County Board. This was an owner occupied property and properties of the type often were purchased to be owner occupied and not for investment, so the sales comparison approach is a relevant approach to determine the value.

18. It was the County's position that there were a number of industrial buildings over #####-square feet in size that had sold in Salt Lake County, so the County disagreed with REPRESENTATIVE-2 FOR TAXPAYER's use of comparable sales in STATE-2 and STATE-1. It was the County's position that the better comparables were those located within Salt Lake County and not properties that had sold in STATE-2, STATE-1 and CITY-2 Utah. This argument was supported by the five sales used by REPRESENTATIVE-2 FOR TAXPAYER in his appraisal. REPRESENTATIVE-2 FOR TAXPAYER's adjusted prices from the three Utah properties, or even the two CITY-1 properties indicated a higher adjusted value price per square foot than the out of state properties. Both the STATE-1 and STATE-2 properties were considerably lower. The County provided a list of thirteen sales that had taken place in Salt Lake County between October 2010 to December 2015 of buildings larger than #####-square feet in size to demonstrate that there were sales within the CITY-1 area that could have been considered in the appraisal. He also provided these comparables to show capitalization rates on the larger properties.¹²

19. In addition to arguing it was not appropriate for the Property Owner's appraiser to use sales outside the area, the County provided information on REPRESENTATIVE-2 FOR TAXPAYER's comparable sales to show they were inferior to the subject. Both the STATE-1 and CITY-2 properties were located in rural locations. Petitioner's comparable 3 had been owner occupied prior to the sale and there was a major renovation after the purchase so the purchaser could use this for its intended purposes. There were also tax credits and assumption of debt as part of this sale. Further, an estimate was made by REPRESENTATIVE-2 FOR TAXPAYER to determine what portion of the purchase price was paid for a power substation on the property.¹³ The County points out that Petitioner's comparable 4 was a functionally obsolete building for many reasons. Comparable 5 was a second generation manufacturing building that may have been a discounted sale to a school.

20. In the valuation analysis prepared by RESPONDENT-2 for the County, six comparable sales were considered. They all were properties located in the CITY-1 area and were the following:¹⁴

¹² Respondent's Exhibit 1.

¹³ In his appraisal, pg. 62, REPRESENTATIVE-2 FOR TAXPAYER had made a 20% adjustment for this substation.

¹⁴ Respondent's Exhibit 4, pg. 10.

Address	Sale Price/ PSF	Sale Date	Build SF	Year Built	Office	Clear Height	LtoB Ratio	Adj. Price PSF
Subject: SUBJECT ADDRESS			#####	YEAR-3 ¹⁵	4.8%	24 ¹⁶	1.93:1	
1) ADDRESS-7	\$\$\$\$	12/12	#####	YEAR	25%	25	3.55:1	\$\$\$\$
2) ADDRESS-8	\$\$\$\$	8/12	#####	YEAR	9%	30	2.89:1	\$\$\$\$
3) ADDRESS-9	\$\$\$\$	5/13	#####	YEAR	2%	24	1.81:1	\$\$\$\$
4) ADDRESS-10	\$\$\$\$	1/12	#####	YEAR	12%	34	2.47:1	\$\$\$\$
5) ADDRESS-11	\$\$\$\$	11/12	#####	YEAR	8%	31	1.98:1	\$\$\$\$
6) ADDRESS-12	\$\$\$\$	12/12	#####	YEAR	15%	15	1.75:1	\$\$\$\$

It was RESPONDENT-2's conclusion that these sales supported a value of \$\$\$\$ per square foot or \$\$\$\$ for the subject property. This is about the average value of these six sales. If comparable 4 is excluded from this group, the average would be \$\$\$\$ or \$\$\$\$\$. This would still be substantially higher than the value the County was requesting for this property at the hearing.

21. Five of the six comparables used by RESPONDENT-2 were much smaller buildings compared to the subject and even the sixth comparable was #####-square feet smaller. RESPONDENT-2 had made an adjustment of 15% for the much smaller properties and no size adjustment for the sixth property. He testified that in his opinion for buildings larger than #####-square feet, size adjustments were no longer needed, although he made an adjustment to be cautious. His size adjustments were smaller than the adjustments made by REPRESENTATIVE-2 FOR TAXPAYER. RESPONDENT-2 did not make an adjustment for land to building ratios; however his comparables generally were more similar regarding this factor than those used by REPRESENTATIVE-2 FOR TAXPAYER. RESPONDENT-2 did make a negative 10% adjustment for functional utility because the building had been constructed in different sections over time.

22. The County had also provided an income approach concluding based on comparable leases that the market lease rate for the subject was \$\$\$\$ per square foot triple net. The County criticized the leases in REPRESENTATIVE-2 FOR TAXPAYER's appraisal, stating that REPRESENTATIVE-2 FOR TAXPAYER's lease comparable 2 had been vacant for four years prior to this lease. Further, the County represented that this building had no heating or cooling capacity outside of the office area, was a Class S-metal building and a Class D rental property, so it was inferior to the subject building in a number of ways. He stated that REPRESENTATIVE-2 FOR TAXPAYER's lease comparable 3 had an atypical escalation clause as the lease increased 64% in the first 4 years. REPRESENTATIVE-2 FOR TAXPAYER had looked at the first year's rent, but the County contends that the extremely high escalation rate shows that the first year's rate was discounted. Also, the County

¹⁵ It weighted average date of construction.

¹⁶ The County indicated the clear height of the subject was 24 feet and not the 20 feet used by the Property Owner.

indicates that this was a shell space only when leased and the tenant constructed its own office area. Both of the CITY-6 leases, (REPRESENTATIVE-2 FOR TAXPAYER's lease comparables 4 & 6) also had atypical escalation rates, with significant increases in subsequent years, again pointing to the first year's rate being a discounted rate. Additionally, CITY-6 is a different market from the Salt Lake County area.

23. The County determined the market lease rate for the subject was \$\$\$\$ triple net per square foot per year from the following comparables, which were all located in the CITY-1 area:

Address	Lease Rate PSF/Year	Date	Build SF	Year Built	Office	Clear Height	Adjusted Rate
Subject: SUBJECT ADDRESS			#####	YEAR-3	4.8%	24	
1) ADDRESS-13	\$\$\$\$	10/12	#####	YEAR	2%	28	\$\$\$\$
2) ADDRESS-14	\$\$\$\$	6/12	#####	YEAR	9%	34	\$\$\$\$
3) ADDRESS-15	\$\$\$\$	4/14	#####	YEAR	12%	32	\$\$\$\$
4) ADDRESS-16	\$\$\$\$	9/12	#####	YEAR	2%	32	\$\$\$\$
5) ADDRESS-17	\$\$\$\$	8/13	#####	YEAR	4%	21	\$\$\$\$

24. The County's lease comparables did reasonably support the lease rate of \$\$\$\$ per square foot per year. In fact, the County has established numerous problems with the lease comparables used by REPRESENTATIVE-2 FOR TAXPAYER that indicate he was using inferior properties. REPRESENTATIVE-2 FOR TAXPAYER did not make appraisal adjustments for his lease comparables. The two CITY-6 properties are from a different market area and had extreme escalation clauses making these poor comparables. The average of REPRESENTATIVE-2 FOR TAXPAYER's other lease comparables support a lease rate of \$\$\$\$ per square foot per year without any appraisal adjustments. Upward adjustments would be needed on several of these comparables based on the reasons noted by the County. Therefore, the County's lease rate of \$\$\$\$ is the best supported rate. The lease rate is one of the major differences between the two parties' income value.

25. In its income calculation, the County allowed 8% for vacancy and 6% for expenses. This was a lower vacancy rate, but higher expenses than used by REPRESENTATIVE-2 FOR TAXPAYER. The County's capitalization rate was 8.65%, which was higher than REPRESENTATIVE-2 FOR TAXPAYER's capitalization rate of 8.5%. The County's resulting income approach value was \$\$\$\$.

26. In addition to the lease rate, the second major difference between REPRESENTATIVE-2 FOR TAXPAYER's appraisal and the County's income valuation was that REPRESENTATIVE-2 FOR TAXPAYER had deducted from his capitalized value \$\$\$\$ for "Lease-up Costs." It was the County's position that the properties are valued at fee simple value in the condition that they are in on the lien date. The County stated for its income approaches it does not make an adjustment for lease up costs to a building that is fully occupied on the lien date. The County valued the building in the condition it was in

on the lien date January 1, 2014. The subject building was fully occupied as of that date and it was expected to remain occupied. It was the County's contention that the Lease-up Cost adjustment was not appropriate.

27. The representative for the Property Owner pointed out that one of the sales comparables used by the County (comparable 4) had a long term, above market rate lease in place. He pointed out that it had sold at a capitalization rate of 6.30%, which was much lower than market capitalization rates. This is the only comparable in the County's market sales approach that was larger than #####-square feet. It was the Property Owner's position that County comparable 4 sold for more than market as a leased fee sale, rather than a fee simple sale and that fair market value for property tax purposes should be based on fee simple value. The County's representative agreed that this comparable was not a good comparable for the subject. He did, however, note that the State Tax Commission does not distinguish between leased fee and fee simple sales in its factor ratio studies and also that sometimes the only comparables you can find are the lease fee comparables.

28. After reviewing the evidence submitted in this matter, the Property Owner's appraisal value is based in part from sales from other market areas and other states. Considering sales from the CITY-1 market area the County's Board of Equalization value is more than supported, even giving no weight to the County's comparable 4, which was a lease fee value. The most similar of the lease comparables support the County's lease rate and income approach. As discussed more below, the Property Owner's adjustment for "Lease-Up Costs" is not appropriate where the building is fully occupied on the lien date.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Sec. 59-2-103(1).)

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. 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. (Utah Code Sec. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the

grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . (Utah Code Sec. 59-2-1006(1).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the assessment contained error, and (2) provide the Commission with a sound evidentiary basis upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. Property tax is based on the property's "fair market value" pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the amount for which property would exchange hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. See Utah Code Sec. 59-2-102.

2. The value set by the County Board of Equalization has the presumption of being correct and to either raise or lower the value either party must demonstrate that the County Board's assessment contained error and provide a sound evidentiary basis for the new value. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this case the Property Owner submitted an appraisal, but went outside the market area of the subject for comparable sales and comparable leases, when there appeared to be sales or leases within the market area. In fact, the comparable sales from the market area of the subject did indicate a higher price per square foot than sales in the other areas. The County provided both a comparable sales and an income approach. The County's sales comparables, although nearer in location to the subject, were for the most part smaller buildings. However, considering both the Property Owner's sales in the market area and the County's sales, the County's value is supported based on a sales comparison approach. The County's lease comparables and the lease comparables offered by the Property Owner that were near in location to the subject also support the County's lease rate.

3. The Property Owner's representative argues that for property tax assessment purposes, which is a "fair market value" standard, the valuation must be based on fee simple ownership. For this reason he asks that a comparable sale which was sold with an above market, long term lease not be considered as a comparable in this matter. He cites for support the Utah State Tax Commission's Standards of Practice 6.2.1, which provides, "For ad valorem tax purposes, properties are generally appraised as if all ownership rights and interests are attached, i.e., fee simple interest." The Commission has previously considered issues regarding this and has found consistent with the Property Owner's contention that the fair market value standard means the property is to be valued based on fee simple

ownership. However, previous cases have generally dealt with a below market lease. In *Utah State Tax Commission Initial Hearing Order Appeal No. 12-2733* (2013)¹⁷ the Commission explained:

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the real issue before us. The evidence indicates that the lease is essentially a “below-market” lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor’s interest is diminished, but the value of the lessee’s interest is increased. See *The Appraisal of Real Estate* (10th Ed. YEAR-3), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor’s and the lessee’s interest.

In the case before the Commission regarding the County’s comparable 4, we have the inverse of what occurred in *Appeal No. 12-2733*. It was argued by the Property Owner, and not refuted by the County, that comparable 4 had sold with a long term above market lease in place. Therefore, the lessee’s interest is diminished; the lessor’s or owner’s interest is increased. The result may be a purchase price above the fee simple value as argued by the Property Owner. If a party shows that the fee simple value is lower than a leased fee sale, the Commission should take that into consideration on how much weight to give the comparable sale. In this case it was not refuted this was an above market sale and the Commission gives comparable 4 little weight. However, a high lease rate is not necessarily suggestive of an above market lease because a good quality, long term tenant may pay a higher rate if they are leasing a better quality building in a prime location and this type of tenant would have leverage to negotiate favorable terms.

4. In this appeal the appraiser for the Property Owner had subtracted \$\$\$\$ from his capitalized value in his income approach for “Lease-Up Costs” and the County argued that this was not an adjustment that should be made for the subject property for property tax assessment purposes because the property was fully occupied as of the lien date. The County points to a number of Orders issued previously by the Tax Commission that support this position.¹⁸ As noted by the County, in *Utah State Tax Commission Initial Hearing Order Appeal No. 13-1079* (2014) the Tax Commission found:

If [Property Owner] planned to abandon the subject property in the near future, the taxpayer’s argument that the unique features present in the subject property would diminish its fair market value would be more convincing. However, there is no indication that [Property Owner] plans to move from the subject property. As a result, there is a demand for the subject property with its unique characteristics, specifically a demand by [Property Owner] itself. Accordingly, the County’s argument that the taxpayer’s

¹⁷ This and other redacted decisions are available for review at tax.utah.gov/commission-office/decisions.

¹⁸ See Respondent’s Exhibit 2. The County cites to Utah State Tax Commission, *Initial Hearing Orders in Appeal Nos. 07-0915*(This reference should have been Appeal No. 07-0935.), *13-1079* & *15-892* as well as the Initial Hearing Order from this appeal. However the *Initial Hearing Order* in this appeal was set aside with the request for Formal Hearing.

appraiser's adjustments for obsolescence should be removed from the taxpayer's appraisal is convincing.

In another appeal, *Utah State Tax Commission Initial Hearing Order Appeal No. 13-757* (2014), the property was a large, first generation retail store with a tenant in place and the petitioner argued that the value should be determined based on second-generation lease comparables. The Commission rejected that petitioner's position stating, "the subject is not a vacant, distressed retail store as of the lien date and should not be valued as such." The Commission has also rejected the reverse, where the property at issue was a large second-generation property that was vacant as of the lien date and the county valued it using first-generation property leases. The Tax Commission rejected the first generation comparables in that instance. See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 07-0172* (2009).

5. In the appeal currently before the Commission, the subject building was fully occupied as of the lien date and there was no indication that it would be vacated in the foreseeable future. It should be valued as such, rather than as if it was an unoccupied property. This is consistent with how other large commercial and industrial properties are valued by the County. The change that the Property Owner requests in this appeal to discount the assessed value based on the hypothetical premise that the property was vacant would have a widespread effect far beyond the subject property because it is an argument that applies equally to many categories of properties. An adjustment of this magnitude would lead to a widespread decrease in commercial and industrial property values, affect tax rates and shift tax burdens. The requested discount, however, is contrary to the facts in this case because the subject was occupied on the lien date, and contrary to Utah Code Sec. 59-2-103 which requires the assessment to be set at a uniform and equal rate on the basis of its fair market value, as valued on January 1. Under Utah Code Sec. 59-2-102, "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." The Property Owner's argument for a discount places more emphasis on what a buyer might like to pay for the property. However, under Utah law equal consideration must be given to what a seller, one who is not 'under any compulsion' to sell, would be willing to accept for the property.

Considering the evidence and the applicable law in this matter, the value should remain as set by the Salt Lake County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2014, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2016.

RECUSED

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.