

15-1051

TAX TYPE: PROPERTY TAX

TAX YEAR: 2014

DATE SIGNED: 5-13-2016

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 15-1051</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 FOR PETITIONER
For Respondent: RESPONDENT-1, Appraiser, COUNTY-1
RESPONDENT-2, Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 18, 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 COUNTY-1 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. This location is near the TRANSPORTATION CENTER.

5. The subject property is #####-acres of land improved with a ##### room HOTEL. The building has #####-square feet and was constructed in 1998. The County considers the building to be of good quality of construction and to be in good condition. The County had placed the property into the hotel category of upper-midscale brand. This property has a large conference center area, which many hotels of this size do not have. The subject property does not have a restaurant. The subject is back off the main roads and not visible from the Interstate. It is located in a pocket of other hotels west of the TRANSPORTATION CENTER.

6. The County’s assessment equates to a value of \$\$\$\$ per hotel room.

7. The Property Owner did not argue that the subject was overvalued based on fair market value. It was the Property Owner’s argument that an adjustment should be made based on equalization. The Property Owner provided as equalization comparables five hotel properties located within the same area as the subject and three additional properties that were located in an area a little further from the subject property, east of the TRANSPORTATION CENTER.¹ The Property Owner’s equalization comparables are the following:

Hotel	Rooms	Sq. Ft.	Year Built	Rest-aurant	Conf-erence Room	Hotel Category	Condition	Assessed Value Per Room
Subject PROPERTY	#####	#####	1998	No	Yes	Upper Midscale	Good	\$\$\$\$
Nearest to Subject HOTEL-1	#####	#####	1997	No	No	Midscale	Good	\$\$\$\$
HOTEL-2	#####	#####	2012	No	Yes	Upper Midscale	Excellent	\$\$\$\$
HOTEL-3	#####	#####	1986	No	Yes	Upper Midscale	Good	\$\$\$\$
HOTEL-4	#####	#####	1984	Yes	Yes	Midscale	Average	\$\$\$\$

¹ Petitioner’s Exhibit 1.

HOTEL-5	#####	#####	1996	No	Yes	Upper Midscale	Good	\$\$\$\$\$
East Side of TRANSPORTATION CENTER								
HOTEL-6	#####	#####	1997	No	No	Midscale	Good	\$\$\$\$\$
HOTEL-7	#####	#####	1999	No	No	Upper Midscale	Good	\$\$\$\$\$
HOTEL-8	#####	#####	1987	Yes	Yes	Upscale	Good	\$\$\$\$\$

8. The representative for the Property Owner had calculated from these equalization comparables that the average assessed values from these properties was \$\$\$\$\$ per square foot, a more than 61.5% difference from the subject.

9. The Property Owner did not provide detailed information regarding these equity comparables. There was one photograph of the exterior but none of the interior.

10. In his equalization analysis the representative for the Property Owner did not consider the average daily room rate for the subject and comparable hotel properties. He argued that this was more related to the business value than the actual property value. The County argued that the average daily room rate was a factor for determining comparability of properties.

11. The County representative testified that the HOTEL-4 had been very run down, had been in receivership for two or three years due to a bankruptcy and then finally sold as a bank owned property in 2013. They indicate that this hotel was in very bad condition. It was significantly remodeled after the sale. The assessment for 2014 may not have reflected the remodeled condition. They testified that the photograph provided by the Property Owner of this property was taken after a significant remodel.²

12. The County’s representatives also pointed out that the conference space for the subject was a very large space and the Property Owner was not taking that into account. This is shown by the square footage compared to the number of hotel rooms for the subject and the comparables. The subject has significantly more square footage per hotel room than any of the Property Owner’s equalization comparables. Only two of the comparables were larger than the subject as far as total square footage, and one just barely larger. The HOTEL-3 property with ##### square feet, has ##### rooms and is considered by the Property Owner to have conference rooms. The subject with ##### has only ##### rooms, so a much larger portion is its conference center. The only comparable significantly larger in size compared to the subject was the HOTEL-4 with ##### square feet. This property has ##### rooms and the Property Owner had also noted conference rooms. This information supports the County’s contention that the Property Owner’s equalization argument fails to take into account the large conference center on the subject.

13. The County’s representatives argued that they considered the average daily room rate in valuing hotel properties, and the properties were generally valued based on an income approach. It was

² Petitioner’s Exhibit 1, pg. 13.

the County’s contention that if you were looking at equalization, the best comparables for the subject property would be other SUBJECTS PROPERTY properties located in the CITY-1 area. It was the County’s contention that the SUBJECTS PROPERTY hotels were the most similar to the subject hotel on a number of factors.³ None of the SUBJECTS PROPERTY equalization comparables were located in the same TRANSPORTATION CENTER area as the subject, but the County indicated that some of the areas where they were located in the CITY-1 valley were comparable or adjustments could be made for location. Some of the locations would clearly be superior, like the one in the CBD or the CITY-1 property. The others were in suburban areas. On a per room basis the subject of the assessment was within the range of the assessments on these comparables. In analyzing its comparables to get to an assessment per room rate, the County added to the real property assessment the personal property assessment. Personal property, which includes the furniture and furnishings of these hotel properties, is also assessed property tax. The County’s SUBJECTS PROPERTY comparables with the price per room calculated based both on real and personal property were the following:⁴

Hotel Address	Rooms	Sq. Ft.	Year Built	Hotel Category	Condition	Assessed Value /Room/wPersonal Property
Subject: TRANSPORTATION CENTER	###	#####	1998	Upper Midscale	Good	\$\$\$\$\$
ADDRESS-1	###	#####	1996	Upper Midscale	Good	\$\$\$\$\$
ADDRESS-2	###	#####	2011	Upper Midscale	Excellent	\$\$\$\$\$
ADDRESS-3	###	#####	1998	Upper Midscale	Good	\$\$\$\$\$
ADDRESS-4	###	#####	1996	Upper Midscale	Good	\$\$\$\$\$
ADDRESS-5	###	#####	2007	Upper Midscale	V. Good	\$\$\$\$\$
ADDRESS-6	###	#####	1991	Upper Midscale	Good	\$\$\$\$\$

14. The County also provided other equalization comparables which the County argued were comparable to the subject property and similar as far as location.⁵ Two of these were in the same neighborhood area as the subject and the third from the second area used by the Property Owner. These comparables were assessed similarly to the subject property and are as follows:

³ Respondent’s Exhibit 1.

⁴ Respondent’s Exhibit 1, pg. 2.

⁵ Respondent’s Exhibit 1, pg. 3.

Hotel Address	Rooms	Sq. Ft.	Year Built	Hotel Category	Condition	Assessed Value /Room/wPersonal Property
Subject: TRANSPORTATION CENTER	###	#####	1998	Upper Midscale	Good	\$\$\$\$\$
Nearest to Subject						
Marriot Residence Inn	###	#####	1999	Upscale	Good	\$\$\$\$\$
Marriot SpringHill Suites	###	#####	2008	Upscale	Excellent	\$\$\$\$\$
East Side of TRANSPORTATION CENTER						
HOTEL-9	###	#####	2006	Upper Midscale	V. Good	\$\$\$\$\$

15. The County also provided an income capitalization approach and sales comparables to show that the fair market value of the property was at least as high as the assessed value.⁶ Four hotel properties had sold between November and December 2012 and had sold for prices per hotel room from \$\$\$\$\$ to \$\$\$\$\$. The County’s income approach was based on the average daily room rate and the average annual occupancy rate. From this approach the County had calculated that the fair market value for the subject was. However, the County did not request that the value for this property be raised to this amount.

16. The Property Owner pointed out that several of the County’s SUBJECT PROPERTY equalization comparables were in better locations than the subject, which the County acknowledged, or had visibility from the Interstate. The subject is not visible from the Interstate. The Property Owner also argued that the County’s two HOTEL-5 AND HOTEL-9 equalization comparables were superior to the subject in several factors.

17. Upon reviewing the facts submitted in this matter and that the burden of proof is on the Property Owner, the Property Owner has not demonstrated error in the fair market value set by the County for the subject property. The Property Owner has provided eight hotel properties that were assessed at a lower rate per room than the subject property. The Property Owner has not shown that any of these are so comparable to the subject that they should be valued the same as the subject and the Property Owner’s analysis is not taking into account the large conference facility that the subject has, which its comparables did not have. The County has shown six hotel properties that are actually valued higher than the subject, although they may have some superior features as noted by the Property Owner.

⁶ Respondent’s Exhibit 1, pgs. 4-5.

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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2. (Utah Code Sec. 59-2-103.)

“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. . .

(5) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Sec. 59-2-1006(1)&(5).)

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 COUNTY-1*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. Property tax is based on its “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 seller. 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 COUNTY-1*, 943 P.2d 1354 (Utah 1997). The Property Owner did not provide sufficient evidence to meet this burden.

3. The Property Owner has also made an argument based on equalization, providing eight hotel properties that are assessed at a lower value per hotel room than the subject. The Property Owner has not provided sufficient evidence to show that these properties were actually comparable to the subject. There were some features of the subject, like the conference center which may have added value to the subject. At least one of the comparables was in inferior condition. Under Utah Code Sec. 59-2-1006, a property owner may appeal the assessment based on either fair market value or equalization. Subsection 59-2-1006(5) provides the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other commercial properties if the issue of equalization is raised and “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.” “Equalization” as used in Utah Code Sec. 59-2-1006, does not mean that you would take all hotel properties in the County and assess them all at the same value. In arguing an adjustment based on equalization, the Property Owner needs to show that properties that are actually comparable to the subject are valued lower. This Property Owner has shown some lower valued properties and the County some higher valued properties. Equalization has been argued at the Tax Commission and to the Utah Supreme Court. The court has put a high burden on property owners generally to show that an adjustment is warranted under equalization. See *Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206,(Utah 2004) & *Decker Lake Ventures v. Utah State Tax Comm’n*, 2015 UT 66.

Considering the evidence and the applicable law in this matter, the value should remain as set by the COUNTY-1 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.

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.