

16-457

TAX TYPE: PROPERTY TAX

TAX YEAR: 2015

DATE SIGNED: 4-10-2017

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

EXCUSED: M. CRAGUN

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 16-457 Parcel No. ##### Tax Type: Property Tax Tax Year: 2015 Judge: Phan
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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:

Rebecca Rockwell, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Manager, PETITIONER
REPRESENTATIVE-2 FOR PETITIONER, CFO, PETITIONER

For Respondent: RESPONDENT-1, Director of Commercial Department, COUNTY-1
RESPONDENT-2, Commercial Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 1, 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, 2015.

3. The COUNTY-1 Assessor’s Office had originally valued the subject property at \$\$\$\$ as of the lien date and the County Board of Equalization (“County”) sustained that value. At the hearing, the Property Owner requested a reduction to \$\$\$\$\$. The representative for the County also concluded the value set by the County was too high and recommended a reduction to \$\$\$\$\$.

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

5. The subject property has #####-acres of land improved with mini-warehouse storage units. There are ##### storage units with ##### rentable square feet. The units were built in two phases, one in 1984 and the other in 1993. The County considers the buildings to be construction class C and rental class C. The property backs onto and is visible from INTERSTATE. However, the street access to the property is difficult, as drivers have to drive around other commercial properties. The storage units have a 10-foot ceiling height and an average size of #####-square feet. There is also an office for an on-site manager.

6. The County’s original assessment equates to a value of \$\$\$\$ per storage unit. The value requested by the Property Owner equates to \$\$\$\$ per storage unit. The value recommended by the County at the hearing is \$\$\$\$ per storage unit.

7. The Property Owner’s representatives made both a valuation argument and an argument that the percentage change year over year for the subject property was higher than for other properties and that this was unfair or unequal. The Property Owner did not submit an appraisal, but rather presented an income approach based on actual rent and expenses. The representatives for the Property Owner provided the Profit & Loss Statement for the year ending December 31, 2014.¹ This showed \$\$\$\$ in total income and \$\$\$\$ in total expenses, for an operating profit of \$\$\$\$\$. To be consistent with how the County calculated the income approach, they added the property tax amount to the operating profit because the effective tax rate was loaded in the capitalization rate. This indicated income of \$\$\$\$\$, which capitalized at a loaded rate of 10.05%, resulted in the value of \$\$\$\$\$ that the Property Owner was requesting.

8. The representatives for the Property Owner used the 10.05% capitalization rate because that was the rate used by the County in the original assessment and in the County Board of Equalization

¹ Petitioner’s Exhibit 1.

decision. They did not offer any market evidence or market studies that supported this capitalization rate. The reason the County’s original assessed value was higher was that the County had not used actual income, but instead had considered potential gross income based on market rental rates, expenses and vacancy rates.

9. The Property Owner’s representatives argued that the percentage increase in assessed value for the subject property from the years 2011 through 2015 had been 76.24%. They provided the assessments for (#) other (X) storage unit properties along with some relevant factors for comparison over that period and calculated that there had been an average increase of only 6.49% on the assessed values of these other properties.² The information provided by the Property Owner on these equalization comparables indicates the following:

Name of Business	Avg Unit Size	Rentable Sq. Ft.	Year Built	Number of Units	Ceiling Height	Assessed Value Per Unit	Assessed Value Per Square Ft
PETITIONER	#####	#####	1984/1993	#####	#####	\$\$\$\$\$	\$\$\$\$\$
STORAGE-1	#####	#####	1993	#####	#####	\$\$\$\$\$	\$\$\$\$\$
STORAGE-2	#####	#####	1985	#####	#####	\$\$\$\$\$	\$\$\$\$\$
STORAGE-3	#####	#####	1998	#####	#####	\$\$\$\$\$	\$\$\$\$\$
STORAGE-4	#####	#####	1996	#####	#####	\$\$\$\$\$	\$\$\$\$\$
STORAGE-5	#####	#####	1980	#####	#####	\$\$\$\$\$	\$\$\$\$\$

10. RESPONDENT-2, Certified Commercial Appraiser for COUNTY-1, prepared two different income approaches that she submitted as evidence at the hearing.³ One was based on potential gross income from market data, which had indicated a value of \$\$\$\$\$. However, she had also prepared a second income approach using the Property Owner’s actual income and expenses from the same Profit and Loss Statement provided by the Property Owner. From this approach, she had concluded the value of \$\$\$\$\$, which she recommended at the hearing as the fair market value of the property.

11. In the second income approach, she had used the same net income of \$\$\$\$\$ as the Property Owner, and the only difference was the capitalization rate. The loaded capitalization rate RESPONDENT-2 used in her income approaches was 9.2294%. The Property Owner had used a loaded capitalization rate of 10.05%.

12. RESPONDENT-2 testified that in her opinion, 9.2294% was the appropriate loaded capitalization rate for the subject property based on market data. This was comprised of a 7.75% capitalization rate and 1.4794% for the effective tax rate. To support these rates, she provided

² Petitioner’s Exhibit 1.

³ Respondent’s Exhibit 1, pg. 4.

publications on capitalization rates for the self-storage industry from BUSINESS-1, the BUSINESS-2, BUSINESS-3 and the BUSINESS-4.⁴ Additionally, she provided information the County had compiled on the capitalization rates from sales of mini-warehouse BUSINESS-2 properties in Utah. All of this information supported the lower capitalization rate that she had used in her income approaches.

13. In addition to the market value evidence, the County’s representative rebutted the Property Owner’s equalization argument. She considered the storage warehouse properties that the Property Owner had submitted as equalization comparables. The County noted some differences between its data and what had been listed by the Property Owner with respect to the comparables. The County also added a sixth equity comparable, which was the STORAGE-6. The County’s information with the assessed values as of the lien date are the following:⁵

Name of Business	Avg Unit Size	Rentable Sq. Ft.	Year Built	Number of Units	Ceiling Height	Assessed Value Per Unit	Assessed Value Per Square Ft
PETITIONER	#####	##### ⁶	1984/1993	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
1) STORAGE-1	#####	#####	1993/1995	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
2) STORAGE-2	#####	#####	1985	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
3) STORAGE-3	#####	#####	1998	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
4) STORAGE-4	#####	#####	1996	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
5) STORAGE-5	#####	#####	1980	#####	#####'	\$\$\$\$\$	\$\$\$\$\$
6) STORAGE-6	#####	#####	1984	#####	#####'	\$\$\$\$\$	\$\$\$\$\$

14. The value the County was recommending at the hearing was \$\$\$\$\$ per unit and \$\$\$\$\$ per square foot.

15. In analyzing the equalization comparables, the County’s representative testified that comparables 3 & 5 were dissimilar to the subject. Comparable 3 was comprised of climate-controlled units and Comparable 5 was a property that had excess vacancy. In her opinion when comparing for equalization purposes, the properties that were actually comparable were comparables 1, 2, 4 and 6. With the low comparables from this range assessed at \$\$\$\$\$ per unit or \$\$\$\$\$ per square foot and the high comparables from this group at \$\$\$\$\$ per unit or \$\$\$\$\$ per square foot, the subject property’s assessed value and the County’s recommended value is well within this range. Therefore, there is no basis to lower the value of the subject based on equalization.

16. After reviewing the evidence, the County had supported that the fair market value of the subject as of January 1, 2015 is \$\$\$\$\$. Although the Property Owner had submitted an income approach

⁴ Respondent’s Exhibit 1, pgs. 12-16.

⁵ Respondent’s Exhibit 1, pgs. 23-24.

⁶ It was the County’s position that the subject has ##### rentable square feet, while the Property Owner states a total of #####-square feet. This small difference, however, appears to be immaterial.

using the same income and expenses as the County, the Property Owner did not establish that a loaded capitalization rate of 10.05% was the appropriate rate to determine fair market value. The Property Owner did not present studies, publications or capitalization rate comparables as did the County at the hearing. The Property Owner relied instead on the argument that the County had used a capitalization rate of 10.05% originally as well as at the County Board of Equalization hearing, so therefore, the County should not be allowed to change the rate now. However, there is no basis in the law that supports this position.

17. Regarding the equalization argument, the fact that the subject property had a higher percentage increase than other properties does not support a reduction in value based on equalization. To support an adjustment based on equalization, the Property Owner would need to show that properties that are actually comparable to the subject were assessed as of the lien date at more than 5% lower than the subject was. The County has established based on the analysis of the equalization comparables that the value set by the County Board, and even more so, the lower value recommended at the hearing, was well within the range of the assessed values for the most similar equalization comparables.

APPLICABLE LAW

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

- (1) All 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.

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

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

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

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...

- (3) In reviewing the county board’s decision, the commission may:

- (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
- (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
 - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (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.

In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value different from the subject property's current value but not higher than the value originally assessed, the respondent has the burden of proof to support its position. For either party's position to prevail in this case, the party must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount proposed by the party. *See Nelson v. Bd. Of Equalization of COUNTY-1*, 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*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. The value set by the County Board of Equalization has the presumption of being correct and to either raise or lower the value a 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). Both parties presented information that indicated that the value set by the County Board of Equalization was too high. However, the Property Owner did not provide sufficient evidence to support a value as low as the \$\$\$\$ it requested.

2. The difference between the County's income approach at the hearing and the Property Owner's income approach was the capitalization rate. The appraiser for the County looked at market

information and concluded the appropriate capitalization rate to use for determining the fair market value of this property was 7.75%, and loaded with the effective tax rate was 9.2294%. The Property Owner argued that the County should not be able to change from the rate of 10.05% used by the County at the Board of Equalization hearing and in the original assessment. However, both parties are allowed to submit new evidence in the proceedings before the State Tax Commission from what had been submitted at the County Board hearing. See Utah Code Subsection 59-2-1006(3). Property tax is based on the “fair market value” as of the lien date for the year at issue 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. Therefore, when a property value is appealed to the Utah State Tax Commission, the Tax Commission must set the value at fair market value as of the lien date based on the evidence submitted at the hearing unless a party establishes an adjustment based on equalization.

3. The Property Owner has also made an argument for reduction based on the fact that the subject property had increased at a higher percentage rate from 2011 to 2015 than other mini-warehouse storage properties. As noted by the County, this appears to be the same argument raised by the Property Owner in the appeal for this same property for the 2014 tax year. In *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision Appeal No. 15-1146*, dated September 20, 2016, the Utah State Tax Commission has already considered this argument and found as follows:

The Property Owner has provided an argument which it asserts is based on equalization under Utah Code Subsection 59-2-1006(5). The Property Owner points to the very high percentage increase of the subject over the years from 2011 to 2014, and much lower increases on other BUSINESS-2 properties. However, there is no basis under Utah Code Subsection 59-2-1006(5) to support this interpretation of equalization. Utah Code Subsection 59-2-1006(5) provides that the Commission shall adjust property valuations to reflect a value equalized with the assessed value of comparable 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 the Commission would compare average increases or decreases over a period of time, but instead compare the assessed value of the subject property and the assessed value of comparable properties for the tax year at issue in the appeal. The Property Owner has not shown that its property was valued more than the comparables for the 2014 year. Some of the comparables offered by the Property Owner were assessed lower and some were assessed higher, with the subject being within the range of assessed values. Also, equalization does not mean all BUSINESS-2 properties should be valued the same on a per unit or per square foot basis, because factors like location, age, grade and condition all affect market value and comparability. 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 for the tax year at issue. 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.

The Property Owner has not offered legal argument or evidence that supports a different conclusion in this appeal.

Considering the evidence and the applicable law in this matter, the value should be reduced to \$\$\$\$\$ as recommended by the representative for the County at the hearing.

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, 2015, is \$\$\$\$\$. The COUNTY-1 Auditor is to adjust the records accordingly. It is so ordered.

DATED this _____ day of _____, 2017.

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.