16-655
TAX TYPE: PROPERTY TAX
TAX YEAR: 2015
DATE SIGNED: 4-25-2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 16-655 Parcel No. ##### Tax Type: Property Tax Tax Year: 2015 Judge: Marshall

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:
Michael Cragun, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE-1 FOR TAXPAYER, Representative
	REPRESENTATIVE-2 FOR TAXPAYER, Appraiser
For Respondent:	RESPONDENT-1, COUNTY Assessor's Office
	RESPONDENT-2, Appraiser for COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 29, 2016, in accordance with Utah Code Ann. §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. The Petitioner ("Taxpayer") is appealing the assessed value of the subject property located in COUNTY.
2. The COUNTY Assessor's Office assessed the subject property at $$$$$ as of the January 1, 2015 lien date, which the Board of Equalization sustained.
3. The County is asking the Commission to increase the value of the subject property to $$$$$.
4. The Taxpayer is asking the Commission to reduce the value of the subject property to $$$$$.
5. The subject property is parcel no. #####, located at SUBJECT ADDRESS in CITY-1. It is a #####-acre parcel improved with a #####-square foot office building built in 1997. The office building is of class-A construction, and is in good condition. It has four stories, and is owner occupied. The building has #####-square feet of rentable area, raised data center floors throughout, UPS power system, two backup generators, a full service cafeteria, fitness center, and medical clinic. (Exhibit R-1).
6. In support of its requested value, the Taxpayer submitted a retrospective appraisal report prepared by REPRESENTATIVE-2 FOR TAXPAYER. REPRESENTATIVE-2 FOR TAXPAYER is a certified general appraiser with an MAI designation. REPRESENTATIVE-2 FOR TAXPAYER determined a value of $$$$$ for the subject property as of the January 1, 2015 lien date. The appraisal included a cost approach, sales comparison approach, and an income approach. (Exhibit P-1).
7. The cost approach in the Taxpayer's appraisal indicated a rounded value of $$$$$. The appraiser concluded a land value of $$$$$ per square foot, and a depreciated replacement cost of $$$$$ for the improvements. (Exhibit P-1).
8. Following are the land sales use by the Taxpayer's appraiser to determine a rounded land value of $$$$$, or $$$$$ per square foot (Exhibit P-1):

	Address	Lot Size	Sales Date	Sales Price	Price/ Sq. Ft.	Adjusted Price
Subject	SUBJECT ADDRESS	#####				
Sale #1	ADDRESS-1	#####	10/14	$$$$$	$$$$$	$$$$$
Sale #2	ADDRESS-2	#####	09/14	$$$$$	$$$$$	$$$$$
Sale #3	ADDRESS-3	#####	11/13	$$$$$	$$$$$	$$$$$
Sale #4	ADDRESS-4	#####	06/13	$$$$$	$$$$$	$$$$$
Sale #5	ADDRESS-5	#####	12/12	$$$$$	$$$$$	$$$$$

9. The Taxpayer's appraiser determined a replacement cost of $$$$$ per square foot for the subject property. The appraiser noted Marshall Valuation Services indicated a cost of $$$$$ per square foot, to which the appraiser added an additional 5% for indirect costs, and $$$$$ per square foot for site

improvements, for an overall cost of $$$$$ per square foot. The appraiser noted that the actual and estimated cost for six similar office buildings ranged from $$$$$ to $$$$$, with an average of $$$$$ (Exhibit P-1).

10. To the $$$$$ per square foot cost estimate, the appraiser added 10% for entrepreneurial profit. He determined an effective age of 15 years for the subject property, with an expected economic life of 45 years, and thus made a 33% reduction for depreciation. Following are the cost calculations in the Taxpayer's appraisal (Exhibit P-1):

#####Square Feet @ $$$$$	$$$$$
Entrepreneurial Profit 10%	$$$$$
Total Replacement Cost New	$$$$$
Depreciation 33%	$$$$$
Depreciated Replacement Cost	$$$$$
Rounded Depreciated Replacement Cost	$$$$$
Land Value	$$$$$
Indicated Property Value	$$$$$
Rounded Value	$$$$$

11. REPRESENTATIVE-2 FOR TAXPAYER stated he did not put any weight on the cost approach.

12. The Taxpayer's appraiser determined a rounded value of $$$$$, or $$$$$ per square foot, based on the following comparable sales (Exhibit P-1):

	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5	Sale #6
Address	SUBJECT ADDRESS	ADDRESS-5	ADDRESS-6	ADRESS-7	ADDRESS-8[1]	ADDRESS-9	ADDRESS-10
Year Built	1997	2000	2001	2006	2001	2009	2000
Class	B	A	B	A	B	A	A
Sq. Ft.	#####	#####	#####	#####	#####	#####	#####
Rentable	#####	#####	#####	#####	#####	#####	#####
Sales Date		10/14	09/14	10/13	08/13	02/13	06/12
Sales Price		$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Price/Sq. Ft.[2]		$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Prop. Rights		(15%)	(15%)	(15%)	(10%)	(15%)	(15%)
Market		1%	1%	4%	4%	6%	6%
Location		0%	(5%)	(10%)	0%	0%	(5%)
Size		(5%)	(5%)	(5%)	(5%)	(5%)	0%
Quality		0%	0%	0%	0%	0%	0%
Age/Cond.		(1%)	(2%)	(8%)	(3%)	(11%)	(3%)
Parking		0%	0%	0%	0%	0%	5%
Space Type		0%	0%	0%	0%	0%	0%
Economic		(6%)	(8%)	(11%)	0%	(28%)	(14%)

[1] Includes a second property located at ADDRESS-9.
[2] Price per square foot is based on rentable area, not total square footage.

Adj. Price		$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

13. REPRESENTATIVE-2 FOR TAXPAYER made a downward adjustment to each of the comparable sales for the property rights conveyed in the transaction. He explained that he made the adjustment because he was appraising the fee simple interest of the subject, and that properties similar in size to the subject typically sell as a leased fee. He explained the comparable sales have a value enhancement due to the leases in place.
14. The appraisal reviewed six sales of similar properties that have taken place across the country over the past few years. The sales prices ranged from $$$$$ to $$$$$ per rentable square foot. The buyers in sales one, three, four, and five required a large discount for the risk of vacancy, while the buyer in sale 6 did not require any discount. The appraiser notes that there are two scenarios for buying such properties, that of an owner user, and that of an investor. An owner user would not necessarily apply discounts to a stabilized value, while an investor would deduct for rent loss, holding costs, tenant improvement allowances, leasing commissions, and developer profit. For an investor buyer, REPRESENTATIVE-2 FOR TAXPAYER determined rounded lease-up costs would be $$$$$. This is based on an 18 month lease up period, $$$$$ per square foot in holding costs, concessions of six months free rent, 6% leasing commission, and 10% developer profit. REPRESENTATIVE-2 FOR TAXPAYER concluded there was a significant risk associated with occupancy of the subject. REPRESENTATIVE-2 FOR TAXPAYER concluded a 50% likelihood of owner occupancy and 50% likelihood of tenant occupancy. He determined a discount would range between $0 and $$$$$, and concluded an overall discount from stabilized occupancy to be approximately $$$$$. (Exhibit P-1).
15. REPRESENTATIVE-2 FOR TAXPAYER also made an economic characteristics adjustment, which is based on the net operating income per square foot of the comparable sales. REPRESENTATIVE-2 FOR TAXPAYER explained each of the comparable properties was purchased by an investor, and in his opinion, the net operating income per square foot is a significant component behind the purchase price that a buyer/investor would be willing to pay. The Taxpayer's representative argued the economic conditions adjustment is a control on the subjectivity of other appraisal adjustments.
16. The appraisal report indicates the "economic characteristics" adjustment is designed to take into account "all of the attributes of a property that affect its operating income." This includes operating expenses, quality of management, tenant mix, rent concessions, lease terms, lease expiration dates, renewal options, and lease provisions. REPRESENTATIVE-2 FOR TAXPAYER made an adjustment of 3% for every $$$$$ in NOI between the subject's stabilized NOI of $$$$$ per square foot and the NOI of the comparables. The appraisal notes that a number of the comparables had occupancy "concerns." (Exhibit P-1).

17. When asked how his adjustments control for "double dipping," REPRESENTATIVE-2 FOR TAXPAYER explained that his other adjustments were very "muted" because they are so subjective.
18. The Taxpayer's appraiser calculated a rounded value of $$$$$ based on a lease rate of $$$$$ per square foot, as follows (Exhibit P-1):

Potential Gross Rent	$$$$$
Vacancy and Collection Loss (7%)	$$$$$
Effective Gross Income	$$$$$
Management (1%)	$$$$$
Structural Reserves	$$$$$
Net Operating Income	$$$$$
Capitalization Rate	$$$$$
Indicated Value	$$$$$
Rounded Value	$$$$$

19. The Taxpayer's appraiser determined a lease rate of $$$$$ per square foot was appropriate for the subject property, based on the following comparable leases (Exhibit P-1):

	Subject	Lease #1	Lease #2	Lease #3	Lease #4	Lease #5	Lease #6	Lease #7
Address	SUBJECT ADDRESS	LEASE ADDRESS-1	LEASE ADDRESS-2	LEASE ADDRESS-4	LEASE ADDRESS-4	LEASE ADDRESS-5	LEASE ADDRESS-6	LEASE ADDRESS-7
Lease Date		10/14	07/14	07/14	02/14	01/14	12/13	10/13
Duration		## mos.	## mos.	## mos.	## mos.	## mos.	## mos.	## mos.
Sq. Ft.	#####	#####	#####	#####	#####	#####	#####	#####
Type		Full Service		NNN	Modified	Full Service	Full Service	NNN
Rent/Sq. Ft.		$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Lease Type		($$$$$)	$0		($$$$$)	($$$$$)	($$$$$)	$0
Market		1%	2%	3%	3%	3%	3%	4%
Location		0%	(5%)	0%	(10%)	0%	0%	(10%)
Size		(5%)	(5%)	0%	0%	(5%)	(10%)	(5%)
Quality		0%	5%	0%	0%	0%	0%	0%
Age/Condition		0%	2%	0%	(15%)	0%	5%	(8%)
Space Type		0%	0%	0%	0%	0%	0%	5%
Adjusted Price		$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

20. REPRESENTATIVE-2 FOR TAXPAYER stated that after the appraisal was complete, he discovered through additional research that his fifth lease comparable was a modified gross lease, rather than full service. He stated the adjustment for the lease type should be $$$$$, not $$$$$. When asked whether that changed his overall opinion of the market lease rate, REPRESENTATIVE-2 FOR TAXPAYER stated it did not, and explained that because the subject property is twice the size of the largest comparable, it should be at the low-end of the lease range.
21. The Taxpayer's appraiser concluded a stabilized vacancy rate of 7.0%. The appraisal noted overall office vacancy for COUNTY was 10.80%, but the subject property is owner occupied and short term

vacancy was not expected. The appraiser used a management fee of 1%, noting that the low end of the range reported by Asset Management Services was used because there is little involvement required for a triple net lease of a single tenant building. A reserve allowance of $$$$$ per square foot was used because of the age of the subject property. (Exhibit P-1).

22. The Taxpayer's appraiser determined a capitalization rate of 8%. The appraiser looked at the sales of large office properties, which had capitalization rates ranging from 6.82% to 9.63%. In addition, publications indicated national capitalization rates ranged anywhere from 3.75% to 10.50%. The appraiser looked at the band of investment, which indicated a capitalization rate of 8.06%. From these, the Taxpayer's appraiser concluded 8% was the most appropriate capitalization rate because the subject is very large, bringing additional cash flow risk. (Exhibit P-1).
23. RESPONDENT-1 stated that he has been with the COUNTY Assessor Office for thirty years, has been a certified general appraiser for twenty-three years, and supervised the commercial appraisers for over ten years. In his opinion, the subject property is an "excellent" grade office building. He noted the amenities of the subject property included a cafeteria, fitness center, and health clinic. RESPONDENT-1 stated that he toured the subject property in 1997 when it was built. He acknowledged technology has changed, and it was possible there was obsolescence in the cost approach. However, he would not give an obsolescence adjustment on the sales or income approaches. He noted that the former NAME OF BUILDING had even older technology, is inferior to the subject, and leases for $$$$$ per square foot.
24. RESPONDENT-1 argued there is a disconnect in ad valorem appraisal and outside fee appraisal regarding "first generation" properties. He cited to several prior Commission decisions for the proposition that "first generation" properties should be valued with the tenant in place.[3] He argued the Taxpayer's appraisal ignores the current "tenant," though the property is owner occupied.
25. RESPONDENT-1 argued the Taxpayer's lease comparables are "second generation" and do not represent the fair market value of the subject property. He stated the taxpayer's first comparable is inferior to the subject, and the owner offered below-market rent to keep the tenant in place. RESPONDENT-1 stated that comparable leases two and three are also inferior to the subject property.
26. In support of its requested value, the County submitted a retrospective appraisal prepared by RESPONDENT-2, a certified general appraiser. RESPONDENT-2 determined a value of $$$$$ as of the January 1, 2015 lien date. The appraisal included a cost approach, income approach, and sales comparison approach. (Exhibit R-1).

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[3] The County specifically referenced Appeal Nos. 15-319, 13-1079, and 07-0915. Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

27. The cost approach in the County's appraisal indicated a value of $$$$$. The appraiser concluded a land value of $$$$$ per square foot, and a depreciated replacement cost of $$$$$ for the improvements. (Exhibit R-1).

28. Following are the land sales used by the County's appraiser to determine a rounded land value of, or $$$$$ per square foot (Exhibit P-1):

	Address	Lot Size	Sales Date	Sales Price	Price/ Sq. Ft.	Adjusted Price
Subject	SUBJECT ADDRESS	#####				
Sale #1	ADDRESS-5	#####	01/30/15	$$$$$	$$$$$	$$$$$
Sale #2	ADDRESS-6	#####	09/19/14	$$$$$	$$$$$	$$$$$
Sale #3	ADDRESS-7	#####	11/23/13	$$$$$	$$$$$	$$$$$
Sale #4	ADDRESS-8	#####	04/17/12	$$$$$	$$$$$	$$$$$

29. The County's appraiser determined a replacement cost of $$$$$ per square foot for the subject property, taken from Marshall Valuation Services. The appraiser determined a cost of $$$$$ per square foot for site improvements, and added a 5% allowance for indirect costs, to arrive at an overall cost per square foot of $$$$$. (Exhibit R-1).

30. To the $$$$$ per square foot cost estimate, the appraiser added 10% for entrepreneurial profit. She determined an effective age of 15 years for the subject property, with an expected economic life of 60 years, and thus made a 25% reduction for depreciation. Following are the cost calculations in the County's appraisal (Exhibit R-1):

#####Square Feet @ $$$$$	$$$$$
Entrepreneurial Profit 10%	$$$$$
Total Replacement Cost New	$$$$$
Depreciation 25%	($$$$$)
Depreciated Replacement Cost	$$$$$
Rounded Depreciated Replacement Cost	$$$$$
Land Value	$$$$$
Indicated Property Value	$$$$$

31. RESPONDENT-2 stated she placed the least weight on the cost approach. She stated she brought the Marshall Valuation Service tables with her, and was unsure how the Taxpayer's appraiser arrived at the numbers used in his cost approach. She noted that he used a "blended" rate and a lower life expectancy for the subject property than she did.

32. The County's appraiser determined a rounded value of $$$$$, or $$$$$ per square foot, based on the following comparable sales (Exhibit R-1):

	Subject	Sale #1	Sale #2	Sale #3	Sale #4
Address	SUBJECT ADDRESS	ADDRESS-9	ADDRESS-10	ADDRESS-11	ADDRESS-12
Year Built	1997	2000	2009	2006	1985
Rental Class	A	A	A	A	A
Sq. Ft.	#####	#####	#####	#####	#####
Sales Date		10/14	02/14	11/14	02/15
Sales Price		$$$$$	$$$$$	$$$$$	$$$$$
Price/Sq. Ft.		$$$$$	$$$$$	$$$$$	$$$$$
Prop. Rights		0%	(8%)	0%	0%
Conditions		0%	(10%)	0%	0%
Market		1%	5%	1%	(1%)
Location		0%	(20%)	(15%)	(5%)
Size		(5%)	0%	0%	(5%)
Age/Cond.		0%	(9%)	(6%)	7%
Quality		5%	(15%)	(10%)	5%
Amenities		5%	0%	0%	3%
Parking		0%	5%	0%	0%
Adj. Price		$$$$$	$$$$$	$$$$$	$$$$$

33. RESPONDENT-2 argued the sales prices of the comparable properties encompass the lease characteristics, and believes the “economic conditions” adjustment made by the Taxpayer’s appraiser is double dipping. She noted that her first comparable, which was also used by the Taxpayer’s appraiser, had inferior finishes and amenities. RESPONDENT-2 stated her second comparable is located in the central business district, for which she made a location adjustment. She stated there were tax credits involved for that property as well, but she selected it as a comparable because of the size. RESPONDENT-2 stated she selected her third comparable because of its size and suburban location, but noted the location is superior to the subject. RESPONDENT-2 stated she selected her fourth comparable to bracket the subject; she noted it is inferior and smaller than the subject, but is in a slightly superior location because it has freeway access.
34. The County’s appraiser calculated a rounded value of $$$$$ using an income approach, based on a lease rate of $$$$$ per square foot, as follows (Exhibit R-1):

Potential Gross Rent	$$$$$
Vacancy and Collection Loss (8%)	($$$$$)
Effective Gross Income	$$$$$
Operating Expenses (3%)	$$$$$
Replacement Allowance (3%)	$$$$$
Net Operating Income	$$$$$
Capitalization Rate	$$$$$

Indicated Value	$$$$$
Rounded Value	$$$$$

35. The County's appraiser determined a lease rate of $$$$$ per square foot was appropriate for the subject property, based on the following comparable leases (Exhibit R-1):

	Subject	Lease #1	Lease #2	Lease #3	Lease #4
Address	SUBJECT ADDRESS	ADDRESS-13	ADDRESS-14	ADDRESS-15	ADDRESS-16
Lease Date		01/01/14	05/01/13	07/01/14	10/01/13
Sq. Ft.	#####	#####	#####	#####	#####
Lease Type		NNN	NNN	NNN	NNN
Rent/Sq. Ft.		$$$$$	$$$$$	$$$$$	$$$$$
Market		6%	10%	3%	8%
Location		0%	0%	0%	(5%)
Size		(5%)	(5%)	0%	(5%)
Age/Condition		0%	7%	5%	(6%)
Quality		5%	5%	10%	0%
Amenities		0%	0%	3%	5%
Parking		0%	0%	0%	5%
Adjusted Rent		$$$$$	$$$$$	$$$$$	$$$$$

36. RESPONDENT-2 stated she selected her lease comparables because they were NNN leases of large square footage properties. She conceded that her first lease comparables may need to be reduced, and explained she was initially told the lease was NNN, but later learned it was "net of gross." RESPONDENT-2 noted that her second comparable is the former NAME OF BUILDING, and is both smaller and inferior to the subject. RESPONDENT-2 stated her third comparable was also used by the Taxpayer, and she noted some functionality is lost because it is two buildings. RESPONDENT-2 stated that her fourth comparable was also used by the Taxpayer, and has a superior location because of freeway access.
37. RESPONDENT-2 stated that if revisions were made to her first lease comparable, the average lease rate would be $$$$$ per square foot. With the revised lease rate, it indicates a value of $$$$$, rounded to $$$$$. The County placed the most weight on the income approach, and asked the Commission to raise the value of the subject property to $$$$$.
38. The County's appraiser concluded a stabilized vacancy rate of 8.0%. The appraisal noted brokers were reporting vacancy near the lien date was around 5%, but considered market reports for office space in general and suburban office space in determining the 8% vacancy rate. The appraiser used 3% for reserves and 3% for management, but noted expenses would likely be less as the property has a single occupant. The appraiser used a capitalization rate of 7.50%, based on the sales of office buildings in the county that had capitalization rates ranging from 6.51% to 8.00%. The appraisal also

indicated market publications showing capitalization rates ranging from 6.00% to 7.96%. (Exhibit R-1).

39. In rebuttal, the Taxpayer's representative argued the County is valuing the property in use, and not as the market would support. It is the Taxpayer's position there is value added to the comparable sales for the leases that are in place. The Taxpayer argued the County is assuming TAXPAYER is going to remain in the building indefinitely.

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 higher than the value originally assessed, Utah Code Ann. §59-2-109(2) places the burden of proof on the respondent to support its position, as follows:

> (2) Notwithstanding Section 59-1-604, in an action appealing the value of property assessed by an assessing authority, the assessing authority has the burden of proof before a board of equalization, the commission, or a court of competent jurisdiction, if the assessing authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the value originally assessed by the assessing authority for that calendar year.

To prevail in this case, the petitioner must show error in the subject property's current value, while the respondent must show error in the property's originally assessed value; and 2) either party must 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*, 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

A. Property tax is based on the property's "fair market value" pursuant to Utah Code Ann. §59-2-103. "Fair market value" is defined in Utah Code Ann. §59-2-102 as the amount for which a 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.

B. The Taxpayer and the County have each asked for a value other than that determined by the Board of Equalization, which sustained the original assessed value. Thus, the Taxpayer has the burden of proof to show both an error in the Board of Equalization value, and to provide a sound evidentiary basis in support of its requested value. Additionally, the County has the burden of proof under Utah Code Ann. §59-2-109(2) to show both an error in the original assessed value, as well as to provide a sound evidentiary basis in support of its requested value.

C. The Taxpayer has not sustained its burden of proof to provide a sound evidentiary basis to support its requested value of $$$$$. The Taxpayer submitted a retrospective appraisal that used the cost approach, income approach, and sales comparison approach. The appraiser put no weight on the cost approach, and gave the income approach "secondary" weight. Concluding an owner user is the most likely buyer for the subject property, the appraiser gave the sales comparison approach the greatest weight. Thus, the Commission focuses on the Taxpayer's sales comparison approach.

The Taxpayer's appraiser testified that he was valuing the fee simple value of the subject property; that he was not valuing as if the property were vacant, nor was he valuing it as a sale/lease back. To do this, the Taxpayer's appraiser made a "property rights" adjustment to each of the comparable sales. The adjustment accounts for such things as rent loss, holding costs, tenant improvement, leasing commissions, rent concessions, and developer profit. The Commission has previously rejected similar adjustments.[4] In Appeal No. 15-319,[5] the appraiser for the Taxpayer subtracted "lease up costs" though the property was fully occupied as of the lien date. The Commission held, "[t]he 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." Similarly, in Appeal No. 13-1079, the 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 appraiser's adjustments for obsolescence should be removed from the taxpayer's appraisal is convincing.

Likewise, in Appeal No. 07-0935[6] the Commission found, "[t]he likelihood that the subject property will be sold or rented as a second generation property with diminished demand in the near future is, at best, minimal. To value the property in this manner as of the lien date, as the taxpayer supports, would ignore the subject's current use and the likelihood that this "higher" use will continue for many years."

As of the lien date, the subject property was occupied by the Taxpayer. The Taxpayer is the first-generation owner, and there was no indication the Taxpayer had any plans to vacate the subject property. "Fair market value" is defined as the amount for which a property would exchange hands between a willing buyer and willing seller. The analysis in the Taxpayer's appraisal evaluates what discounts a potential buyer might consider, but does not consider whether the Taxpayer, the potential

[4] Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.
[5] The County cited to the Initial Hearing Order for Appeal No. 15-319. The Initial Hearing Order was set aside, and a Formal Hearing was held. The Commission issued its Findings of Fact, Conclusions of Law, and Final Order on June 13, 2016. The Commission cites to the Order from the Formal Hearing.
[6] The County erroneously cited to Appeal No. 07-0915. The referenced decision is for Appeal No. 07-0935.

seller, would be willing to accept those discounts for the property. The Taxpayer's appraisal does not appear to attribute value to the subject's circumstances as they were as of the lien date. Specifically, that the subject is a first generation owner-occupied property, and is expected to remain that way for the foreseeable future. If the "property rights" and "economic characteristics" adjustments were excluded, the Taxpayer's comparable sales support a value in excess of $$$$$. Accordingly, the Commission concludes the Taxpayer's appraisal does not provide a sound evidentiary basis in support of its requested value of $$$$$.

D. The County has sustained its burden of proof to provide a sound evidentiary basis to support its requested value of $$$$$. The County submitted a retrospective appraisal that used the cost approach, income approach, and sales comparison approach. The appraiser put no weight on the cost approach, considering the value derived to be an outlier. The County's appraisal noted that due to the number of available leases and the close proximity to the subject of two of the lease comparables, the most weight is being placed on the income approach. The revised value requested by the County's representative at the hearing appears to be based on the income approach, but is supported by the sales comparison approach. The Commission focuses primarily on the County's income approach.

The County derived its lease rate from four comparable lease properties with actual lease rates ranging from $$$$$ to $$$$$, and adjusted lease rates ranging from $$$$$ to $$$$$. Lease comparables one and four were also used by the Taxpayer's appraiser. Of note is the County's lease comparable two, which was formerly occupied by the Taxpayer. It is older and inferior to the subject and is currently leased for $$$$$ per square foot, adjusted to $$$$$ per square foot. The County's revised lease rate of $$$$$ per square foot is more persuasive than the Taxpayer's lease rate of $$$$$. The vacancy and collection loss, operating expenses, and replacement allowance used by the County were more favorable to the Taxpayer than those used in the Taxpayer's appraisal. The County used a 7.50% capitalization rate, which falls within the range of capitalization rates presented by both parties, and appears to be reasonable given that the subject is owner occupied, and is expected to remain that way for the foreseeable future. The value should be increased to $$$$$.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of parcel no. ##### was $$$$$ as of the January 1, 2015 lien date. The COUNTY Auditor is hereby ordered to adjust its 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.