

16-719

TAX TYPE: PROPERTY TAX

TAX YEAR: 2016

DATE SIGNED: 2-21-2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 16-719
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2016
	Judge: Phan

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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, COUNTY Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY Board of Equalization ("the County") under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on November 21, 2016, in accordance with Utah Code §59-1-502.5. The COUNTY Assessor's Office valued the subject as personal property in the amount of \$\$\$\$ as of the January 1, 2016 lien date. The County Board of Equalization sustained the value. The Property Owner is requesting the value of the subject property be reduced to \$\$\$\$\$. At the hearing, the County requested the value remain as set at \$\$\$\$\$. However, the County Assessor

did offer to look at the interior of the airplane hangar to review whether there were errors on the County records regarding the quality or condition. As of the date of this decision, there was no indication the County and Property Owner had reached a settlement or agreement based on a review of the property.

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, regarding personal property as provided in Utah Code Ann. §59-2-1005, in pertinent part, below:

- (1) (a) A taxpayer owning personal property assessed by a county assessor under Section 59-2-301 may make an appeal relating to the value of the personal property by filing an application with the county legislative body no later than: (i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306; or (ii) 60 days after the mailing of the tax notice, for each other taxpayer.
(b) A county legislative body shall: (i) after giving reasonable notice, hear an appeal filed under Subsection (1)(a); and (ii) render a written decision on the appeal within 60 days after receiving the appeal.
(c) If the taxpayer is dissatisfied with a county legislative body decision under Subsection (1)(b), the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner 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 it proposes. *See Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State*

Tax Comm'n, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is an airplane hangar, which the Property Owner had constructed on land that he leased from the NAME OF AIRPORT. The land itself is owned by a government entity and is not part of this assessment. The County had issued as a personal property assessment a tax on the metal airplane hangar based on a depreciated cost. At the hearing, the County Assessor explained they had used the Marshall and Swift costing system to value the airplane hangar. This system calculates the cost new to construct the improvement and then adjusts for depreciation based on the age of the improvement. Although the County Assessor did not provide the cost report as evidence in this matter, he did testify that the County had considered the hangar to have an effective age of 20 years and based on that had made a 53% adjustment for depreciation. He also stated they had used the lowest cost grade for the airplane hangar. As the Property Owner did not own the land, the County's value was only for the improvement and not for the underlying land.

The Property Owner had several contentions with the value set at \$\$\$\$\$. First, he explained that the County had told him that values based on a cost approach would only decrease. He stated that he had built the airplane hangar in 2000 and at that time, an employee of the County had inspected the building and set the value for the building at \$\$\$\$\$. For the 2016 tax year, the County had reappraised the property and the value jumped up to the \$\$\$\$\$. It was the Property Owner's contention that the value should not increase for this building.

Second, the Property Owner also argued that it would cost him only around \$\$\$\$\$ to construct the airplane hangar. He did indicate that he was a builder and had built the subject airplane hangar for his own personal use and that he had also built airplane hangars for other people. He provided a hand written list of some of the materials used to build the hangar and the costs of the materials. He did not provide invoices or receipts of bids that supported the cost stated for most of the materials. His cost list did not include all of the costs that would be captured in a cost valuation appraisal method. He did not include any amount for labor, impact or building permit fees, engineering, entrepreneurial profit or even shipping costs. The only actual invoice for any item on his handwritten list of costs was from COMPANY-1. This invoice was dated May 17, 2004 and listed a 39' wide by 9'6" high bi-fold door. The invoice indicated a cost for the door of \$\$\$\$\$ plus \$\$\$\$\$ for shipping, for a total of \$\$\$\$\$. However, when the Property Owner listed the door on his handwritten cost estimate, he listed the cost at \$\$\$\$\$, not the cost of \$\$\$\$\$ to have the door delivered to the job site. It was unclear if this was an invoice for the door

at the subject property or a door for a different project. In addition, it is not known what this door would currently cost, or if the other costs listed, like for lumber or steel, were the current costs for these materials or had been costs in 2000 or 2004.

A third concern expressed by the Property Owner was that one of the members of the County Legislative Body who had heard his appeal at the County level, NAME-1, had a conflict of interest in this appeal. He explained that he had constructed an airplane hangar for NAME-1 and the cost he had charged NAME-1 was much higher than what the Property Owner was requesting in this appeal. However, the Property Owner stated that he had used a much higher grade of materials and finish for NAME-1's hangar than he had for the subject property hangar. The Property Owner did not provide how much he charged NAME-1 for his higher quality hangar. NAME-1 was the one who had signed the decision letter on behalf of the County Legislative Body that denied the Property Owner's appeal at the County level. In that decision was the statement, "NAME-2 stated that she can go back 5 years to see what PETITIONER has paid and compare it to what others paid for their hangars; others paid a lot more than him." The County did not provide notes or minutes of this hearing so it is not known whether NAME-1 disclosed that he had firsthand knowledge of the cost at which at least one of these hangars had been purchased.

Upon reviewing the arguments and information presented by the parties at this hearing, it is clear that a cost approach can be an appraisal method to determine the fair market value of a property. However, a valid appraisal cost approach is not the cost of the materials only, but what someone would have to pay a general contractor to build the building plus any other permit, impact, engineering or architectural fees. It would be assumed in this that the general contractor would add a profit margin to the amount charged and labor would be included in the cost. In this appeal, the handwritten list of costs of materials was not a complete cost estimate. The County Assessor indicated that the County used a Marshall and Swift Costing System. This is a common appraisal costing system and does attempt to take into account all of the costs like labor, shipping and entrepreneurial profit, then adjusts for an age-based depreciation.

The Property Owner had indicated concern that he had been told that a cost approach value would never increase, that it would depreciate every year as the improvement aged. Based on this, he thought the County should not be able to raise the value of this structure. However, property tax is based on the fair market value of the property as of January 1 of the tax year at issue, under Utah Code §59-2-103. When a valuation is appealed, the Tax Commission must determine the fair market value as of the lien date at issue in the appeal. If the evidence indicates the fair market value is higher than as set for prior years, the law requires the value be raised to

the fair market value. The subject property may have been undervalued for prior years. Additionally, cost values can appreciate because costs increase over time. Labor and materials may have been higher in 2016 than in 2000. The Property Owner had provided an invoice for a bi-fold door that had cost \$\$\$\$ in 2004. The price for that type of door may be substantially higher now. The appraisal cost approach would attempt to estimate the cost new as of the lien date and then depreciate the cost based on the age of the building. The cost new can increase over time and theoretically, may increase at a higher rate than the age based depreciation.

The Property Owner has not provided a complete appraisal cost approach and has the burden of proof in this matter. The County had reappraised the property for 2016 using a cost method designed to capture all of the costs and concluded the value for the subject property to be \$\$\$\$\$. Without further evidence, the value should remain as set by the County.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2016 lien date. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Appeal No. 16-719

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.
DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner