

16-833

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2015

DATE SIGNED: 4/27/2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 16-833 Parcel No. XXX- 002 Tax Type: Property Tax / Locally Assessed Tax Year: 2015 Judge: Chapman
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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 mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative

For Respondent: RESPONDENT, from the COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 14, 2017.

At issue is the fair market value of the subject property as of January 1, 2015. The subject is an office building and parking structure located at SUBJECT ADDRESS in CITY-1, Utah. The County BOE sustained

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the \$\$\$\$ value at which the subject property was assessed for the 2015 tax year. The taxpayer asks the Commission to reduce the subject's value to \$. The County asks the Commission to sustain the subject's current value of \$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

UCA §59-2-102(12) defines “fair market value” to mean “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.”

UCA §59-2-301.4 provides for a county assessor to consider certain prior valuation reductions when assessing a property, as follows:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

UCA §59-2-1006(1) provides that “[a]ny 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.”

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 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 49, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property consists of #####-acres of land, an office building with #####-square feet of rentable space, and a #####-square foot parking structure with ##### parking stalls. The improvements were built in 1965. The County has classified the subject’s office building as Class B office space.

In recent years, the subject’s office building has experienced excessive vacancy. REPRESENTATIVE FOR TAXPAYER, the taxpayer’s representative, stated that the office building’s vacancy rate was at 36% at year-end 2013. In addition, he provided the final page from the subject’s rent roll to show that the office building’s total vacancy rate was still at 36% at year-end 2014.¹

1 REPRESENTATIVE FOR TAXPAYER stated that the office building’s vacancy rate may have increased to 42% for year-end 2014, even though the subject property’s rent roll shows otherwise. REPRESENTATIVE FOR TAXPAYER, however, did not provide any evidence to support this claim. Furthermore, as will be explained in more detail later in the decision, REPRESENTATIVE FOR TAXPAYER calculated the short-term losses associated with the subject’s excess vacancy based on a vacancy rate of 36% as of year-end 2014. As a result, the Commission considers the vacancy rate of the subject’s office building to be 36% at year-end 2014.

The subject's current value of \$\$\$\$\$ is the sum of two income approach values, one produced for the subject's office building and another one produced for the subject's parking structure. The income approaches with which the County originally assessed the office building and parking structure were not proffered at the Initial Hearing.² The County, however, did proffer that the parking structure's income approach value was originally estimated to be \$\$\$\$\$. Once this \$\$\$\$\$ value is deducted from the subject property's total assessed value of \$\$\$\$\$, the remainder is \$\$\$\$\$. As a result, it appears that the office building's income approach value was originally estimated to be \$\$\$\$\$.

The taxpayer does not contest the \$\$\$\$\$ value that the County originally estimated for the parking structure. The taxpayer, however, contends that the \$\$\$\$\$ value that the County originally estimated for the office building is too high. As will be explained in more detail below, the taxpayer proffers an income approach with which it derives a value of \$\$\$\$\$ for the office building. Because the sum of the taxpayer's proposed value of \$\$\$\$\$ for the office building and the original \$\$\$\$\$ value of the parking structure is approximately \$\$\$\$\$, the taxpayer asks the Commission to reduce the subject's current total value of \$\$\$\$\$ to \$\$\$\$\$.

In addition, the taxpayer contends that its proposed value of \$\$\$\$\$ is supported by Section 59-2-301.4, because the County BOE reduced the subject's total value from \$\$\$\$\$ to \$\$\$\$\$ for the 2014 tax year. The Commission will first address the taxpayer's proposed income approach for the office building, after which it will address the Section 59-2-301.4 argument.

Income Approach Value - Office Building

² The County indicated that the income approach with which the office building's value was originally derived included a "tabled" expenses rate of \$\$\$\$\$ per square foot (which included reserves expenses) and a deduction of 10% of the subject's total improvements value to account for the stabilization costs associated with the office building's excess vacancy. The other components of the income approach that the County originally used to derive the office building's value were not provided.

Both parties have used an income approach to estimate the value of the subject’s office building. As mentioned before, neither party provided the original income approach that the County used to derive a value of approximately \$\$\$\$ for the office building. However, the County has proffered a new income approach that results in a higher value for the office building, as follows:

#####	Rentable Sq. Ft.
x \$\$\$\$\$	Market Rent Per Sq. Ft. (triple net)
\$\$\$\$\$	Potential Gross Income (“PGI”)
- \$\$\$\$\$	Stabilized Vacancy & Collection Losses (10% of PGI)
\$\$\$\$\$	Effective Gross Income (“EGI”)
- \$\$\$\$\$	Expenses (27% of EGI, which equates to \$\$\$\$ per square foot)
\$\$\$\$\$	Net Operating Income (“NOI”)
÷ 9.60%	Capitalization Rate (8.0% capitalization rate plus 1.6% property tax rate)
\$\$\$\$\$	“Stabilized” Value of Subject’s Office Building
\$\$\$\$\$ ³	Deduction for Stabilization Costs (10% of subject’s revised improvements value)
\$\$\$\$\$	Final Value for Subject’s Office Building

Because its new income approach value of \$\$\$\$ for the office building is about \$\$\$\$ higher than the office building’s original value of \$\$\$\$ and because the taxpayer is not contesting the parking structure’s original value, the County contends that the subject’s current total value is reasonable. In addition, the County asks the Commission to consider that the taxpayer purchased the subject property for \$\$\$\$ on July 30, 2013 (about 1½ years before the 2015 lien date). For these reasons, the County asks the Commission to sustain the subject’s original value of \$\$\$\$.

As shown by the taxpayer’s proposed office building income approach, as follows, the taxpayer agrees with most of the components of the County’s new income approach for the office building, with three

3 The County’s deduction for stabilization costs that the taxpayer will incur while the office building’s vacancy rate of 36% is reduced to 10% is based on the following formula:

\$\$\$\$\$	Revised “Stabilized” Value of Office Building
+ \$\$\$\$\$	Original Value of Parking Structure
\$\$\$\$\$	Total Revised “Stabilized” Value of the Subject Property
- \$\$\$\$\$	Minus Subject Property’s Land Value
\$\$\$\$\$	Total Revised “Stabilized” Improvements Value of the Subject Property
<u>x 10%</u>	

exceptions, specifically: 1) the expense rate; 2) the lack of a reserves expense; and 3) the amount of the deduction for stabilization costs associated with the excess vacancy:

#####	Rentable Sq. Ft.
x \$\$\$\$\$	Market Rent Per Sq. Ft. (triple net)
\$\$\$\$\$	Potential Gross Income (“PGI”)
- \$\$\$\$\$	Stabilized Vacancy & Collection Losses (10% of PGI)
\$\$\$\$\$	Effective Gross Income (“EGI”)
- \$\$\$\$\$	Expenses (\$\$\$\$ per square foot)
- \$\$\$\$\$	Reserves Expense (3% of EGI)
\$\$\$\$\$	Net Operating Income (“NOI”)
÷ 9.60%	Capitalization Rate (8.0% capitalization rate plus 1.6% property tax rate)
\$\$\$\$\$	“Stabilized” Value of Subject’s Office Building
- \$\$\$\$\$ ⁴	Deduction for Stabilization Costs Associated with the Excess Vacancy
\$\$\$\$\$	Final Value for Subject’s Office Building

The difference between the \$\$\$\$ value the County derived with its new income approach for the office building and the \$\$\$\$ value the taxpayer derived with its office building income approach is \$\$\$\$\$. This \$\$\$\$ difference can be allocated as follows: 1) approximately \$\$\$\$ of the difference is due to the taxpayer’s use of a \$\$\$\$ per square foot expenses rate, in comparison to the County’s use of a \$\$\$\$ per square foot expenses rate; 2) approximately \$\$\$\$ of the difference is due to the taxpayer’s deduction of an additional reserves expense rate of 3%, in comparison to the County’s decision not to deduct an additional reserves expense; and 3) approximately \$\$\$\$ is due to the difference between the taxpayer’s excess vacancy stabilization costs of \$\$\$\$ and the County’s excess vacancy stabilization costs of \$\$\$\$\$. The Commission

4 \$3,171,469 Deduction for Stabilization Costs Associated with Excess Vacancy

 The taxpayer’s deduction for stabilization costs is based on excess vacancy of 26% (36% actual vacancy rate minus stabilized vacancy rate of 10%). The deduction is intended to account for the short-term losses and expenses the taxpayer will incur during the period the office building is “leased up” to its stabilized vacancy rate of 10%, as follows:

\$\$\$\$\$	Rent Loss (based on a lease up period of two years with a larger percentage of the lease up occurring in the second year)
+ \$\$\$\$\$	Leasing Commission Costs (based on five-year lease term and 6% commission rate)
+ \$\$\$\$\$	Tenant Improvements (at \$\$\$\$ per square foot)
\$\$\$\$\$	Total Deduction for Stabilization Costs Associated with Excess Vacancy

will first address the parties' respective expenses, after which it will address the excess vacancy stabilization costs.

Expenses. In their respective office building income approaches, the parties accounted for the property tax expense by adding the property tax rate to the capitalization rate. In addition, they both have estimated all other "stabilized" expenses as a deduction to arrive at NOI. From EGI, the taxpayer deducted "operating" expenses (excluding property taxes) of \$\$\$\$ per square foot and a reserves expense of 3%, whereas the County deducted total expenses (excluding property taxes) of \$\$\$\$ per square foot.⁵

At first glance, it appears that the County may have omitted a reserves expense because a *separate* deduction for this expense is not included in the County's new income approach for the office building. At the hearing, however, RESPONDENT indicated that the \$\$\$\$ per square foot expenses rate used in the County's new income approach included a reserves expense and, thus, includes all deductible expenses except for property taxes.⁶ To support the \$\$\$\$ per square foot expenses rate, the County proffered an Office Building Operating Expenses report prepared by COMPANY-1("COMPANY-1"). The report shows the CAM charges (excluding property taxes) that tenants paid in 16 Class B office buildings in CITY-1's COMPANY-1D.⁷ The

5 The taxpayer has not provided the office building's actual 2014 expenses, which is often helpful in determining the correct amount of stabilized expenses that should be deducted to derive NOI. The taxpayer contends that the office building's actual 2014 expenses would not be helpful in establishing the office building's stabilized expenses because of its excess vacancy during 2014 (i.e., that actual expenses may be lower than stabilized expenses because of the lower number of tenants and fewer expenses that a 36% vacant building has in comparison to a 10% vacant building). Regardless, it might be useful to know what CAM (common area maintenance) expenses the taxpayer charged and recouped from the full-service tenants that did occupy the office building during 2014.

6 The County also indicated that in its original income approach to value the office building, it had used an expense rate of \$\$\$\$ per square foot and that this expense rate had also included a reserves expense but had excluded property taxes.

7 The portion of the COMPANY-1 report that the County provided does not show the year or period during which these expenses were incurred. It is assumed that the COMPANY-1 report shows expenses that were incurred in 2014.

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CAM charges (excluding property taxes) ranged between \$\$\$\$ and \$\$\$\$ per square foot, with a mean of \$\$\$\$ per square foot and a median of \$\$\$\$ per square foot. The County's \$\$\$\$ per square foot expenses rate falls within the mean and median of these CAM charges that were reported for Class B office buildings. As a result, the County contends that the COMPANY-1 report supports its use of a \$\$\$\$ per square foot expenses rate to account not only for all ordinary expenses (except for property taxes), but also for reserves expenses.

The taxpayer, however, claims that CAM charges do not include reserves for future capital expenditures. The Commission is aware that an income approach used to value a commercial property typically includes a deduction for reserves (because the income that is capitalized into perpetuity generally cannot be maintained without future capital expenditures that are not reflected in the deduction of ordinary expenses). The Commission is also aware that under full-service leases, tenants often pay a CAM charge to reimburse the property owner for expenses that have occurred during the year. For future capital expenditures that have not yet been incurred, however, the Commission is not aware that full-service tenants pay such expenses in advance as part of their current CAM charges. Without evidence to show otherwise, the Commission finds that the CAM charges shown on the County's COMPANY-1 report do not include a reserves expense. As a result, the County's reliance on the COMPANY-1 report to support its use of a \$\$\$\$ per square foot expense rate for all ordinary expenses (except for property taxes) and for reserves expenses appears to be misplaced. For these reasons, the Commission finds that the County's new income approach for the subject's office building improperly excludes a reserves expense. The Commission is aware that a 3% reserves expense, as proposed by the taxpayer, is often deducted in the income approach. Because the County has not shown that the reserves expense should be less than 3%, the Commission finds that an income approach to value the subject's office building should include a 3% reserves expense.

Remaining at issue is whether the County's \$\$\$\$ per square foot rate or the taxpayer's \$\$\$\$ per square foot rate better reflects the subject's stabilized ordinary expenses (except for property taxes) that should be deducted to derive NOI. To support its proposed expenses rate of \$\$\$\$ per square foot, the taxpayer proffers a BOMA Experience Exchange Report for the 2014 tax year, which shows the mean and median expenses incurred by nine office buildings that have between ##### and ##### of rentable space and that are located in downtown CITY-1. These nine buildings have a mean operating expense of \$\$\$\$ per square foot and a median operating expense of \$\$\$\$ per square foot.

The concern with the taxpayer's BOMA evidence, however, is that it does not indicate whether any of the office buildings used for the report are Class B office buildings (like the subject's office building). The County's COMPANY-1 report shows that expenses are typically higher for Class A office buildings than for Class B office buildings. If the nine office buildings used for the BOMA report are all or primarily Class A office buildings, their expenses may overestimate the expenses of an office building like the subject's Class B office building. Furthermore, it is noted that the County's COMPANY-1 report provides the CAM charges of 16 Class B office buildings and that none of these CAM charges are as high as the taxpayer's proposed rate of \$\$\$\$ per square foot. As a result, the County's COMPANY-1 report, which is specific to Class B office buildings, supports the County's use of a \$\$\$\$ per square foot rate to account for all stabilized ordinary expenses (except for property taxes).

It is noted that the taxpayer has the burden of proof in this matter. Without additional evidence to show that *Class B* office buildings typically have ordinary expenses (excluding property taxes) of \$\$\$\$ per square foot, the Commission declines to find that this expense rate should be used in an income approach to value the subject's office building. For these reasons, the Commission finds that the expenses to be deducted from EGI to derive NOI should include: 1) an expenses rate of \$\$\$\$ per square foot; and 2) a reserves expense rate of 3%.

Excess Vacancy Stabilization Costs. Because a stabilized income approach used to value the subject's office building deducts a stabilized vacancy rate of 10% and because the subject property's actual vacancy rate is 36%, the office building is not expected, in the short-term, to generate all of the EGI reflected in the stabilized income approach. Furthermore, the taxpayer is expected to incur additional expenses, in the short-term, that are not accounted for in the stabilized income approach, specifically: 1) operating expenses for the excess vacant space (i.e., for that space currently without full-service tenants who would be paying the expenses instead of the property owner); 2) commission costs to lease the excess vacant space; and 3) tenant improvement costs. As a result, both parties have deducted short-term stabilization costs that the taxpayer is expected to incur during the lease up period needed to reduce vacancy from 36% to 10%. The taxpayer has estimated these short-term stabilization costs to be \$\$\$\$\$, while the County has estimated these short-term costs to be \$\$\$\$\$.

The County determined the excess vacancy stabilization costs to be 10% of the subject's total improvements value. The County, however, did not explain how this methodology produces a better estimate of excess vacancy stabilization costs than a methodology, like the taxpayer's, that estimates the short-term loss of revenue and the additional, short-term expenses associated with the building's actual excess vacant space. As a result, the County's methodology appears to be more of an educated guess than a reasoned consideration of the various short-term losses associated with the excess vacant space. For these reasons, the taxpayer's methodology will be more convincing if the various components that comprise the taxpayer's methodology are reasonable.

The taxpayer deducted leasing commission costs of \$\$\$\$\$ (based on five-year leases and 6% commission rates), which appears reasonable, especially where the County did not contest this deduction. The taxpayer also deducted tenant improvement costs of \$\$\$\$\$ (based on tenant improvement costs of \$\$\$\$\$ per square foot for the excess vacant space). The County questioned the \$\$\$\$\$ per square foot rate, but did not

provide evidence to show that tenant improvement costs are typically lower. The taxpayer provided evidence that one of the spaces recently leased in the subject's office building had tenant improvement costs of more than \$\$\$\$ per square foot. For these reasons and because tenant improvement costs in an older building, like the subject property, may be higher, the Commission will also accept the taxpayer's estimated tenant improvement costs.⁸

Lastly, the taxpayer deducted rent loss of \$\$\$\$ based on a lease up period of two years with a larger percentage of the lease up occurring during the second year. The Commission often allows a lease up period of two years where the lease up occurs evenly throughout the two-year period. If the lease up were assumed to occur evenly, the rent loss would only be \$\$\$\$\$, which is about \$\$\$\$\$ lower than the taxpayer's estimated rent loss. However, it is noted that the taxpayer failed to deduct the additional operating expenses that it (as the owner) will have to incur while the excess vacant space does not have tenants to pay the expenses. At \$\$\$\$ per square foot per year, this additional short-term expense would total \$\$\$\$\$ and more than compensate for the \$\$\$\$\$ of rent loss that was possibly overestimated. For these reasons, the Commission accepts the taxpayer's proposed excess vacancy stabilization costs of \$\$\$\$\$ and finds that this amount should be deducted from the stabilized income approach value that is derived for the subject's office building.

Office Building Income Approach Summary. Based on the foregoing, the Commission accepts the taxpayer's proposed office building income approach, with one exception. Specifically, the Commission finds that the \$\$\$\$ per square foot expenses rate that the taxpayer used should be revised to reflect the \$\$\$\$ per square foot rate used in the County's new income approach for the office building. Once this revision is made, the taxpayer's revised income approach shows a value of \$\$\$\$ for the subject's office building.

⁸ On page 9 of the taxpayer's evidentiary packet, it appears the taxpayer has shown that six spaces in the subject's office building have leased in 2014 and 2015. Had the County provided evidence to contest the taxpayer's estimated tenant improvement costs of \$\$\$\$ per square foot, information about the actual tenant improvements for *all* six of these leases may have been useful.

Total Value. When the \$\$\$\$ value of the subject's office building (as derived in the prior paragraph) is added to the \$\$\$\$ value of the subject's parking structure (which was not contested), it results in a total value of approximately \$\$\$\$ for the subject property. This \$\$\$\$ value, as of January 1, 2015, is 4.2% higher than the \$\$\$\$ price that the taxpayer paid for the subject property on July 30, 2013 (which occurred 17 months prior to the 2015 lien date at issue). As a result, the \$\$\$\$ value reflects an annual value increase of 3% since the subject property was purchased on July 30, 2013.

A 3% annual increase over a July 30, 2013 purchase price does not appear to be unreasonable. The County indicated that prior to the 2015 lien date, office building lease rates had been going up and that office building capitalization rates had been going down, which would result in higher values for office buildings as of the 2015 lien date than for prior periods. The taxpayer did not refute these assertions or show that, since it purchased the subject property, values have increased at an annual rate of less than 3%. In addition, the taxpayer has not shown that the subject's vacancy rate has increased since it purchased the subject property or that other circumstances have occurred that would have caused the subject property's value to decrease since the taxpayer purchased it in 2013. For these reasons, the subject's current total value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2015 tax year, unless a further reduction is warranted in accordance with Section 59-2-301.4.

Section 59-2-301.4 Argument

The taxpayer contends that the subject's 2015 value should be reduced to its proposed value of \$\$\$\$ pursuant to Section 59-2-301.4 because: 1) the County BOE reduced the subject's 2014 value from \$\$\$\$ to \$\$\$\$;⁹ and 2) "nothing much has changed" between 2014 and 2015, as the vacancy rate of the subject's office building has remained about the same.

⁹ Neither party appealed the County BOE's decision concerning the subject property's 2014 value to the Tax Commission.

The County, on the other hand, contends that the 2014 value established by the County BOE is not controlling because “each year stands on its own.” The County admitted that it does not know the reasons why the County BOE reduced the subject’s 2014 value, but contends that the decision may have been wrong. Neither party has provided a copy of the 2014 County BOE’s 2014 decision so that the Commission could consider the reasons why the County BOE established a value of \$\$\$\$ for the subject property as of January 1, 2014 (five months after the taxpayer purchased the subject property for \$\$\$\$).

Prior to the 2013 tax year, the County’s statement that “each year stands on its own” may have been correct. However, effective for tax year 2013, Subsection 59-2-301.4(1) and (2) provide that where a property’s value has been reduced within the three years before the lien date at issue, a county assessor shall consider “any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal” and “whether the reasons for the valuation reduction continue to influence the fair market value of the property.” As a result, at a Tax Commission hearing that concerns a Section 59-2-301.4 valuation reduction in whole or in part, a county is expected to provide evidence to show that it followed Utah law and considered the prior valuation reduction when assessing the property whose value is at issue. A county’s failure to provide such evidence may be a factor that the Commission considers when determining whether a party has met its burden of proof or not.

In the instant case, the County has not shown that it considered the subject property’s 2014 valuation reduction when it assessed the subject property for the 2015 tax year at issue. As a result, this is a factor that the Commission will consider when determining whether the taxpayer has met its burden of proof to show that the subject’s 2015 value should be reduced under Section 59-2-301.4. Nevertheless, the Commission also notes that Subsection 59-2-301.4(3) provides that the statute “does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.”

The Commission has interpreted Subsections 59-2-301.4(1), (2), and (3) to mean that a value reduction within three years before the lien date shall be considered in establishing the subject's value as of the lien date at issue, especially where evidence relevant to the lien date at issue does not show that the subject's value has significantly changed since the year for which the reduction occurred.¹⁰ These provisions, however, do not provide that a county assessor *must assess* a property at the value to which it was reduced within the prior three years. It provides that a county assessor *must consider* the value reduction when assessing the property for the year at issue. In addition, Subsections 59-2-301.4(2)(b) and (3) make clear that a county assessor may consider factors other than the valuation reduction when assessing a property for a current year. Given these guidelines, the Commission will address how the subject property's 2014 valuation reduction affects its 2015 value.

As mentioned earlier, the taxpayer has the burden of proof in this matter. As a result, the taxpayer also has the burden of proof to show that the subject property's 2015 value should be reduced to \$\$\$\$ pursuant to Section 59-2-301.4. For a property subject to a valuation reduction, Subsection 59-2-301.4(2)(b) requires, in part, a consideration of "whether the reasons for the valuation reduction continue to influence the fair market value of the property." Had the taxpayer provided a copy of the 2014 County BOE decision, perhaps the Commission could have determined whether the reasons for the 2014 valuation reduction continue to influence the subject property's 2015 fair market value and why the 2014 County BOE established a value for the subject property that was more than \$2.2 million below its purchase price five months earlier.

Without such information, however, the Commission is unable to determine whether the reasons for the 2014 valuation reduction continue to influence the subject property's value as of the 2015 lien date and, thus, is unable to determine whether the taxpayer's proposed reduction for 2015 is warranted under Section 59-

¹⁰ See, e.g., *USTC Appeal Nos. 13-2390 & 15-36* (Findings of Fact, Conclusions of Law, and Final Decision Dec. 18, 2015); *USTC Appeal No. 16-160* (Findings of Fact, Conclusions of Law, and Final Decision Feb. 15, 2017). Redacted copies of these and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

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2-301.4. Accordingly, even though the County did not show that it complied with its statutory duties under Section 59-2-301.4, this one factor is insufficient for the taxpayer to meet its burden of proof and show that that the subject's 2015 value should be reduced below the \$\$\$\$ value that was derived earlier with the income approach. For these reasons, the Commission should reduce the subject's value to \$\$\$\$ for the 2015 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2015 tax year. The COUNTY-1 Auditor is ordered to adjust its records in accordance with this decision.

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
CITY-1, Utah 84134

or emailed to:

taxappeals@utah.gov

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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