

18-814 & 19-349

TAX TYPE: LOCALLY ASSESSED PROPERTY TAX

TAX YEAR: 2017 & 2018

DATE SIGNED: 2/18/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p><b>ORDER DENYING MOTION TO COMPEL</b></p> <p>Appeal Nos. 18-814 &amp; 19-349</p> <p>Tax Type: Locally Assessed Property Tax Tax Years: 2017 &amp; 2018 Parcel No. #####</p> <p>Judge: Phan</p>
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**Presiding:**

Lawrence C. Walters, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy District Attorney,  
COUNTY  
COUNTY, Commercial Appraiser, COUNTY

STATEMENT OF THE CASE

On DATE, 2019, Respondent (“County”) submitted a Motion to Compel in this matter. Petitioner (“Taxpayer”) submitted a response to the Motion on DATE, 2019 and the County submitted a Reply on DATE, 2020. The matter proceeded to a Hearing on Motion to Compel on DATE, 2020. Based on the written submissions and arguments presented by the parties at the hearing, the Tax Commission issues its decision as follows.

APPLICABLE LAW

Utah Admin. Rule R861-1A-27 provides the following regarding discovery procedures in administrative proceedings before the Utah State Tax Commission:

- (1) Discovery procedures in formal proceedings<sup>1</sup> shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.
- (2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

Utah Rules of Civil Procedure, Rule 26 provides as follows:

- (b)(1) Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. . .
- (b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving issues;
- (b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;
- (b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;
- (b)(2)(D) the discovery is not unreasonably cumulative or duplicative;
- (b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and
- (b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

#### BACKGROUND INFORMATION

The parcel at issue in these appeals is parcel no. #####, which is located at 3491 South Redwood Road. The Taxpayer leases the subject property to the tenant of the property, COMPANY. COMPANY operates a LOAN BUSINESS at the subject parcel. The Taxpayer and COMPANY are related entities that share common equity ownership. Although the Taxpayer and another related entity, COMPANY-2, own several properties that they lease to COMPANY, COMPANY also leases business locations from eight other, non-related property owners in COUNTY. It is the lease information from these leases between COMPANY and the eight non-related property owners that is the subject of the County's discovery request.

#### DISCOVERY REQUEST & OBJECTIONS

Although there had been several requests made by the County for discovery, the request that was still at issue at the Hearing on Motion to Compel was the County's Request No. 3, in which the County asked:

- REQUEST 3: Please produce the lease agreements and rent rolls applicable for the 2017 and 2018 lien dates for the following:
- a. COMPANY, ADDRESS-1, parcel number #####;
  - b. COMPANY, ADDRESS-2, parcel number #####;

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<sup>1</sup> Both an Initial Hearing and a Formal Hearing are considered part of the "formal proceedings." See Utah Admin. Rules R861-1A-23 and 26.

- c. COMPANY, ADDRESS-3, parcel number; #####
- d. COMPANY, ADDRESS-4, parcel number; #####
- e. COMPANY, ADDRESS-5, parcel number; #####
- f. COMPANY, ADDRESS-6, parcel number; #####
- g. COMPANY, ADDRESS-7, parcel number; #####
- h. COMPANY, ADDRESS-8, parcel number; #####

The Taxpayer objected to this request on several grounds, one of which was that although the Taxpayer was a related entity with COMPANY, even COMPANY would not have access to the rent rolls because COMPANY was the tenant. The rent rolls would be something maintained by the non-related property owners who were the landlords. At the hearing and in its Motion to Compel, the County conceded this point but argued that the Taxpayer should be required to provide copies of the leases.

In his response to the Motion to Compel and at the hearing, the representative for the Taxpayer argued that the requested leases were not relevant to determining the market value of the subject property as of the lien dates at issue in these appeals, which were DATE, 2017 and DATE, 2018. One significant point he made was that COMPANY had entered into the leases for each of these properties many years prior to the lien dates at issue, and although there had been multiple renewals, these were old long-term leases. He provided the lease dates for each of the leases. The oldest lease had been entered into in 1999 and the newest lease in 2008, with the other six leases spread out between. The Taxpayer's representative also pointed to the fact that the locations of the eight leased properties were spread out across the valley, and that there were other retail properties much nearer in location to the property subject to this appeal that could be used as comparables, which would have leased near the lien date. It was his position that based on Appraisal Standards, an appraiser should be considering current or recent leases for property in the same location as the property being valued.

Furthermore, only one of the eight properties that the County was requesting lease information for had been built for the purpose of leasing to COMPANY. The rest were properties built as retail or even fast food spaces and had been leased to other tenants prior to the COMPANY lease. When COMPANY leased the spaces there was some remodeling or signage made to the spaces but they were still general retail spaces. The representative for the Taxpayer provided photographs of each of the eight COMPANY properties for which the County wanted the lease information. These showed that comparables 4 through 8 were generic retail spaces in what appeared to be general retail buildings. The first three comparables, although still fairly generic, had a green, yellow and red marquee all around the top of the buildings, which was probably unique to some of the COMPANY businesses. No picture of the property subject to these appeals was provided so it is unclear which group it would be more similar to. Some of the eight COMPANY leases that the County was requesting were for properties that were free standing retail properties, and some were in-line spaces or in strip centers.

In his response to the Motion to Compel and at the hearing, the representative for the Taxpayer argued that providing the eight leases the County requested would just make the appeal more complicated and difficult. He further argued that the leases were not good evidence of market value, and that market value could be determined using current leases of retail properties near to the subject property. He did not argue that he would not be able to provide the leases or that it would be unduly burdensome to provide the leases.

The County asserts the lease information was discoverable under Rule 26(b)(1) of the Utah Rules of Civil Procedure which provides that a party “may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality . . . .” It was the County’s argument that lease information from the eight COMPANY properties, which were owned by parties unrelated to COMPANY, was relevant in determining a market lease rate for the subject property to determine the value based on the income approach, even though these eight properties were not subject to the appeal. The County argued that the subject property and the COMPANY-2 properties that had also been appealed were leases between related parties because the Taxpayer and COMPANY-2 had common ownership with COMPANY. Because they were all related entities the leases on the properties appealed were not arm’s-length leases. However, the eight leases the County requested were arm’s-length leases because they were between COMPANY and unrelated property owners. The County’s representative also argued that there were common features with the COMPANY properties that might make them relevant comparables despite the differences in location and the age of the leases. The County’s representatives acknowledged that the County would not know until they evaluated the leases and other information that they had if they would use the leases in their income approach. The County’s representative also appeared to argue that the leases were necessary to complete a thorough appraisal. The County points out that the proportionality test had been met, because COMPANY, the tenant, had the leases and the Taxpayer’s representative had not argued he would not be able to provide the leases or that it would be unduly burdensome.

After evaluating the arguments of the parties and specifically the age of the eight leases, which were originally entered into nearly to ten to twenty years prior to the lien dates at issue in these appeals, and that the leased buildings are generic retail spaces for the most part which have been used or could be used for other types of retail or commercial uses, the Commission concludes they have little relevance for determining the fair market value of the subject parcel as of the lien dates at issue in these appeals. The Commission understands that the standard for relevance under Rule 26(b)(1) of the Utah Rules of Civil Procedure is a fairly low bar, and had all of the eight leases been entered into even within ten years of the lien dates, or if all the buildings were constructed specifically to COMPANY’s specifications to be leased to COMPANY, the low relevance bar may have been met. In this case, there is neither and the relevance

to the market value as of the lien dates at issue is so limited, the Tax Commission concludes it would not be appropriate to grant the County's Motion to Compel.

Jane Phan  
Administrative Law Judge

ORDER

Based on the foregoing, the County's Motion to Compel is hereby denied. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner