

18-2023

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 12/08/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 18-2023
v.	Parcel No. #####, #####, ##### and #####
BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2018
	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 Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Owner, PETITIONER

For Respondent: RESPONDENT, Appraiser, COUNTY-1 Assessor's (X)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 27, 2020, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. This hearing was

conducted by teleconference. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. _____ The issue before the Tax Commission at the Formal Hearing is Petitioner’s (Property Owner’s) appeal of the decision issued by the COUNTY-1 Board of Equalization in regards to the fair market value, as of the lien date January 1, 2018, of four Office Condos, which are parcel nos. #####, #####, ##### and #####.

2. The values originally set by the County Assessor for the 2018 tax year were reduced by the County Board of Equalization. At the Formal Hearing before the State Tax Commission, the County was recommending a further reduction. The County’s values and the value the Property Owner was requesting are as follows:

Parcel	Original Assessed Value	BOE Value	Property Owner’s Request	County’s Hearing Recommendation
##### (Parcel 1)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Parcel 2)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Parcel 5)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
##### (Parcel 6)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

3. The Property Owner had not filed appeals to the County Board of Equalization for tax years 2015, 2016 or 2017 for any of the four parcels at issue.

4. The four parcels that are subject to this appeal are four individual Office Condos located at SUBJECT ADDRESS, CITY-1, Utah. Each subject parcel is a standalone Office Condos that could be sold separately from any of the other subject parcels or any of the other Office Condos in the development. The subject parcels are all located in the same building, which was constructed in YEAR of average quality and is of average condition. Parcels 1 and 2 are ##### square feet each in size and are basement level units that have some daylight windows due to the slope on the lot.¹ Parcel 5 is ##### square feet in size and is a second-story, top floor unit. Parcel 6 is ##### square feet in size and is also a second-story, top floor unit. The building has no elevator.

5. The four parcels are not owner occupied. The Property Owner leases the subject Office Condos as (X) space to four separate tenants. There are ##### Office Condos units in the same building as the subject and the Property Owner owns four of the six. The other ##### Office Condos in the same building as the subject are owned by other persons and are owner occupied.

¹ Respondent’s Exhibit 7.

6. The subject Office Condos units are located near the SHOPPING CENTER in CITY-1 and the County considers them to be in a good location for Office Condos. The Property Owner presented nothing to refute this position.

7. The Property Owner argued that the County should value the subject Office Condos on an income approach, rather than a sales comparison approach. He testified a real estate agent who he works with told him that this type of property should be valued based on the income approach and he said appraisers would not value the subject parcels based on sales comparables and would instead value it based on income. Based on these hearsay assertions it was his argument that the County's value, which was based on a sales comparison approach, was in error. The Property Owner did not have the real estate agent or an appraiser attend the hearing to testify, nor did he submit an appraisal, or even a signed opinion or affidavit from an appraiser regarding this position.²

8. The Property Owner presented a number of different income approaches which he had prepared and they did result in lower value calculations, although that appears to be more from using a variety of income factors not necessarily reflective of market factors. In Petitioner's Exhibit 1, the Property Owner included a rent roll for DATE, 2017. This indicated that all four units were leased as of DATE, 2017. In his Exhibit 1 approaches, he also appears to have considered each of the subject Office Condos to be ##### square feet, when in fact they had some variations in size. He testified that his actual rents were on a "modified gross" basis and not triple net or full service leases. He testified that the tenants paid their own utilities separately from the lease. His actual rent roll in Exhibit 1 indicated the following:

	Size	Monthly Rent	Rent Per Square Foot	Year Lease Was Commenced
Parcel 1	#####	\$\$\$\$\$	\$\$\$\$\$	YEAR
Parcel 2	#####	\$\$\$\$\$	\$\$\$\$\$	YEAR ³
Parcel 5	#####	\$\$\$\$\$	\$\$\$\$\$	YEAR
Parcel 6	#####	\$\$\$\$\$	\$\$\$\$\$	YEAR ⁴

² The Property Owner's testimony in regards to what a real estate agent or what appraisers would say was offered as proof of the matter claimed and is hearsay. Pursuant to Utah Admin. Rule R861-1A-28(2)(b) the Tax Commission may admit hearsay evidence in the hearing. "However, no decision of the commission will be based solely on hearsay evidence." Had the Property Owner presented the agent or appraiser as a witness in the hearing to testify subject to penalties of perjury, the Tax Commission could have questioned them in regards to whether they were speaking about multi-unit Office Condos, instead of individual Office Condos.

³ The Property Owner stated that he felt this lease rate was higher than market due to the fact that the lease had expired and the tenant was on a month to month basis.

⁴ On page 4 of Petitioner's Exhibit 1, the Petitioner had indicated this was a below market lease rate.

9. In his Exhibit 1 calculations, the Property Owner prepared income approaches based on “pro forma” calculations in which he estimated triple net lease rates for each property, vacancy rates, reserves and capitalization rates. He did not provide lease comparables that supported his lower “pro forma” triple net lease rates. His Parcel 1, which was a basement unit, was leasing according to his rent roll for \$\$\$\$ per square foot and Parcel 2 had an actual lease rate of \$\$\$\$ per square foot. He used \$\$\$\$ NNN per square foot in his pro forma calculation for both basement units. For Parcel 5 his actual rent was \$\$\$\$ per square foot and his pro forma rent was \$\$\$\$ per square foot. Parcel 6 had actual rent of \$\$\$\$\$, which he had acknowledged as being below market, and his pro forma rent was \$\$\$\$ per square foot.

10. In addition to these rents in the pro forma triple net income approaches, the Property Owner had used a %%% vacancy rate, a %%% reserves rate and a %%% capitalization rate. He provided no evidence to support such high vacancy, reserves and capitalization rates. For example, the Property Owner provided no published studies and no capitalization rate comparables that supported anything this high. In fact, Property Owner’s Exhibit 2 had included some pages from real estate market publications looking at lease rates, capitalization rates and vacancy rates. The REAL ESTATE SERVICES COMPANY report indicated capitalization rates for (X) space at %%%. The County said for this type of building the market vacancy rate was %%%. A %%% range for management and reserves is typical when looking at triple net leases. Even using the Property Owner’s estimated triple net rates at \$\$\$\$ and \$\$\$\$ and correcting the other factors based on actual market appraisal factors to %%% vacancy, %%% expenses and reserves, and an %%% capitalization rate, results in income approach values near the values the County is requesting for the subject parcels and not what the Property Owner is requesting. The Property Owner argued at the hearing that he thought his vacancy and reserves were more realistic and the real estate agent had told him a %%% capitalization rate was appropriate.

11. The Property Owner also provided an income approach from actual income and expenses, but from which he then subtracted an additional %%% for reserves and used a %%% capitalization rate. He did not provide evidence to support %%% reserves or %%% capitalization rate. Even just correcting the capitalization rate to an actual market rate of %%% or %%%, and a %%% reserves rate, which would be typical in an income approach prepared by an appraiser, the value again would be near what the County is requesting in this matter.

12. The Property Owner also presented a pro forma approach based on a full service lease estimate.⁵ (X) spaces do often lease on a full service lease basis where the rents are higher but the lessor pays more of the expenses. For these pro forma approaches, he looked at lease rates of \$\$\$\$ per square foot, but multiplied that by square footages in this approach that were smaller than the actual size of the

⁵ Petitioner’s Exhibit 1.

subject units. In this approach, he used %%% vacancy, %%% expenses and %%% reserve rates. In these, he did use the market capitalization rate of %%%. In addition, he made very large appraisal adjustments for some of the features. For instance for the basement units he adjusted %%% off the rate. Again, the Property Owner has not supported the extremely high vacancy rate he used in this calculation, his expenses or the appraisal adjustments. The Property Owner's income approaches are indicating a lower value, but this is due to some of the unsupported factors that he used in his approaches.

13. The County did determine its recommended values for the subject Office Condos (X) properties using comparable sales. However, it was the County's position that it would also consider an income approach, it was just that the County disagreed with the Property Owner's income approaches because the Property Owner was using factors that were not appropriate in that approach. It was the County representative's expert appraisal testimony at the hearing that Office Condos are often bought and sold to be owner occupied and a sales comparison approach is a valid approach for Office Condos. The County's representative did explain that Office Condos, for which each (X) can be individually bought and sold, are different from large multi-tenant (X) buildings where the buyer is purchasing to lease to multiple tenants.

14. The County provided sales comparison approaches for each of the subject Office Condos units, using the same comparables and then adjusting them for the different sizes and if they were basement or above grade units.⁶ All of the comparables the County used were located in CITY-1.⁷ However, the County did consider the subject units to be in a better location for Office Condos than any of the comparables. The County also provided a photograph of the subject and each of the comparables, which indicates some differences but overall that they were good sales comparables to the subject.⁸ Some of the comparables had both basement and above grade square footage and some had all their square footage above grade. The subject units are all one level units that are either above grade or basement square footage only. The County did adjust for this difference in its sales approaches and concluded a much lower value per square foot for the basement units than the above grade units.

15. The County's sales comparables were the following:

Address	Sale Price/ Per Sq. Ft.	Sale Date	Size	Year Built	Grade	Condi- tion	Base- ment	Location
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⁶ Respondent's Exhibits 2-5.

⁷ Respondent's Exhibit 6.

⁸ Respondent's Exhibits 7-13.

Subject: SUBJECT ADDRESS Good		###	YEAR	X	X	X
ADDRESS-1	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X
ADDRESS-2	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X
ADDRESS-3	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X
ADDRESS-4	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X
ADDRESS-5	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X
ADDRESS-6	\$\$\$\$ DATE \$\$\$\$	###	YEAR	X	X	X

16. After making appraisal adjustments for the differences, the County concluded the following values per square foot for each of the subject parcels:

Parcel 1-Basement Unit	\$\$\$\$
Parcel 2-Basement Unit	\$\$\$\$
Parcel 5-Above Grade Unit	\$\$\$\$
Parcel 6-Above Grade unit	\$\$\$\$

17. The sales comparison approaches offered by the County do support the values the County was requesting at the Formal Hearing and that value is lower than the values set by the County Board of Equalization, but higher than what the Property Owner was requesting at the Formal Hearing. The County's comparables are reasonably similar and the appraisal adjustments the County's appraiser has made are reasonable. The Property Owner did not provide any better comparable sales or evidence to indicate those used by the County were not comparable Office Condos units. The Property Owner instead was primarily arguing that it was improper to use a comparable sales approach to value individual Office Condos units.

18. At the hearing the County's appraiser testified that the County disagreed with the various income approaches used by the Property Owner because the Property Owner was not using market

vacancy, expenses or for some a market capitalization rate. He testified that if he were to perform an income approach on the subject he would use a \$\$\$\$ rent rate for the basement units, %%%% vacancy, %%%% expenses, %%%% reserves and an %%%% capitalization rate. He would use a higher rate for the above grade units. This income approach would support a value near his sales comparison approach value.

19. The Property Owner does have the burden of proof to show error in the value set by the County Board of Equalization and to support his requested value. As the County is also recommending a lower value than that set by the County Board of Equalization and not higher than the value originally assessed, the County also has a burden to show error in the subject property's current value and to provide a sound evidentiary basis for the value the County proposes. The Commission finds that the County's sales comparison approach shows error in the value set by the County Board of Equalization. The Property Owner has not established a sound evidentiary basis for a lower value as the Property Owner has not used market vacancy, expenses or capitalization rates in his various income approaches. His conclusions do result in lower values, however, they are not fair market values for the subject parcels. The Property Owner's focus at the hearing was more on his argument that it was wrong for the County to value the subject individual Office Condos on a sales comparison approach. The County has supported its requested value using a sales comparison approach and there is no basis provided by the Property Owner to indicate this is improper given that Office Condos are often bought and sold to be owner occupied.

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(13), 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.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4, below, in pertinent part:

- (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...

In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value different from the subject property's current value but not higher than the value originally assessed, the respondent has the burden of proof to support its position. For either party's position to prevail in this case, the party must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount proposed by the party. *See Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Fraughton v. Tax Commission*, 2019 UT App 6; *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."

2. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property's "fair market value" as of January 1 of the tax year at issue pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the "amount for which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." See Utah Code Sec. 59-2-102.

3. Clearly, a valid way to determine "fair market value" of the subject property is from comparable sales. In fact, there are three common approaches to determining value that an appraiser may use,⁹ although an appraiser may place more, less or no weight to a particular approach depending on the facts and circumstances. Although buyers of large multi-tenant (X) buildings may give significant consideration to the income they will receive from rentals in determining how much they are willing to pay, the market for individual Office Condos is a different market and generally has a different set of potential buyers. Many buyers are not concerned at all with income from rentals as the intent is to use the building for their own business. For this reason it is appropriate for the County to value individual Office Condos based on comparable sales. In this matter, an income approach using appropriate market factors would also support the value the County is requesting. The use of improper vacancy, reserves and

⁹See Understanding the Appraisal-Appraisal Institute, www.appraisalinstitute.org/assets/understand_appraisal . . .

capitalization rates, as has been done by the Property Owner in his various approaches, does not result in fair market value.

The values should be reduced to the values requested by the County for the lien date at issue for each of the subject parcels.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the values for the subject parcels as of the lien date January 1, 2018 should be as follows:

##### (Parcel 1)	\$\$\$\$
##### (Parcel 2)	\$\$\$\$
##### (Parcel 5)	\$\$\$\$
##### (Parcel 6)	\$\$\$\$

The County Auditor is hereby ordered to adjust their records accordingly. 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

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.