

APPEAL # 18-2301  
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED  
TAX YEAR: 2018  
DATE SIGNED: 7/28/2020  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, L.WALTERS

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 18-2301  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2018  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 send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.**

**Presiding:**

Rebecca L. Rockwell, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER'S REP-1, Attorney (by telephone)  
PETITIONER'S REP-2, Appraiser (by telephone)  
For Respondent: RESPONDENT'S REP-1, from the COUNTY-1 Assessor's Office (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 24, 2020.

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

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2018, with a lien date of January 1, 2018.
3. At issue is the fair market value of Parcel No. #####. The subject property is a BUSINESS-1 located at ADDRESS-1.
4. The subject property is owned by TAXPAYER (“Petitioner,” “taxpayer,” or “TAXPAYER”). The taxpayer brings this appeal from a decision of the COUNTY-1 Board of Equalization (“County BOE”).
5. The Commission held a Mediation Conference in this matter on October 9, 2019. Because the matter was not resolved through mediation, it was scheduled for a Formal Hearing.
6. The County BOE sustained the \$\$\$\$ value at which the subject property was assessed for the 2018 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 \$\$\$\$.
7. In support of its proposed value of \$\$\$\$\$, TAXPAYER submitted an appraisal prepared by PETITIONER'S REP-2, and PERSON-1 (“taxpayer’s appraisal” or “PETITIONER'S REP-2 appraisal”).<sup>1</sup> In support of the subject’s current value of \$\$\$\$\$, the County submitted an appraisal prepared by RESPONDENT'S REP-1, a certified appraiser from the County Assessor’s Office (“County’s appraisal” or “RESPONDENT'S REP-1 appraisal”).<sup>2</sup>
8. The subject property consists of ##### acres of land and a distribution warehouse that is ##### square feet in size and which was built in YEAR. Approximately %%% of the subject’s space is office space. The subject warehouse is a Class “S” (Steel) metal building, and the steel frame is covered by single insulated steel panels (although RESPONDENT'S REP-1 indicated in his appraisal that the subject’s steel frame was covered by insulated metal sandwich panels, it was established at the hearing that the frame was not covered by sandwich panels). The subject property has approximately #####

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<sup>1</sup> Petitioner’s Exhibit 1.

<sup>2</sup> Respondent’s Exhibit 2.

dock-high doors (specifically somewhere between ##### and ##### doors). The subject's ceiling heights range between ##### and ##### feet, with County records showing a ceiling height of ##### feet in the warehouse portion of the subject property. The subject property is zoned M-D (Light Manufacturing and Distribution).<sup>3</sup>

9. For the subject property, PETITIONER'S REP-2 derived a cost approach value of \$\$\$\$\$, an income approach value of \$\$\$\$\$, and a sales comparison approach value of \$\$\$\$\$. When reconciling these values, PETITIONER'S REP-2 indicated in his appraisal that “[m]arket participants do not typically place weight on [the cost approach] for properties similar to the subject. Overall, minimal weight is given to this approach.” He also indicated that he gave each of the income and sales comparison approaches considerable weight, and he estimated a final value estimate of \$\$\$\$\$ for the subject property.<sup>4</sup> On the basis of this appraisal, the taxpayer asks the Commission to reduce the subject's current 2018 value of \$\$\$\$\$ to \$\$\$\$\$.

10. RESPONDENT'S REP-1 derived a cost approach value of \$\$\$\$\$, an income approach value of \$\$\$\$\$, and a sales comparison approach value of \$\$\$\$\$. When reconciling these values, RESPONDENT'S REP-1 indicated in his appraisal that “[t]he cost approach provides a secondary indication of value for the subject property[,]” that the income approach was given “secondary reliance[,]” and that the sales comparison approach “is given primary consideration[.]” After these

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<sup>3</sup> Petitioner's Exhibits 1 (pp. 1 and 6-10) and 2; Respondent's Exhibit 1 (first pages 1, 3, and 6-8). The page numbering of the County's appraisal is confusing because the appraisal begins with pages 1-8 (the “first pages 1-8”) and then has further pages numbered 1-19 (which includes a second set of pages numbered 1-8) and a number of other unnumbered pages. Any future references in this decision to pages 1-8 of the County's appraisal will be referring to the second set of pages 1-8. In addition to the page numbering issue and the incorrect statement about the subject's steel panels, the County's appraisal contained a number of typographical and/or mathematical errors and misstatements.

RESPONDENT'S REP-1 showed the size of the subject property's improvements to be ##### square feet (which is ##### square feet larger than the ##### square feet shown by PETITIONER'S REP-2). Because RESPONDENT'S REP-1 indicated that there was no significant disagreement on square footage and because the taxpayer submitted building plans (Petitioner's Exhibit 2) to support the ##### square footage that PETITIONER'S REP-2 used, the Commission finds that the subject's size is ##### square feet for purposes of this decision.

<sup>4</sup> Petitioner's Exhibit 1 (pp. 39-40). At the Formal Hearing, PETITIONER'S REP-2 also stated that he did not give weight to the cost approach because the subject property is an older property.

considerations, RESPONDENT'S REP-1 estimated a final value of \$\$\$\$\$ for the subject property.<sup>5</sup> The County, however, does not ask the Commission to increase the subject's current 2018 value of \$\$\$\$\$ to \$\$\$\$\$. On the basis of its appraisal, the County asks the Commission to sustain the subject's current 2018 value of \$\$\$\$\$.

11. 2016 Valuation Reduction. Before addressing the parties' respective evidence of the subject's 2018 value, the Commission will discuss the reduction made to the subject's value for the 2016 tax year (which occurred within the three years prior to the 2018 tax year currently at issue) and how that reduction may affect the Commission's decision for the 2018 tax year.<sup>6</sup> Specifically, the \$\$\$\$\$ value at which the subject property was originally assessed for the 2016 tax year was reduced to \$\$\$\$\$ by the 2016 County BOE, which became final after neither party appealed the 2016 County BOE decision to the Tax Commission.

12. Section 59-2-301.4 provides that in assessing the fair market value of property subject to a valuation reduction within the past three years, "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." Because the County assessed the subject property at \$\$\$\$\$ for each of the 2017 and 2018 tax years, it appears that the County Assessor considered the 2016 valuation reduction when it assessed the subject property not only for the 2017 tax year, but also for the 2018 tax year at issue.

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<sup>5</sup> Respondent's Exhibit 1 (p. 17). At the Formal Hearing, RESPONDENT'S REP-1 stated that neither party "hung their hat" on the cost approach. Although RESPONDENT'S REP-1 stated in his reconciliation that his income approach was given "secondary reliance[,]", he stated earlier in his appraisal that "the income approach will provide a good estimate of [the subject's market] value" (Respondent's Exhibit 1, p. 12).

<sup>6</sup> For the other two years prior to the 2018 tax year, the values at which the subject property was assessed were not reduced during the appeals process. The subject's 2015 assessed value was not appealed. While the taxpayer appealed the \$\$\$\$\$ value at which the subject property was assessed for the 2017 tax year, the subject's 2017 value was not reduced.

13. Neither party, however, provided a copy of the 2016 County BOE's decision to show why the County BOE reduced the subject's 2016 value to \$\$\$\$\$. As a result, the Commission cannot determine with any certainty whether new information that was previously unknown for the 2016 appeal about the property is now known or if the reasons for the prior 2016 reduction no longer continue to influence the property. For these reasons, when determining the subject's 2018 value, the Commission will give little, if any, weight to the 2016 valuation reduction.

#### Evidence of 2018 Value

14. Cost Approach. PETITIONER'S REP-2 derived a cost approach value of \$\$\$\$\$, while RESPONDENT'S REP-1 derived a cost approach value of \$\$\$\$\$. The Commission has concerns with the parties' cost approaches, including: 1) the Commission is not convinced that either party's land comparables establish a reasonable value of the subject's ##### acres of land because of significant differences between the comparables and the subject's land; 2) the Commission has concerns that RESPONDENT'S REP-1 did not use Marshall & Swift cost information for mega-warehouses when deriving a cost approach value for the subject's improvements; 3) for a property built approximately 13 years prior to the 2018 lien date, the Commission has concerns whether PETITIONER'S REP-2's "indexing" the 2005 actual costs is a reasonable method with which to partially estimate the 2018 cost of the subject's improvements; and 4) the Commission has concerns whether the obsolescence adjustment of %%% that PETITIONER'S REP-2 used to estimate the 2018 cost of the subject's improvements is appropriate and, even if an obsolescence adjustment is appropriate, whether a %%% adjustment is excessive.<sup>7</sup>

15. For these reasons and because neither party gave much, if any, weight to the cost approach when determining a final estimate of value for the subject property, the Commission will give

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<sup>7</sup> Petitioner's Exhibit 1 (pp. 16-25); Respondent's Exhibit 1 (pp. 5-8).

the cost approach no weight when determining the subject's 2018 value. As a result, the Commission will not discuss the parties' cost approaches any further.

16. Income Approach. For the County, RESPONDENT'S REP-1 derived an income approach value of \$\$\$\$\$, based on a size of ##### square feet, a triple net rental rate of \$\$\$\$ per square foot, a vacancy and collection loss rate of %%%%, an expenses rate of %%%% (for minor expenses such as administrative/management), and a capitalization rate of %%%%.<sup>8</sup> For the taxpayer, PETITIONER'S REP-2 derived an income approach value of \$\$\$\$\$, based on a size of ##### square feet, a triple net rental rate of \$\$\$\$ per square foot, a vacancy and collection loss rate of %%%%, an expenses rate of %%%% (%% for management and %% for reserves), and a capitalization rate of %%%%.<sup>9</sup> For reasons stated earlier, the Commission has found that the subject's size is ##### for purposes of this decision. The Commission, however, still needs to address the other differences between the parties' respective income approaches.

17. *Triple Net Rental Rate.* RESPONDENT'S REP-1 derived a triple net rental rate of \$\$\$\$ per square foot, while PETITIONER'S REP-2 derived a triple net rental rate of \$\$\$\$ per square foot. RESPONDENT'S REP-1 compared the subject property to three comparables, two that are located in COUNTY-1, Utah (which leased for \$\$\$\$ and \$\$\$\$ per square foot) and one that is located in CITY-1, STATE-1 (which leased for \$\$\$\$ per square foot). All of the comparables are buildings or are located in buildings that range between ##### and ##### square feet in size. It appears that the two comparables in COUNTY-1 leased in 2009 and 2014 (about nine and four years prior to the 2018 lien date) and that these leases were for the entire buildings. It is unclear when the comparable in CITY-1 leased, but the lease was only for ##### square feet of the building. RESPONDENT'S REP-1 did not adjust his three comparables. However, because the subject property is larger than any of the three comparables he used, RESPONDENT'S REP-1 determined that the subject's rental rate should be lower than the \$\$\$\$ to

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<sup>8</sup> Respondent's Exhibit 1 (pp. 12-16).

<sup>9</sup> Petitioner's Exhibit 1 (pp. 25-33).

\$\$\$\$\$ per square foot range at which his comparables leased. For these reasons, RESPONDENT'S REP-1 estimated a rental rate of \$\$\$\$\$ per square foot for the subject property.<sup>10</sup>

18. RESPONDENT'S REP-1's estimated rental rate of \$\$\$\$\$ per square foot is suspect. The Commission is concerned that RESPONDENT'S REP-1 did not adjust his three comparables for all differences between the subject property and the comparables. In addition, one of RESPONDENT'S REP-1's two COUNTY-1 comparables was associated with a sale-leaseback transaction, and the Commission is concerned that a rental rate associated with a sale-leaseback transaction may reflect the property's sales price more than it reflects the property's market lease rate. The Commission is also concerned that at least two of RESPONDENT'S REP-1's three comparables leased about four and nine years prior to the 2018 lien date (especially where no adjustments have been made for these lease dates).

19. Furthermore, where rental rates for warehouses as large as the subject property are relatively few (which might result in comparables located outside of Utah being considered), the Commission is concerned that RESPONDENT'S REP-1's CITY-1 comparable concerns the rental of only ##### square feet of a larger property (which could represent a different market than the lease of an entire warehouse of around ##### square feet in size). Lastly, RESPONDENT'S REP-1's estimated market rent of \$\$\$\$\$ per square foot for the subject property is not bracketed by the \$\$\$\$\$ to \$\$\$\$\$ per square foot rates at which his comparables leased. As a result, even though RESPONDENT'S REP-1 concluded that the subject's market rental rate would be lower than the rates at which the comparables leased, it is difficult to gauge just how much lower the subject's market rental rate should be (especially where no adjustments were made). For these reasons, the Commission finds RESPONDENT'S REP-1's comparables and the \$\$\$\$\$ per square foot rental rate he derived to be suspect.

20. PETITIONER'S REP-2 compared the subject property to six comparables, five that are located in COUNTY-2 and one that is located in COUNTY-1. The comparables ranged between ##### and ##### square feet in size, and they leased between DATE and DATE for rental rates ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. PETITIONER'S REP-2 adjusted the comparables and derived adjusted

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<sup>10</sup> Respondent's Exhibit 1 (p. 13).

rental rates of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot (the average of which is \$\$\$\$\$ per square foot). For the four smallest comparables (i.e., those with less than ##### square feet), PETITIONER'S REP-2 applied negative size adjustments ranging between %%% and %%%. The four smallest comparables (with the highest size adjustments) showed adjusted rental rates no higher than \$\$\$\$\$ per square foot. The two largest comparables (which were in excess of ##### square feet and which had no or relatively small size adjustments) had adjusted rental rates of \$\$\$\$\$ and \$\$\$\$\$ per square foot. PETITIONER'S REP-2 gave the most weight to the two largest comparables and estimated a rental rate of \$\$\$\$\$ per square foot for the subject property.<sup>11</sup>

21. The Commission, however, is concerned that PETITIONER'S REP-2's size adjustments are too high, which may explain why the four smallest comparables (which required the highest size adjustments) resulted in lower adjusted rental rates than the two largest comparables. As a result, the Commission is concerned that using the adjusted rental rates of the four smallest comparables, even to a lesser degree, will underestimate the subject's value. As a result, the Commission will use the adjusted rental rates of PETITIONER'S REP-2's two largest comparables to establish a rental rate for the subject property. Because the adjusted rental rates of the two largest comparables are \$\$\$\$\$ and \$\$\$\$\$ per square foot (the average of which is \$\$\$\$\$ per square foot and which is within the \$\$\$\$\$ to \$\$\$\$\$ range at which all of the taxpayer's comparables leased), the Commission finds that a rental rate of \$\$\$\$\$ per square foot should be used in an income approach to value the subject property.

22. *Vacancy and Collection Loss Rate.* In his appraisal, RESPONDENT'S REP-1 indicated that the industrial market in COUNTY-1 had average vacancy of about %%% in late 2017, and had ranged between %%% and %%% in recent years. For these reasons, RESPONDENT'S REP-1 used a vacancy and collection loss rate of %%% in his income approach.<sup>12</sup> In his appraisal, PETITIONER'S REP-2 indicated that vacancy rates have trended downward and were roughly %%% to %%% as of year-end 2017 for bulk distribution/#####+ square foot buildings in COUNTY-2

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<sup>11</sup> Petitioner's Exhibit 1 (pp. 26-30).

<sup>12</sup> Respondent's Exhibit 1 (p. 14).



(based on four published sources - CBRE, Cushman, Newmark, and IPG Commercial). PETITIONER'S REP-2 also indicated that a single published source (IPG Commercial) showed a vacancy rate for COUNTY-1 of %%% (which appears to be a general vacancy rate and not one specific to bulk distribution/#####+ square foot properties). For these reasons, PETITIONER'S REP-2 used a vacancy and collection loss rate of %%% in his income approach.<sup>13</sup>

23. The parties' evidence concerning vacancy rates for industrial properties in COUNTY-1 near year-end 2017 is contradictory. RESPONDENT'S REP-1 indicates that the average industrial vacancy rate in COUNTY-1 was about %%%, while PETITIONER'S REP-2 cited a single source that indicated that the general industrial vacancy rate in COUNTY-1 was %%%. The Commission finds that RESPONDENT'S REP-1, as an appraiser working in the COUNTY-1 Assessor's Office, has specific knowledge about markets and vacancy rates in COUNTY-1. Accordingly, his assertion about industrial vacancy rates in COUNTY-1 is credible. Where PETITIONER'S REP-2 cited only one source that was contradictory to RESPONDENT'S REP-1's assertion and where that one source related to general industrial vacancy rates, the taxpayer's evidence is insufficient to refute RESPONDENT'S REP-1's assertion. For these reasons, the Commission finds that a vacancy and collection loss rate of %%% should be used in an income approach to estimate the subject's value.

24. *Expenses Rate.* PETITIONER'S REP-2 used a triple net expenses rate of %%% in the taxpayer's income approach, while RESPONDENT'S REP-1 used a triple net expenses rate of %%% in the County's income approach.<sup>14</sup> PETITIONER'S REP-2's expenses rate of %%% is the sum of management expenses of %%% and reserves expenses of %%%. In his appraisal, RESPONDENT'S REP-1 stated for a triple net analysis, "[t]he landlord would be responsible for only minor expenses such as administrative/management, for which I believe 3% is a reasonable estimate." As a result, it appears that RESPONDENT'S REP-1 deducted expenses for administrative/management, but

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<sup>13</sup> Petitioner's Exhibit 1 (pp. 13-14 and 30).

<sup>14</sup> Petitioner's Exhibit 1 (p. 30); Respondent's Exhibit 1 (p. 14).

not for reserves. The Commission generally allows triple net expenses for both management and reserves. For this reason and because RESPONDENT'S REP-1 has not shown that his %%% expenses rate included any reserves, the Commission finds PETITIONER'S REP-2's expenses rate to be more convincing. Accordingly, the Commission finds that a triple net expenses rate of %%% should be used in an income approach to value the subject property.

25. *Capitalization Rate.* PETITIONER'S REP-2 used a capitalization rate of %%% in the taxpayer's income approach, while RESPONDENT'S REP-1 used a capitalization rate of %%% in the County's income approach.<sup>15</sup> To support his %%% capitalization rate, PETITIONER'S REP-2 provided capitalization rates from 10 Utah sales (the average of which is %%%) and showed that Newmark reported a capitalization rate for bulk distribution industrial properties in Utah to be approximately %%. To support his %%% capitalization rate, RESPONDENT'S REP-1 provided industrial capitalization rate information from national surveys that showed rates somewhere in between %% and %%. For purposes of determining a value for the subject property, the Commission finds capitalization rate information specific to Utah to be more convincing than nationwide capitalization rate information. Accordingly, the Commission finds that a capitalization rate of %%% should be used to establish an income approach value for the subject property.

26. *Income Approach Summary.* Based on the foregoing, the Commission finds that the subject's income approach value for the 2018 tax year is \$\$\$\$ (rounded), based on a size of ##### square feet, a triple net rental rate of \$\$\$\$ per square foot, a vacancy and collection loss rate of %%%, an expenses rate of %%%, and a capitalization rate of %%%.

27. Sales Comparison Approach. For the County, RESPONDENT'S REP-1 compared the subject property to six comparable sales that sold between 2013 and 2018 and which range between ##### and ##### square feet in size. One of the comparables is located in COUNTY-1, while the other five comparables are located in STATE-2, STATE-3, STATE-1, STATE-4, and STATE-5. RESPONDENT'S REP-1 shows the comparables selling for prices ranging between \$\$\$\$ and \$\$\$\$ per

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<sup>15</sup> Petitioner's Exhibit 1 (pp. 31-32); Respondent's Exhibit 1 (pp. 14-16).

square foot, and he adjusted them to adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. RESPONDENT'S REP-1 gave the most weight to the \$\$\$\$\$ per square foot price at which the COUNTY-1 comparable adjusted, and he estimated the subject's value to be \$\$\$\$\$ per square foot. When RESPONDENT'S REP-1 applied this \$\$\$\$\$ per square foot value to the ##### square feet of space that he used as the subject's size, he derived a value of \$\$\$\$\$ (which he "rounded to \$\$\$\$\$"). On this basis, RESPONDENT'S REP-1 estimated a sales comparison approach value of \$\$\$\$\$ for the subject property.<sup>16</sup>

28. A number of issues exist with the County's sales comparison approach. First, the prices per square foot that RESPONDENT'S REP-1 calculated for three of his six comparables appear to be incorrect. Specifically, RESPONDENT'S REP-1 shows the sales prices per square foot of County Comparables 3, 4, and 5 (which are located in STATE-3, STATE-1, and STATE-4) to be \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. However, based on the sales prices and square footages that RESPONDENT'S REP-1 shows for these comparables, their "corrected" prices per square foot would be \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. If the total percentage adjustments that RESPONDENT'S REP-1 made for these three comparables are applied to the corrected prices per square foot, their corrected adjusted sales prices would be \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot (which are lower than the adjusted sales prices per square foot that RESPONDENT'S REP-1 derived for these comparable).<sup>17</sup>

29. In addition, it is questionable whether the prices for two of the County's six comparables reflected those comparables' fair market values. The taxpayer discussed information that suggests that the County's Comparable 4 was a refinancing transaction by its owner, not the sale of the property from a willing buyer to a willing seller. In addition, the taxpayer indicated that the buyer of County Comparable 6 was the property's tenant, which may not be an arm's-length sale.

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<sup>16</sup> Respondent's Exhibit 1 (pp. 9-11). If RESPONDENT'S REP-1's sales comparison approach value of \$\$\$\$\$ is divided by the subject's size of ##### square feet that the Commission is using for this decision, it would result in a value of \$\$\$\$\$ per square foot.

<sup>17</sup> Furthermore, it appears that RESPONDENT'S REP-1 miscalculated the total adjustments of his Comparable 4 to be negative %%%%. When the individual percentage adjustments he made to this comparable are summed, the total adjustment appears to be only negative %%%%.

30. Furthermore, on the Improved Sales Summary chart that RESPONDENT'S REP-1 prepared for his six comparables, he shows that five of the County's six comparables were leased fee sales and that one of his comparables (the one in STATE-4) was a fee simple sale.<sup>18</sup> However, when discussing whether any adjustments needed to be made to his comparables for "property rights conveyed," RESPONDENT'S REP-1 stated that "[t]he valuation of the subject is of the fee simple interest" and that "[t]hree of the four comparable sales are also of the fee simple interest."<sup>19</sup> After making these statements, RESPONDENT'S REP-1 decided that no adjustment for property rights conveyed was needed for any of his five leased fee comparables. These statements, however, are incorrect because RESPONDENT'S REP-1 used six comparables (whereas he states that he considered four comparables) and because five of RESPONDENT'S REP-1's comparables are leased fee sales (whereas he states that only one of the comparables is a leased fee sale). As a result, the Commission is not convinced that RESPONDENT'S REP-1 properly determined that none of his five leased fee comparables required an adjustment for property rights conveyed.

31. Furthermore, to estimate the subject's value, RESPONDENT'S REP-1 relied primarily on the comparable in COUNTY-1 (County Comparable 1), which he adjusted to an adjusted sales price of \$\$\$\$ per square foot.<sup>20</sup> However, PETITIONER'S REP-2 also used this comparable in his sales comparison approach (which will be discussed in more detail below). PETITIONER'S REP-2 shows a different sales price and a different amount of square footage for this comparable. In addition, PETITIONER'S REP-2 makes negative adjustments to this comparable to account for its being a leased fee sale and for location, whereas RESPONDENT'S REP-1 did not make any such adjustments.<sup>21</sup> Because of the many errors contained in RESPONDENT'S REP-1's sales comparison approach and questions as to whether RESPONDENT'S REP-1's adjustments are appropriate, the Commission finds the \$\$\$\$ per square foot adjusted sales price that RESPONDENT'S REP-1 derived for the COUNTY-1

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<sup>18</sup> Respondent's Exhibit 1 (p. 9).

<sup>19</sup> Respondent's Exhibit 1 (p. 10).

<sup>20</sup> Respondent's Exhibit 1 (p. 11).

<sup>21</sup> Petitioner's Exhibit 1 (p. 34).

comparable and his primary reliance on it to estimate the subject's value to be suspect. For these reasons, the Commission will not use the County's sales comparison approach when establishing a 2018 value for the subject property.

32. For the taxpayer, PETITIONER'S REP-2 compared the subject property to six comparable sales that sold between 2012 and 2018 and which range between ##### and ##### square feet in size. As discussed above, one of PETITIONER'S REP-2's comparables is the same COUNTY-1 comparable that RESPONDENT'S REP-1 used. PETITIONER'S REP-2's other five comparables are also located in Utah, one in COUNTY-3, three in COUNTY-2, and one in COUNTY-4. PETITIONER'S REP-2 shows two of his comparables selling for prices of \$\$\$\$ and \$\$\$\$ per square foot (the comparables in COUNTY-3 and COUNTY-4), while he shows his other four comparables (the ones located in COUNTY-1 and COUNTY-2) selling for prices ranging between \$\$\$\$ and \$\$\$\$ per square foot. For the two comparables in COUNTY-3 and COUNTY-4 (which sold for the lowest prices per square foot), PETITIONER'S REP-2 adjusted them to adjusted sales prices of \$\$\$\$ and \$\$\$\$ per square foot. For the four comparables in COUNTY-2 and COUNTY-1 (which sold for the highest prices per square foot), PETITIONER'S REP-2 adjusted them to adjusted sales prices \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot.<sup>22</sup>

33. However, PETITIONER'S REP-2 gave little, if any weight to his Comparable 2 (the COUNTY-1 comparable) and his Comparable 3 (one of the COUNTY-2 comparables) because the COUNTY-1 sale was a sales-leaseback transaction and because he described his Comparable 3 as a failed sale. Because his remaining four comparables (taxpayer Comparables 1, 4, 5, and 6) adjusted to adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot and because the mean and median of these four adjusted sales prices is \$\$\$\$\$ and \$\$\$\$\$ per square foot, PETITIONER'S REP-2 estimated a value of \$\$\$\$\$ per square foot for the subject property. When PETITIONER'S REP-2 applied this \$\$\$\$\$ per square foot value to the subject's ##### of square foot space, he derived a value of \$\$\$\$\$ (which he

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<sup>22</sup> Petitioner's Exhibit 1 (pp. 33-38).

rounded to \$\$\$\$\$). On this basis, PETITIONER'S REP-2 estimated a sales comparison approach value of \$\$\$\$\$ for the subject property.<sup>23</sup>

34. The Commission, however, believes that PETITIONER'S REP-2's sales comparison approach may underestimate the subject's value. Of particular concern are the comparables located in COUNTY-3 (taxpayer Comparable 1) and in COUNTY-4 (taxpayer Comparable 2). The sales prices of these comparables appear anomalously low when compared to the sales prices of PETITIONER'S REP-2's remaining comparables (which are located in COUNTY-2 and COUNTY-1). In addition, the adjusted sales prices of these two comparables are lower than any of the adjusted sales prices that PETITIONER'S REP-2 derived for his COUNTY-2 and COUNTY-1 comparables.

35. It is possible that the COUNTY-3 and COUNTY-4 comparables sold for relatively low prices not only because they are located relatively far away from the COUNTY-2 area, but also because they have relatively low ceiling heights and/or have few dock-high doors. RESPONDENT'S REP-1 contends that whereas the subject property has approximately ##### dock-high doors, the COUNTY-4 comparable (taxpayer Comparable 6) only has ##### dock-high doors (which the taxpayer did not refute). In addition, whereas the subject's ceiling heights range between ##### and ##### feet, the COUNTY-3 comparable (taxpayer Comparable 1) has ceiling heights ranging between ##### and ##### feet, while the COUNTY-4 comparable (taxpayer Comparable 6) has ceiling heights ranging between ##### and ##### feet. In comparison, the subject property, the COUNTY-1 comparable (taxpayer Comparable 1), and two of the COUNTY-2 comparables (taxpayers Comparable 2 and 3) have ceiling heights of ##### feet or more, while the remaining COUNTY-2 comparable (taxpayer Comparable 4) has a ceiling height of ##### feet.<sup>24</sup> In addition, RESPONDENT'S REP-1 contends that taxpayer Comparable 4 only has a few dock-high doors (which the taxpayer did not refute).

36. Based on the foregoing, the Commission believes that giving any weight to the COUNTY-3 comparable (taxpayer Comparable 1) would underestimate the subject's value. The

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<sup>23</sup> Petitioner's Exhibit 1 (pp. 33-38).

<sup>24</sup> Petitioner's Exhibit 1 (pp. 83-93).

COUNTY-3 comparable has the lowest sale price per square foot and adjusted sale price per square foot. It also has, by far, the lowest ceiling heights, with ceiling heights as low as ##### feet. It is also the oldest of the taxpayers' six comparables, as it was built in YEAR and the other five comparables were built between YEAR and YEAR (the subject property was built in 2005).<sup>25</sup> As a result, taxpayer Comparable 1 is too dissimilar to the subject property to be of any use in determining the subject's value. If this comparable is eliminated from the analysis, the mean of the taxpayer's five remaining adjusted sales prices (for taxpayer Comparables 2, 3, 4, 5, and 6) is \$\$\$\$\$ per square foot.

37. However, it is also questionable whether the COUNTY-4 comparable (taxpayer Comparable 6) should be used to estimate the subject's value because of its location and because it was built in DATE, has ceiling heights as low as ##### feet, and has relatively few dock-high doors. If this comparable is also eliminated from the analysis, the mean of the taxpayer's four remaining adjusted sales prices (for taxpayer Comparables 2, 3, 4, and 5) is \$\$\$\$\$ per square foot.<sup>26</sup>

38. Lastly, it is questionable whether the COUNTY-2 comparable with a ##### foot ceiling height and few dock-high doors (taxpayer Comparable 4) should be used to estimate the subject's value, especially where it was also built in 1990. If this comparable is also eliminated from the analysis, the mean of the taxpayer's three remaining adjusted sales prices (for taxpayer Comparables 2, 3, and 5) is \$\$\$\$\$ per square foot.<sup>27</sup> Admittedly, these three remaining adjusted sales prices include those for taxpayer Comparables 2 and 3, which PETITIONER'S REP-2 gave little weight to when estimating a sales comparison approach value for the subject property. However, the Commission is not as concerned with using these comparables where PETITIONER'S REP-2 included these comparables in his analysis, where he adjusted the comparables for their "economical characteristics," and where these two comparables are more similar to the subject property than some of PETITIONER'S REP-2's other comparables (as previously discussed).

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<sup>25</sup> Petitioner's Exhibit 1 (pp. 34 and 83).

<sup>26</sup> Petitioner's Exhibit 1 (pp. 34 and 93).

<sup>27</sup> Petitioner's Exhibit 1 (pp. 34 and 89).

39. By eliminating those comparables that are least similar to the subject property, the means of the adjusted sales prices of the other comparables (as derived in the three prior paragraphs) are \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. As a result, the Commission finds that a value of \$\$\$\$\$ per square foot would be a reasonable estimate of the subject's 2018 value. Applying this \$\$\$\$\$ per square foot value to the subject's size of ##### square feet results in value of \$\$\$\$\$ (rounded to \$\$\$\$\$). For these reasons, the Commission finds that the subject's sales comparison approach value for the 2018 tax year is \$\$\$\$\$.

40. 2018 Value – Summary. Earlier, the Commission has determined that for the 2018 tax year, the subject's income approach value is \$\$\$\$\$ and that its sales comparison approach value is \$\$\$\$\$. In addition, the Commission finds that each of these values should receive similar weight when establishing the subject's 2018 value, while the cost approach should receive no weight in establishing the subject's 2018 value (for reasons explained earlier). For these reasons, the Commission finds that the subject property's value for the 2018 tax year is \$\$\$\$\$.

41. The evidence is sufficient to show that the subject's current 2018 value of \$\$\$\$\$ is incorrect and that the subject's 2018 value is \$\$\$\$\$. However, the taxpayer has not provided a sound evidentiary basis to support its proposed value of \$\$\$\$\$. In addition, the taxpayer has not shown that the subject's value should be lower than \$\$\$\$\$, and the County has not shown that the subject's 2018 value should be higher than \$\$\$\$\$.

42. The subject's value for the 2018 tax year is \$\$\$\$\$.

#### APPLICABLE LAW

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

2. 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 a 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.

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

....

4. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Commission, as follows in pertinent part:

- (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. . . .

....

- (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 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-2*, 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).

#### CONCLUSIONS OF LAW

1. For the 2018 tax year at issue, Subsection 59-2-103(1) provides for the subject to be taxed on the basis of its "fair market value" as of January 1, 2018. Subsection 59-2-102(13) defines "fair market value" as "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."

2. The County does not request a 2018 value for the subject property that is different from the \$\$\$\$\$ value at which the subject property was originally assessed and which the County BOE sustained. Accordingly, the taxpayer has the burden of proof not only to demonstrate that the subject's current value of \$\$\$\$\$ is incorrect, but also to provide the Commission with a sound evidentiary basis for reducing the subject's value to its proposed value of \$\$\$\$\$.

3. For reasons explained earlier, the Commission found the evidence to be sufficient to show that the subject's current 2018 value of \$\$\$\$\$ is incorrect and that the subject's 2018 value is \$\$\$\$\$. The taxpayer has not provided a sound evidentiary basis to support the \$\$\$\$\$ it requested, nor has it shown that the subject's 2018 value should be lower than \$\$\$\$\$. In addition, the County has not shown that the subject's 2018 value should be higher than \$\$\$\$\$.

4. Furthermore, for reasons explained earlier, establishing a 2018 value of \$\$\$\$\$ for the subject property is not inconsistent with the provisions of Section 59-2-301.4.

5. Based on the foregoing, the Commission should reduce the subject's current 2018 value of \$\$\$\$\$ to \$\$\$\$\$.

Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property's current value of \$\$\$\$ should be reduced to \$\$\$\$ for the 2018 tax year. The COUNTY-1 Auditor is ordered to adjust its records in accordance with this decision.

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.