

19-355

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 2020-08-14

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

GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

---

<p>PETITIONER-1 and PETITIONER-2,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, EX REL. SOFFE CITY-1,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 19-355</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2018</p> <p>Judge: Phan</p>
--	--

**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:**

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

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONERS, Deputy District Attorney, by  
Teleconference

For Respondent: No One Appeared

For Ex Rel. Party: REPRESENTATIVE FOR EX REL. PARTY, Representative by  
Teleconference

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 21, 2020, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. 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 the COUNTY Assessor's appeal of the decision issued by the COUNTY Board of Equalization in regards to the fair market value, as of lien date DATE 2018, of Parcel No. #####.<sup>1</sup>

2. The County Assessor had originally assessed the subject parcel for the lien date at issue at \$\$\$\$\$. The ex rel party in this matter, PROPERTY OWNER ("Property Owner") had appealed the 2018 assessed value to the COUNTY Board of Equalization and the COUNTY Board of Equalization reduced the value of the subject parcel for the tax year 2018 to \$\$\$\$\$.<sup>2</sup> The COUNTY Assessor then appealed the COUNTY Board of Equalization's decision regarding the subject parcel to the Utah State Tax Commission.

3. At the Formal Hearing the County Assessor ("County") asks the Commission to increase the subject's current value back to the original assessed value of \$\$\$\$\$. The Property Owner asks the Commission to sustain the value set by the County Board of Equalization of \$\$\$\$\$. Although technically the Respondent in this appeal, a representative for the COUNTY Board of Equalization did not attend the hearing or present a position.

4. The parcel subject to this appeal contains a BUSINESS-1 located at SUBJECT ADDRESS in CITY-1, Utah. There is a second parcel that is adjacent to the subject parcel and contains the parking lot for the BUSINESS-1 identified as Parcel No. ##### ("Parcel 9"). Both parcels together make up the economic unit for the BUSINESS-1. The Property Owner had appealed both parcels together to the County Board of Equalization. However, when the County appealed the County Board of Equalization decision to the Utah State Tax Commission the County did not appeal the value set for Parcel 9. Therefore, no adjustment can be made to the value set by the County Board of Equalization for Parcel 9 and the current assessed value of Parcel 9, which is \$\$\$\$\$, is subtracted from the value of the economic unit.

---

1 There are two parcels that make up the economic unit of the subject BUSINESS-1 property, but only one was appealed to the Utah State Tax Commission.

2 It is noted that the 2017 County BOE also reduced the value at which the subject property was originally assessed for the 2017 tax year to \$\$\$\$\$. No party appealed the 2017 County BOE decision concerning the subject property to the Commission.

5. The parcel subject to this appeal is #####-acres in size, combined with Parcel 9 the land size is #####-acres. The improvement on the subject parcel is a purpose built building to be used as a BUSINESS-1. The building was constructed in YEAR and has been used in an ongoing BUSINESS-1 operation since that time. The BUSINESS-1 building has ##### square feet on the main floor and an #####-square foot basement that is finished. There is also a garage that is ##### square feet in size with a COVERED AREA of ##### square feet. There is a separate (X) building that is ##### square feet in size.

6. Based on photographs,<sup>3</sup> a 2012 Appraisal<sup>4</sup> and testimony offered at the Formal Hearing, the BUSINESS-1 building has both the design and functionality suitable for its use as a BUSINESS-1. In the 2012 Appraisal submitted in this matter, the Appraisers consider the highest and best use as improved and concluded, “that a continuation of the existing improvements is the highest and best use of the subject property “as improved”” and “the most typical purchaser for the subject property would be an owner-user with the continued use as a BUSINESS-1.”<sup>5</sup> The main floor of the building contains a front (Z) area, a ##### square foot ROOM-1, a ROOM-2 and ROOM-3. (SENTENCE REMOVED).

7. The County in this matter did not prepare and submit a traditional appraisal, but did present appraisal approaches which had been prepared by NAME-1, Appraiser COUNTY, as well as other information. NAME-1 attended the hearing via teleconference and testified about his valuation conclusions. In addition NAME-2, Commercial Appraisal Manager COUNTY, attended the hearing via teleconference and testified regarding valuation of the property. The County argued the position that this was a special purpose building and should be assessed based on the cost approach because there were no reliable market transactions to establish value and the land was a significant component of the value. The County submitted a cost approach prepared by NAME-1<sup>6</sup> from which it concluded a value of \$\$\$\$ for the subject parcel. The County also presented a market sales approach. The County requested at the hearing that the value be set at the original assessed value of \$\$\$\$.<sup>7</sup>

8. The County’s cost approach concluded that the value of the buildings was \$\$\$\$ and the value of both parcels of land was \$\$\$\$\$. This indicated a cost approach conclusion for the economic unit of \$\$\$\$\$. However Parcel 9 was not subject to this appeal and so the current assessed value for that

---

3 Petitioner’s Direct Exhibit 6.

4 Petitioner’s Direct Exhibit 8 was an appraisal of the economic unit, which had been prepared for financing purposes by GROUP-1, with an effective date of DATE, 2012.

5 Petitioner’s Direct Exhibit 8, pg. 47.

6 Petitioner’s Direct Exhibit 1.

7 Had the County requested the value be increased from the original assessed value of \$\$\$\$\$, the County would have had the burden of proof in this matter based on the statutory provision at Utah Code Sec. 59-2-109(2) that was in effect for tax year 2018 which provided, “the assessing authority has the burden of proof . . .if the assessing authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the value originally assessed by the assessing authority.” However, in asking to increase the value from the \$\$\$\$\$ that the County Board of Equalization had determined, the County still has the burden of proof based on case law.

parcel of \$\$\$\$\$ was subtracted to get to the County’s conclusion for the subject parcel of \$\$\$\$\$. In his cost approach, NAME-1 determined the value for the land based on land sales and the cost to construct the improvements using APPRAISAL GUIDE cost information. Then the County applied its own age/life method to determine depreciation.

9. The County’s land sales and the adjusted value conclusion for the subject from these sales were the following:<sup>8</sup>

Address	Sale Price/Per Square Foot	Sale Date	Square Foot	Access	Location	Adjusted Price Per Square Foot
Subject:	SUBJECT ADDRESS	##### <sup>9</sup>		X		
ADDRESS-1	\$\$\$\$/\$\$\$\$\$	DATE	#####	X	Equal	\$\$\$\$
ADDRESS-2	\$\$\$\$/\$\$\$\$\$	DATE	#####	X	Inferior	\$\$\$\$
ADDRESS-3	\$\$\$\$/\$\$\$\$\$	DATE	#####	X	Equal	\$\$\$\$
ADDRESS-4	\$\$\$\$/\$\$\$\$\$	DATE	#####	X	Inferior	\$\$\$\$
ADDRESS-5	\$\$\$\$/\$\$\$\$\$	DATE	#####	X	Equal	\$\$\$\$

From these sales the County had concluded a value for the subject land, for both parcels in the economic unit of \$\$\$\$\$ per square foot or a total value rounded for the land parcels of \$\$\$\$\$. NAME-1 points out that the land sale at ADDRESS-5 was just across the street from the subject property and had sold very near the lien date at issue in this appeal.

10. NAME-1 determined the cost of the improvements using APPRAISAL GUIDE.<sup>10</sup> One key element of this valuation was NAME-1’s classifying the quality of the above grade area and the finished basement area as both being of very good quality. NAME-1 had taken photographs which he submitted in this matter<sup>11</sup> showing the interior and they were consistent with at least a good grade quality, but it was more difficult to determine if the quality was very good grade, especially in regards to the basement area.

11. In his analysis, NAME-1 acknowledged that the APPRAISAL GUIDE does not have a classification designated as “very good” for a BUSINESS-1. There is a “good” and an “excellent.” NAME-1 concluded his own cost for the building by choosing a cost between these two “good” and “excellent” categories. APPRAISAL GUIDE cost for its “good” grade classification for an above grade

---

8 Petitioner’s Direct Exhibit 1, pg. 8.

9 Includes the land size from both parcels in the economic unit.

10 Petitioner’s Direct Exhibit 1, pgs 10-12.

11 Petitioner’s Direct Exhibit 6.

square foot was \$\$\$\$ and the cost for an “excellent” above grade square foot was \$\$\$\$\$. It was NAME-1’s conclusion that the cost per square foot for the above grade area was \$\$\$\$ and for the basement was \$\$\$\$ per square foot. Adding to this all the other improvements including the garage, retort or (X) building, concrete paving and landscaping, plus a %%% development fee, his cost new conclusion for all of the improvements was \$\$\$\$\$. From this cost new he subtracted \$\$\$\$ in depreciation based on an age/life calculation. He concluded there was no additional functional or economic obsolescence to deduct and this results in his improvement value, rounded of \$\$\$\$.

12. The County did submit a sales comparison approach, but argued these special purpose type properties should be valued based on the cost approach because there were inadequate sales of BUSINESS-1 properties to complete a sales approach. This type of business operates in owner occupied buildings. There were no leased comparables so there was no lease information to determine an income approach. There had been a few BUSINESS-1 sales in the County, but they were generally sales between family members or related parties, not arm’s length transactions. The County noted the BUSINESS-2 had sold between father and daughter and the BUSINESS-3 had some sort of restructuring but the principals before and after were the same.

13. It was NAME-1’s contention that since there were few BUSINESS-1 sales, an appraiser would have to look for comparables with similar features like (Y) and (Z) centers. He provided the opinion that a BUSINESS-1 needs a large amount of parking and would generally have a ROOM-1 so these were the features he would consider in trying to find comparables. He did offer four comparable sales which he adjusted for a sales comparison approach. (SENTENCE REMOVED). He noted that his comparable 3 was a (Y) with a ROOM-1. He did not state in his exhibit what each of the other comparables had been or what they were purchased for. His sales comparison and adjusted value for the subject was the following:

Address	Sale Price/Per Square Foot	Building Size	Land Size	Quality/Condition	Year Built	Adjusted Value Per Square Ft
SUBJECT ADDRESS		#####	#####	V Good/Good	YEAR	
1) ADDRESS-6	\$\$\$\$/\$\$\$\$	#####	#####	Average/Good	YEAR	\$\$\$\$
2) ADDRESS-7	\$\$\$\$/\$\$\$\$	#####	#####	Good/V Good	YEAR	\$\$\$\$
3) ADDRESS-8	\$\$\$\$/\$\$\$\$	#####	#####	Avg./Avg.	YEAR	\$\$\$\$
4) ADDRESS-9	\$\$\$\$/\$\$\$\$	#####	#####	Avg./Avg.	YEAR	\$\$\$\$

From these sales, NAME-1 concluded a value of \$\$\$\$ per square foot or \$\$\$\$ for the subject economic unit. These sales did not bracket the subject, as all had sold for significantly less per square foot than NAME-1’s adjusted value conclusion of \$\$\$\$ per square foot.

14. Because valuing a special use property was difficult the County had submitted in this appeal a number of BUSINESS-1 appraisals, none of which had been prepared by the County and three of which were for other BUSINESS-1 properties. These were provided to support the County's contention that a cost approach should be used and to illustrate the lack of good comparables. There had been the August 2012 appraisal of the subject property prepared by GROUP-1 for financing purposes. When that appraisal had been completed on the subject property the basement was only partially finished.<sup>12</sup> The conclusion in that appraisal was a value of \$\$\$\$\$ for the economic unit, giving weight to both a cost approach value of \$\$\$\$\$ and a sales comparison value of \$\$\$\$\$. In the appraisal, none of the sales comparables used had been BUSINESS-1 properties. One point of note in this appraisal was that the highest and best use of the land if vacant was not used as a BUSINESS-1.

15. The County submitted an appraisal that had been prepared to value another BUSINESS-1 property. This was a DATE, 2013 appraisal of a proposed BUSINESS-3 located at ADDRESS-10, CITY-2 Utah, which had been prepared by NAME-3, and NAME-4, State Licensed Appraiser.<sup>13</sup> At the time of the appraisal, this was a proposed project that had not yet been built, but it was eventually constructed. In their appraisal the NAME-3 & NAME-4 valued the proposed property at \$\$\$\$\$ and the valuation was based on a cost approach and one comparable sale, which was a (A) building. The proposed BUSINESS-1 was smaller than the subject as far as the land and the building size, however, it was a brand new construction at the time of the appraisal. The appraisers note in the appraisal that the highest and best use of the land if vacant was to construct COMMERCIAL BUILDINGS. A BUSINESS-1 was not the highest and best use of the land if the land was vacant.

16. A third appraisal submitted by the County was an appraisal of the BUSINESS-3 located at ADDRESS-11, CITY-3, Utah. This property was appraised by BUSINESS-4 effective DATE, 2017.<sup>14</sup> The BUSINESS-3 had been constructed in YEAR and YEAR. It was more similar in size to the subject with #####-square feet and a finished basement area like the subject. However, this was an older building. In this appraisal the value was based only on a sales comparison approach. The appraisal conclusion for this property was a value of \$\$\$\$\$. The BUSINESS-4 appraiser had used one BUSINESS-1 sale as a comparable, which was the BUSINESS-5, ADDRESS, CITY-2 Utah. However, he noted in the appraisal that both the ongoing business and the real property had sold for the total sales price of \$\$\$\$\$ and this sale was between related parties. The other comparables used in this appraisal were a property that had been a (Y), one that was purchased to be used for (Y), a property that had been a

---

12 Petitioner's Direct Exhibit 8.

13 Petitioner's Direct Exhibit 10.

14 Petitioner's Rebuttal Exhibit 15.

(A) , and one that had been used as a (B) but was advertised as having (Y) potential. The BUSINESS-3 also transferred ownership but it was a related party transfer.

17. The County also submitted an appraisal for the BUSINESS-5 which had been prepared to determine the purchase price between the related parties. This appraisal had been prepared by BUSINESS-6 with an effective date of DATE, 2016.<sup>15</sup> This appraisal concluded a value for the real estate, after a proposed addition was added to the building, of \$\$\$\$or \$\$\$\$ per square foot. In valuing the real estate, these appraisers also considered both a cost and sales comparison approach. In the sales approach they used BUILDINGS but did note one BUSINESS-1 sale, which had been the BUSINESS-7 in CITY-4, Utah, although this building had sold in May of 2008 and was located in a different County. This appraisal also estimated a value for the business as well, determining a “total going concern” value of \$\$\$\$.

18. One thing noted in these appraisals was that the highest and best use of land if vacant was not for use to construct a BUSINESS-1, but once the BUSINESS-1 was constructed the highest and best use as improved was for the property to continue as a BUSINESS-1. These appraisals all support the position that it is difficult to appraise BUSINESS-1 properties because these are owner used properties, which sell infrequently and when they do sell they tend to sell between related parties. Additionally, none of these appraisers relied solely on a cost approach.

19. The County also submitted a UDOT appraisal that had a valuation date of DATE, 2017.<sup>16</sup> The purpose of that appraisal was to value a small sliver of land that UDOT took from the subject property for a road project. The appraisal concluded a land value of \$\$\$\$ per square foot. The County points out that this more than supports the County’s land value in its cost approach.

20. The Property Owner submitted an appraisal at the hearing which supported the value set by the County Board of Equalization and the Property Owner requested that the value remain as set by the County Board of Equalization. The appraisal had been prepared by NAME-5 of APPRAISAL COMPANY. NAME-5 concluded that effective DATE, 2018, the value of the two parcel economic unit was \$\$\$\$.<sup>17</sup> NAME-5 attended the hearing via teleconference and testified regarding his appraisal conclusions and other valuation information. To get to the value of the subject parcel only of \$\$\$\$\$, the \$\$\$\$ assessment for Parcel 9 needs to be subtracted from NAME-5 appraisal conclusion.

21. In his appraisal, NAME-5 considered only a sales comparison approach. As all appraisal evidence had indicated in this hearing, there are very few BUSINESS-1 sales that are not between related parties. NAME-5 did consider in his appraisal the BUSINESS-3 and BUSINESS-5 sales as well as

---

15 Petitioner’s Rebuttal Exhibit 24.

16 Petitioner’s Direct Exhibit 9.

17 Ex rel. Party’s Main Appraisal Report.

another BUSINESS-1, the BUSINESS-8, which had sold in CITY-5 Utah. NAME-5 sales and his value conclusion per square foot from the sales are the following:

Address	Sale Price/Per Square Foot	Building Size	Land Size	Quality/Condition	Year Built	Adjusted Value Per Square Ft
Subject: SUBJECT ADDRESS		#####	#####	V Good/Good	2002	
BUSINESS-8 ADDRESS	\$\$\$\$/\$\$\$\$	#####	#####	Good/Avg.	YEAR	\$\$\$\$
BUSINESS-3 ADDRESS CITY-3	\$\$\$\$/\$\$\$\$	#####	#####	Good/Avg.	YEAR	\$\$\$\$
BUSINESS-5 ADDRESS, CITY-2	\$\$\$\$/\$\$\$\$	#####	#####	Good/Avg.	YEAR	\$\$\$\$
TYPE OF BUILDING ADDRESS	\$\$\$\$/\$\$\$\$	#####	#####	Good/Avg.	YEAR	\$\$\$\$
TYPE OF BUILDING ADDRESS	\$\$\$\$/\$\$\$\$	#####	#####	Good/Avg.	YEAR	\$\$\$\$

From these sales, NAME-5 concluded a value of \$\$\$\$ per square foot or \$\$\$\$ for the subject economic unit.

22. In his appraisal NAME-5 noted that TYPE OF BUILDING's have similar costs to construct compared to BUSINESS-1's and BUSINESS-1's tend to be in similar locations to TYPE OF BUILDING.<sup>18</sup>

23. In addition to this appraisal, the Property Owner offered the County Board of Equalization hearing record in support of the value conclusion determined by the County Board of Equalization.<sup>19</sup> The Property Owner had submitted an appraisal to the County Board of Equalization, which had offered four BUSINESS-1 comparables and one (Y) sale. Two of these comparables were the BUSINESS-3 and the BUSINESS-5. NAME-5 testified that because of criticism from the County, he had not used in his new appraisal the other three comparables, noting that two were very old sales and the third was a different type of property, containing crypts rather than the BUSINESS-1 type properties.

24. One point of interest in the comparable sales the Property Owner had submitted to the County Board was the BUSINESS-1 comparable located at ADDRESS. This comparable had sold for

<sup>18</sup> Ex rel Party's Main Appraisal Report, pg. 21.

<sup>19</sup> Ex rel Rebuttal Exhibit 3.



\$\$\$\$\$ in DATE of 2011, so predated the lien date by many years, but was the only BUSINESS-1 sale discussed by the parties where the use had changed after the sale. This had been an older, ##### square foot BUSINESS-1 building located on ##### acres of land. The building, however, was no longer being used as a BUSINESS-1 and was in disrepair at the time of the sale. The buyer bought the property and tore down the building to make way for a new commercial development on the land. This supports the position that if a BUSINESS-1 building is no longer used for a BUSINESS-1 the building will be torn down and not repurposed. Another comparable offered in that appraisal had been a DATE 2011 sale at ADDRESS. This was a (Y) building, but the sale had predated the lien date by many years.

25. In addition the Property Owner provided APPRAISAL GUIDE<sup>20</sup> costing information to show that the subject property did fit within the classification of “Good” in that valuation services description, and argued that the cost approach the County had offered at this hearing was too high. The County Board of Equalization had rejected the County’s cost approach and accepted the Property Owner’s appraisal value, which had been based on sales comparables.

26. The Property Owner’s representative, REPRESENTATIVE FOR EX REL. PARTY, called into question the County’s sales comparables offered in this matter, none of which were BUSINESS-1 properties. REPRESENTATIVE FOR EX REL. PARTY points out that the County’s sales comparable 1, located at ADDRESS-6, was a building purchased by EDUCATION INSTITUTION to be used as a (A). The County’s comparable 2, at ADDRESS, was a high tech CENTER that had the potential for a number of different uses at the same time, for example, there was RECREATIONAL AREAS. The Property Owner’s representative testified that he had been involved in appraising comparable 2 when it was constructed and it was designed to have ##### separate rooms or areas that could be rented either separately or together (WORDS REMOVED). The County’s appraiser, NAME-1, had indicated that this CENTER was a lower grade of finish than the subject building, and REPRESENTATIVE FOR EX REL. PARTY did provide photographs and the sales information regarding the CENTER that supported that the grade and finishes were not lower than the subject building, although they were different in style. REPRESENTATIVE FOR EX REL. PARTY testified that the County’s comparable at ADDRESS-8 was used as a RELIGIOUS INSTITUTION, that had a ROOM-1 as (WORDS REMOVED). He testified that the County’s final comparable at ADDRESS was a (Z) center. He noted that unlike the subject, the basement level of the (Z) center was fully above grade. (WORDS REMOVED).

27. An additional point that the Property Owner’s representative made was that the BUSINESS-1 business was starting to see an obsolescence due to the fact that PROCEDURE was becoming more and more common. (SENTENCES REMOVED).

---

20 Ex rel Rebuttal Exhibits 1 & 2.

28. REPRESENTATIVE FOR EX REL. PARTY also provided a few pages of the Real Estate Purchase Agreement for the BUSINESS-8 purchase, which indicated that the buyer and seller were not the same entities or people. However, this agreement highlighted the fact that the buyer had acquired not only the real estate but also the business and all non-real estate assets of the business.<sup>21</sup> NAME-1 made the statement in his own rebuttal report that the purchase price of the real estate was just an “allocated value arbitrarily set using the COUNTY Assessment value and does not reflect a market price.”<sup>22</sup> Again this highlights the problems of trying to determine a “fair market value” for BUSINESS-1 properties.

29. Upon review of the many BUSINESS-1 appraisals submitted at the hearing, the Commission’s conclusion is that the highest and best use of the subject property “as improved” was the continuation of the existing use, although the highest and best use of the land if not already improved was not for use as a BUSINESS-1. The highest and best use of the land would have been for commercial uses. The Commission notes that in his own rebuttal report,<sup>23</sup> NAME-1 criticized the fact that NAME-5 had not made adjustments for location to the two TYPE OF BUILDINGS sales comparables NAME-5 had included in his appraisal. These TYPE OF BUILDINGS comparables did not have good street frontage and were tucked away behind other TYPE OF BUILDING. The Commission concludes that NAME-1’s criticism is unfounded. Although a backage location would decrease the value for commercial property, it would be less of an issue for a BUSINESS-1 property, which is less likely to need visibility to attract customers. Therefore, an adjustment for location to the comparables would be valuing the subject property as if it is a commercial property, not a BUSINESS-1 property. It is appropriate to value the subject property as having the highest and best use as improved being the continuation of the use as a BUSINESS-1. However, in doing so the parties need to keep in mind that this diminishes the value of the land because it is not the highest and best use of the land itself.

30. NAME-2, provided a rebuttal report<sup>24</sup> of NAME-5 appraisal. In it he made the argument that NAME-5 was valuing the property as a second generation use and that he had not made adequate adjustments for grade and the amount of parking at the subject. In addition the County stated that it had looked at the actual business income for the business that operates the subject BUSINESS-1 and concluded that the subject BUSINESS-1 is a functional BUSINESS-1, thereby arguing there was no external obsolescence to the real property. Although NAME-2 offered this argument at the hearing, there was not enough information offered to support that it adequately accounted for the obsolescence to the real property for the purposes of fair market value in a cost approach.

---

21 Ex rel Party’s Rebuttal Exhibit 4, pg. 12.

22 Petitioner’s Rebuttal Exhibit 13, pg. 1.

23 Petitioner’s Rebuttal Exhibit 13, pg. 1.

24 Petitioner’s Rebuttal Exhibit 12.

31. The evidence submitted in this matter indicates that it is unlikely that the subject building would be purchased to be repurposed to another use. The property would either be purchased for use as a BUSINESS-1, which is its highest and best use as improved, or would be purchased for the land and the improvements torn down to be put to a new commercial use, which would be the highest and best use of the land.

32. The difficulty in determining the “fair market value” using a sales comparison approach of the subject property based on its highest and best use as improved, that being a BUSINESS-1 building, is that when BUSINESS-1’s sell they generally sell between related parties and the business itself sells with the real estate. The problem with trying to value a BUSINESS-1 property based on a cost approach, is the cost does not necessarily equate to what the real property would sell for between a willing buyer and seller. The owner built properties could be taste and style specific and a cost approach would need to consider all forms of obsolescence. It is clear that the BUSINESS-1 property sales do not support the cost approach value the County is relying on to increase the assessment of the subject property. In addition, in calculating its cost approach the County used a “very good” grade, which the Property Owner has called into question as far as the APPRAISAL GUIDE costing guide. The County has the burden of proof in this matter to show error in the value set by the County Board of Equalization and to support the higher value it is requesting.

33. After consideration of all the evidence submitted at the Formal Hearing, there is an inconsistency in how the County is valuing this property. The County has stated, and the other appraisals submitted also have indicated that the highest and best use of the subject property “as improved” is to continue as a BUSINESS-1. Since the BUSINESS-1 building is already constructed, the valuation needs to be based on a BUSINESS-1 building. However, the highest and best use of the land if it was still vacant is not for use as a BUSINESS-1. It would be for other commercial uses, like other types of property the County has used as comparables. Building a BUSINESS-1 on the property reduces the value of the property overall compared to other commercial uses. The County argues the value should be based on the continuation of its current use, yet it is the County in its sales approach that is not valuing the subject property as a BUSINESS-1. The Property Owner has provided information that supports the County Board of Equalization’s value and the County has the burden of proof in this matter. Because there are concerns with the County’s cost approach and the fact that the County has compared the subject to buildings that are not BUSINESS-1’s, while arguing that the highest and best use of the property as improved is a BUSINESS-1, there is an inconsistency in its sales comparison approach which has not been sufficiently answered. The County has not met its burden to establish a higher value in this appeal and the value should remain as set by the County Board of Equalization.

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.

Utah Code §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.

....

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, who in this case is the County Assessor, 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 he proposes. *See Nelson v. Bd. of Equalization of COUNTY*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 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." Utah statute implements the constitutional provision and provides that property tax is assessed on the basis of the property's "fair market value" 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 seller. See Utah Code Sec. 59-2-102.

2. As recently noted by the Utah Court of Appeals in *Fraughton v. Tax Commission*, 2019 UT App 6, ¶10, “the protesting taxpayer is required not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation (Citation Omitted).” In this appeal it is the Petitioner or County that is protesting the value set by the County Board of Equalization and the party that has the burden of proof based on case law. The County must show substantial error in the County Board of Equalization’s value and a sound evidentiary basis to adopt a new value. The Property Owner is requesting merely that the value remain as set by the County Board of Equalization and has provided evidence in support of that value as well as evidence calling into question the higher value requested by the County at the hearing. See also *Nelson v. Bd. Of Equalization of COUNTY*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 2000 UT 46, 5 P.3d 652 (Utah 2000).

3. 3. Utah law provides that where there has been a “valuation reduction” in a prior year, the county assessor shall consider certain factors in the determination of its value. Although the property was the subject of a “valuation reduction” as that is defined in Utah Code §59-2-301.4 in tax year 2017, and therefore §59-2-301.4 is applicable in this appeal, the County did not address these factors at the hearing.<sup>25</sup>

4. It seems apparent from the arguments of the County offered in this hearing that the County would like the Tax Commission to issue an order accepting County assessments based solely on a cost approach for all special purpose properties, including BUSINESS-1 properties. Certainly it would be easier for the County to value special purpose properties based on a cost approach, especially one where the County does not study or present a basis to accurately determine all types of obsolescence. It appears from consideration of the market information submitted that there is external obsolescence that affects the BUSINESS-1 properties that has not been considered in the age/life depreciation offered by the County. The Commission has never ruled that a BUSINESS-1’s fair market value should be derived based solely on a cost approach, although the Commission has indicated that the cost approach may be considered along with other valuation evidence submitted and taking into account which party has the burden of proof. (SENTENCES REMOVED). In this case the Commission has concerns with the County’s cost approach because the APPRAISAL GUIDE cost information the County relies on does not have a BUSINESS-1 category for “very good” grade, the subject seems to match the description of what constitutes a “good” grade BUSINESS-1 for purposes of the Valuation Services costing, and because it

---

25 H.B. 11 was adopted and became effective for tax year 2019 property appeals. If a party had appealed the 2019 assessed value for this property, because the Tax Commission is finding a 2018 value lower than the County’s assessed value, this property may be “qualified real property” as that is defined under Utah Code §59-2-109(2019) and the §59-2-109 provisions would need to be applied in a 2019 appeal.

appears there is additional obsolescence that is not captured in the County's age/life depreciation. The County did present a sales indicator, but those sales were not BUSINESS-1 properties. The Property Owner offered an appraisal with a sales comparison approach developed with BUSINESS-1 sales that supports the Board of Equalization value. The County has not met its two-fold burden of proof to raise the value above the value set by the County Board of Equalization.

After reviewing the evidence and the applicable law in this matter, the Commission should sustain the value set by the County Board of Equalization of \$\$\$\$ for the 2018 tax year.



Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Tax Commission finds that the value of the subject parcel as of the lien date DATE 2018 is \$\$\$\$\$. 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.