

19-649

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 11/15/2019

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

EXCUSED: J. VALENTINE

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,  Respondent.	<b>ORDER GRANTING MOTION TO COMPEL</b>  Appeal No.    19-649  Parcel No.    ##### Tax Type:    Property Tax Tax Year:    2018  Judge:        Phan
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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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    REPRESENTATIVE FOR TAXPAYER, Attorney at Law  
                            TAXPAYER/OWNER, Owner, Manager  
For Respondent:    REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY  
                            District Attorney  
                            RESPONDENT, Commercial Appraiser, COUNTY

On DATE, 2019, Respondent ("County") submitted a Statement of Discovery Issues and Motion Compel in this matter. On DATE, 2019, Petitioner ("Taxpayer") submitted a Response to Respondent's Motion to Compel and on DATE, 2019, the County submitted its Reply in Support

of its Motion to Compel. A Hearing on Respondent's Motion to Compel was held on DATE, 2019.

APPLICABLE LAW

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

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

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

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

DISCOVERY REQUESTS & OBJECTIONS

The County had made discovery requests and in this appeal argues in its Motion and at the Hearing on Motion that the Taxpayer had failed to provide responsive information to the County's discovery requests. The County's discovery requests and the initial response from the Taxpayer to the requests are the following:

**Interrogatory No. 1:** Please identify the actual costs of assembling the above parcel for its present use, regardless of whether capitalized or expensed, including the purchase price of the land, escrow fees, taxes and interest paid during construction, right-of-way acquisitions, storm drain, rough grading, overhead, and related items.

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

**Response from the Taxpayer:** No initial response from the Taxpayer and no direct response in the Taxpayer's Response to Respondent's Motion to Compel.

**Interrogatory No. 2:** The actual costs of constructing the improvements upon the above parcel, whether capitalized or expensed, including contractor profits, entrepreneurial cost, or developer fees.

**Response from the Taxpayer:** No initial response from the Taxpayer and no direct response in the Taxpayer's Response to Respondent's Motion to Compel.

**Request No. 1:** Please produce all documents relied upon and answer the above interrogatories.

**Response from the Taxpayer:** No initial response from the Taxpayer and no direct response in the Taxpayer's Response to Respondent's Motion to Compel.

**Request No. 2:** Please produce the actual income and operating statements for calendar years 2015, 2016, 2017, and 2018 for the subject property.

**Response from Taxpayer:** Taxpayer provided one page from the STR STAR Report which showed the percentage increase/decrease in the Occupancy, ADR and RevPar of the subject hotel and a competitive set of hotel properties.<sup>2</sup> However, although it showed a percentage increase/decrease it did not show the beginning number or ending number for the subject or the competitive set, which meant that there was no way to know what the actual Occupancy, ADR or RevPar were for the subject or the competitive set, or even how comparable the subject was to the competitive set. It also did not show how many hotel properties were in the competitive set or which properties those were.

#### ANALYSIS

At the hearing and in its Motion to Compel and Reply in Support of its Motion to Compel, the County claims the actual income and expenses are relevant to determining the fair market value of the subject property under the income approach. The County explains that hotels make money by renting rooms and the revenue and expenses are related to the physical characteristics of the property. The County's explanation that for assessment purposes in the County, the County values hotel properties using the actual rent rates and actual expenses and using a method the County called the Rushmore Approach in which franchise fees and management fees are subtracted to get to the tangible, taxable property value. The County points out that for this reason the actual income and expenses are relevant to determining the fair market value of hotel properties.

It was the County's position that there is an easy threshold under the Utah Rules of Civil Procedure, Rule 26 (b)(1) which permit the discovery of "any matter, not privileged, which is

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<sup>2</sup> This document was attached as Exhibit D to Respondent's Statement of Discovery Issues and Motion to Compel.

relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality.” The County argues the information is clearly relevant and it also meets the standards of proportionality because it is reasonable and necessary given that this is a hotel property. There is no other place the County can get the information other than the Taxpayer. It was the County’s contention that the Taxpayer has this information and can provide it to the County. The County points out that other hotel properties provide their own income and expense information to the County. The County also points out that the Taxpayer is the one that initiated this appeal and it would be wrong to allow the Taxpayer to challenge the assessment, but not allow the County to discover the information so that the County could defend its assessment.

The County also points out that the Taxpayer provided no explanation as to why it should not answer the Interrogatories Nos. 1 & 2 about the cost information. The County states that the actual costs to buy the land and construct the hotel are relevant to a cost approach. The County also argues that the information meets the proportional standards of the Utah Rules of Civil Procedure because it is reasonable given the complexity of valuing a hotel property, it’s readily available from the records of the Taxpayer, cannot be obtained from a more convenient source, there is no better source than the Taxpayer, it is consistent with appraisal process and is not duplicative. Although the cost information may be less reliable for determining the 2018 value of the subject property because the hotel was constructed in 2010 and 2011, which is significantly prior to the lien date, the Taxpayer did not object to this discovery.

In addition, the County points out that the Tax Commission has previously ruled that actual income and expenses as well as the cost information is discoverable in regards to the subject property when the Taxpayer had appealed for the 2017 tax year. In *Utah State Tax Commission, Order Granting Motion to Compel, Appeal No. 18-556*, (Sept. 25, 2018), the Tax Commission ordered the Taxpayer to produce its 2015 and 2016 income and operating statements as well as the cost information. The Taxpayer failed to comply and an Order of Default was issued against the Taxpayer closing the appeal.

The Taxpayer argues that the actual income, expense or cost information is not needed to determine the taxable value of the subject property. It is the Taxpayer’s argument that although the Utah Rules of Civil Procedure permit the discovery of “any matter . . . which is relevant to the claim,” there are limitations. The Taxpayer points out that discovery requests must be “reasonable, considering the needs of the case.” Citing U.R.C.P. 26(b)(2)(A).<sup>3</sup> It was the Taxpayer’s argument that it could meet its burden of proof to show error in the County’s assessment and support a sound evidentiary basis for a lower value without the actual income and

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<sup>3</sup> Response to Respondent’s Motion to Compel, pg. 2.

expense or cost information, so the actual income and expenses were not needed. Therefore, the Taxpayer argues the County's discovery is not reasonable. It was the Taxpayer's contention that the income and expenses went more to the business value of the hotel, which includes goodwill, licenses and trademarks, and not the property value.

In the alternative, the Taxpayer argues that if the Tax Commission grants the Motion to Compel to provide the actual income and expenses or cost information, and then the Taxpayer failed to produce the information, rather than dismiss the Taxpayer's appeal for failure to produce such information, the Commission should instead "preclude Petitioner from submitting such information as evidence in the appeal."<sup>4</sup>

After reviewing the arguments of the parties, the actual income, expense and cost information is the same information that was the subject of the Motion to Compel in *Appeal No. 18-556* and in *Utah State Tax Commission, Order Granting Motion to Compel, Appeal No. 18-556*, (Sept. 25, 2018), the Tax Commission held the information was both relevant and met the proportional test of U.R.C.P. 26. In *Appeal No. 18-556* the Commission stated:<sup>5</sup>

[T]his information is clearly relevant to determining the fair market value of the subject property, therefore it is relevant to a claim or defense of any party. So regardless of the Property Owner's claim that it intends to present its case relying on different types of evidence, the County may use this information in defense of its position. . . . The income and operating expenses for the two years prior to the lien date meet all of the proportionality standards. This is a reasonable request considering the needs of the case, this is information the Property Owner would have from its own accounting records, so is not burdensome or expensive to provide. It is not unreasonably cumulative or duplicative and the County cannot obtain this information from another source.

In addition, the Taxpayer has made a request in this matter that if the information is ordered and the Taxpayer still does not produce the information, instead of issuing a default against the Taxpayer and dismissing this appeal, the Tax Commission should merely preclude the Taxpayer from offering the actual income and expense information as evidence at the hearing. This request is not appropriate because it takes from the County a valid and appropriate means to defend its assessment, or support a higher value, should the County conclude that would be appropriate. It was the Taxpayer who initiated this appeal, not the County. There is no legal basis for the Taxpayer to argue that it may file an appeal of the County's assessment and then dictate in the appeal that the only evidence that may be offered by either party is the limited set of data that the Taxpayer wants to provide, when there is other relevant data available.

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<sup>4</sup> Response to Respondent's Motion to Compel, pg. 3.

<sup>5</sup> At page 5.

In regards to the cost information, the Taxpayer did not make a formal objection. The Tax Commission notes that this information predates the lien date by seven or eight years, so is relatively old information and, therefore, less relevant to fair market value as of DATE, 2018. The Tax Commission had granted the request pertaining to this information in the appeal for tax year 2017, despite the age of the information and now this is an additional year older. However, the Taxpayer did not provide a formal objection to this discovery, arguing merely that it could present its position using other information. Therefore, the Tax Commission will allow it for this tax year, but may not do so for subsequent years.

Jane Phan  
Administrative Law Judge

ORDER

Based on the foregoing, the Taxpayer is hereby ordered to provide the information requested by the County in the County's Interrogatories Nos. 1 & 2 and Requests Nos. 1 & 2, set out above. If the Taxpayer fails to produce the discovery as outlined above, the Tax Commission may issue an order of default against the Taxpayer for failure to participate in the proceeding and dismiss this appeal pursuant to Utah Admin. Rule R861-1A-26(6)(c) and Utah Code Sec. 63G-4-209. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner

**Notice of Appeal Rights:** If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.