

APPEAL #: 21-838
TAX TYPE: PROPERTY TAX
TAX YEAR: 2020
DATE SIGNED: 09/27/2022
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND R.ROCKWELL
EXCUSED/RECUSED: J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 21-838</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2020</p> <p>Judge: Phan</p>
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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, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

John L. Valentine, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Representative
For Respondent: RESPONDENT'S REP-1, Commercial Appraiser COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 6, 2022, 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

I. General Information

1. The issue before the Tax Commission at the Formal Hearing is Petitioner’s (“Property Owner’s”) appeal of the decision issued by the COUNTY-1 Board of Equalization in regards to the fair market value of parcel no. ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is DATE.

3. The County Assessor had originally valued the subject parcel at \$\$\$\$ as of the lien date at issue. The Property Owner had appealed to the County Board of Equalization and the County Board of Equalization upheld that value. At the Formal Hearing, the Property Owner requested a reduction in value to \$\$\$\$\$. During the hearing, the County requested the value remain at its current value of \$\$\$\$\$.

4. The property at issue had been the subject of an appeal to the County Board of Equalization and then an appeal to the Tax Commission for tax year 2019. However, there was no reduction in value resulting from those appeals. There had been an appeal filed in 2018 and the County Board of Equalization reduced the original 2018 assessed value of \$\$\$\$\$ to \$\$\$\$\$. The \$\$\$\$\$ value was later upheld on appeal to the Tax Commission for tax year 2018. For tax year 2017, the Property Owner had appealed the value to the County Board of Equalization and then to the Tax Commission, but there was no reduction in value resulting from those appeals. Although he was not specific about when the change had been made in regards to the subject property, the County’s representative stated at the hearing that the County had made some adjustments to its data to reflect that the subject was a basement or below grade unit.¹

¹ The Tax Commission takes administrative notice that the County Board of Equalization hearing record for the 2018 property tax appeal, found in *Utah State Tax Commission Appeal No. 19-865*, indicates the 2018 County Board of Equalization reduction was based on the County’s correcting the record to indicate this parcel was a basement condominium unit and that change resulted in the lower value.

5. The subject property is an office condominium located at ADDRESS-1. The condominium was constructed in 2001. The County record indicates that this property has ##### rentable square feet and the County considered the building to be of a “good” quality of construction and in “good” condition. The County had classified the building as a Rental Class B property. The subject is located in a two-story building, which has office condominiums on the lower level and separate office condominiums on the upper level. However, the lower level is partially below grade. The subject unit is a lower level unit and is partially below grade.

II. Property Owner’s Evidence

6. The Property Owner’s representative did not submit an appraisal or a sales comparison approach, although she did submit some comparable sales. The Property Owner’s representative did submit an income approach and requested that the value be based on an income approach.

7. The representative for the Property Owner explained that the property was leased and not owner occupied. She stated that she did not have the actual lease information from the lease in place for the subject property. She stated that she looked at lease information from CoStar to determine a market lease rate for her income approach. It appeared that her leases came from office buildings and not office condominiums. Her lease comparables were the following:²

Address of Comparable	Property Type	Property Size	Unit Size	Year Built	Rent
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TABLE REDACTED

8. The representative for the Property Owner had concluded a lease rate of \$\$\$\$ per square foot. She also used a %%% vacancy and collection loss, %%% operating expenses and an %%% capitalization rate in her income approach. She did not provide supporting documentation for the operating expenses or capitalization rate. It is also unclear how she concluded her vacancy rate. Her income approach for this property was the following:

² The Property Owner did not submit any new exhibits at the Formal Hearing, but instead relied on the evidence submitted for the County Board of Equalization hearing. For that reason, the Property Owner’s evidence is found in the County Board of Equalization record, PDF pages 29-53.

Net Leasable Area:	##### ³	
Market Rent (NNN):	\$\$\$\$\$	
Potential Gross Income:		\$\$\$\$\$
Vacancy & Collection Loss:	%%%%%%%%%	\$\$\$\$\$
Effective Gross Income:		\$\$\$\$\$
Operating Expenses:	%%%%%%%%%	\$\$\$\$\$
Net Operating Income:		\$\$\$\$\$
Capitalization Rate:	%%%%%%%%%	
Estimate of Real Estate Value:		\$\$\$\$\$

9. Although the Property Owner’s representative did not present a full sales comparison approach, she did submit some comparable sales of office buildings and office condominiums. She did not make appraisal adjustments for the differences between the comparables and the subject property or a time adjustment for the sale dates. Most of her comparables were office condos, but some were office buildings or manufacturing or industrial space. The information in regards to the size of the buildings came from pages that had indicated they were from “Copyright report licensed to Property Valuation Services.” Her comparable sales were the following:

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III. County’s Evidence

10. At the Formal Hearing, the County’s representative, RESPONDENT'S REP-1, Commercial Appraiser for COUNTY-1, explained that the County values office condominiums based on a sales comparison approach as they are generally owner occupied and he pointed out that sales data is readily available for office condominiums, while income data for these type of properties is difficult to obtain. In his Formal Hearing exhibit, RESPONDENT'S REP-1 explained, “COUNTY-1 collects and maintains a database of over 400 commercial condominium sales. The commercial condominium sales are verified by a dedicated sales crew to substantiate the accuracy of the reported data.”⁴

³ The Property Owner’s income approach indicated the subject had ##### square feet, while the County records indicated ##### rentable square feet. The Property Owner did not provide any documentation or evidence to show that ##### was correct.

⁴ Respondent’s Exhibit 1, pg. 4.

11. RESPONDENT'S REP-1 prepared a sales comparison approach, which he submitted as evidence at the Formal Hearing.⁵ He explained in his report that the six comparables he used “were selected to provide the best available comparable properties to bracket the subject’s characteristics.”⁶ All of the County’s comparables were office condominiums, like the subject. The County’s sales comparison approach as follows:

Subject	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Comp. 5	Comp. 6
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TABLE REDACTED

RESPONDENT'S REP-1 concluded a value of \$\$\$\$ per square foot from his sales comparison approach, which he multiplied by the ##### square feet of the subject for a rounded value of \$\$\$\$\$. RESPONDENT'S REP-1 did not ask for an increase to this value but offered this in support of the County’s current value of \$\$\$\$\$.

12. One of the adjustments RESPONDENT'S REP-1 had made in his sales comparison approach was the negative %%% adjustment for functional utility. In his comparable sales exhibit he explained “[a] %%% adjustment was made to account for the subject being a lower-level office area.”⁷ RESPONDENT'S REP-1 had also made substantial time adjustments to account for market appreciation in 2018 and 2019.

13. Regarding the Property Owner’s income approach, the County’s representative pointed out that the Property Owner’s vacancy and collection loss percentages, expenses and capitalization rate were all unsupported and stated in his exhibit: “The Assessor’s office is unaware of any market publications or sources available to determine market data regarding these metrics as it pertains directly to office condominiums as they are generally owner-occupied.”

14. Regarding the Property Owner’s 12 comparable sales, the County provided some additional data, including the date of sale, as well as the square footage of the unit in the County records for the property, which came from the condominium declarations. In all cases for which the County provided data, the County’s square footage for each comparable was smaller than the square footage

⁵ Respondent’s Exhibit 1, pg. 5.

⁶ Respondent’s Exhibit 1, pg. 4.

⁷ Respondent’s Exhibit 1, pg. 7.

used by the representative for the Property Owner in her analysis. The County recalculated the price per square foot for the relevant comparables based on the County's square footage data, so in all cases for which the County provided data the price per square foot calculated by the County was higher. The County also provided some additional comments regarding the comparables. The County's information regarding the Property Owner's sales comparables was the following:⁸

Property Owner's Comps.	Property Owner's Sq. Foot	Property Owner's Price/SqFt	County Sq. Ft	County Price/SqFt	Sale Date	County Comments
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TABLE REDACTED

From this analysis, the County concluded that the more relevant sales, which occurred near the lien date, actually supported the County's assessed value.

IV. Value Conclusion

15. After reviewing the evidence in this matter, as the property is not a qualified real property for tax year 2020 and the only party asking for a change from the current value is the Property Owner, it is the Property Owner that has the burden of proof to show substantial error in the current value and provide a sound evidentiary basis to support the lower value the Property Owner is requesting. In this appeal, the Property Owner argued the office condominium should be valued based on an income approach but has not provided lease rates from office condominiums or supported her vacancy and collection loss percentages, expenses or capitalization rate. Regarding the sales provided by the Property Owner's representative, there was no evidence that the square footage she relied on to determine the price per square foot was the actual square footage of the comparable and the properties more similar and nearer the lien date supported the County's current value. The County explained that it values office condominiums based on sales comparables and there is plenty of market information from the sale of these types of units. The sales information supported the County's value. The County pointed out that these properties are often owner occupied. The Commission has previously concluded that it is appropriate for a County to value office condominiums based on comparable sales. The weight of the evidence submitted supports the County's current value. Therefore, substantial

⁸ Respondent's Exhibit 1, pg. 2.

error has not been shown by the Property Owner and the value should remain at its current value.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

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 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.

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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, 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 or entity with designated decision-making authority described in Section 59-2-1101.

...

- (3) In reviewing a decision described in Subsection (1), 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 or entity with decision-making authority.
- (4) In reviewing evidence submitted to the commission to decide an appeal under this section, the commission shall consider and weigh:
- (a) the accuracy, reliability, and comparability of the evidence presented;
 - (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 a decision described in Subsection (1), 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 %%% from the assessed value of comparable properties.

....

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

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property.

...

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
 - (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by a county board of equalization after the appeal;
 - (ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:
 - (A) the commission, if the commission has issued a decision in the appeal; or

- (B) a county board of equalization, if the commission has not yet issued a decision in the appeal; or
- (iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.
- (b) "Inflation adjusted value" means the value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection 59-2-1004(2)(c).
- (c) "Qualified real property" means real property:
 - (i) that is assessed by a county assessor in accordance with Part 3, County Assessment;
 - (ii) for which:
 - (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;
 - (B) as a result of the appeal described in Subsection (1)(c)(ii)(A), a county board of equalization or the commission gave a final assessed value that was lower than the assessed value; and
 - (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and
 - (iii) that, between January 1 of the previous taxable year and January 1 of the current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.
- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
 - (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization;
 - or
 - (C) if Subsection (3) applies, the original assessed value; or
 - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.
- (3)
 - (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:
 - (i) that is not qualified real property; and
 - (ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (b) For purposes of Subsection (3)(a), the following have the burden of proof:
 - (i) for property assessed under Part 3, County Assessment:

- (A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
- (B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
- (ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
- (c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:
 - (i) the original assessed value shall lose the presumption of correctness;
 - (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties; and
 - (iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.
- (4)
 - (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.
 - (b) For purposes of Subsection (4)(a):
 - (i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or
 - (ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.
 - (c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:
 - (i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or
 - (ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *See Nelson v. Bd. of Equalization of COUNTY-1*, 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); *Utah Railway Co. v. Utah*

State Tax Comm'n, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the petitioner must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

CONCLUSIONS OF LAW

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

2. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property’s “fair market value” as of January 1 of the tax year at issue pursuant to Utah Code Sec. 59-2-103. “Fair market value” is defined by statute as the “amount for which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.” See Utah Code Sec. 59-2-102. Therefore, to determine the fair market value of property as of the lien date at issue in the appeal, the Tax Commission must consider what the property would have sold for on that date.

3. The subject property is not a "qualified real property" for tax year 2020 pursuant to Utah Code §59-2-109(1)(c) because, although there had been an appeal filed in 2019, the value of the property for 2019 had not been lowered. The law provides that a “qualified real property” is a property that was subject to a valuation or equalization appeal in the prior year in accordance with Utah Code §§59-2-1004 or 59-2-1006, the appeal resulted in a final assessed value that was lower than the assessed value, the assessed value for the current year was higher than the inflation adjusted value and the property had not been improved or changed between the lien date of the current year and the lien date of the prior year beyond the improvements in place on the lien date for the prior year.

4. Based on the information the parties presented at the hearing, the property was the subject of a "valuation reduction" in 2018. Therefore, Utah Code

§59-2-301.4 is applicable. For property subject to a “valuation reduction” in any of the three prior tax years, Utah Code Ann. §59-2-301.4 requires a county assessor to “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.” In this appeal the County had pointed out that the County had adjusted its data to reflect that the subject unit was partially below grade and the 2018 appeal record also indicates that was the basis for the County’s reduction in 2018. For 2020, the County was still taking that into consideration and had made an adjustment in its sales comparison approach for the fact that the subject was a partially below grade office unit, so has met the Section 59-2-301.4 requirements.

5. In this proceeding before the Tax Commission, the burden of proof is on the Property Owner to support its position. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the Property Owner must: 1) demonstrate that the subject property's current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. The Property Owner argued the value should be based on an income approach. The County had valued the subject property based on a sales comparison approach. The Tax Commission has previously concluded that a sales comparison approach is a valid approach for valuing office condominiums. In *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 18-2023 (12/08/2020)*, pg. 9, the Commission noted:

Although buyers of large multi-tenant office buildings may give significant consideration to the income they will receive from rentals in determining how much they are willing to pay, the market for individual office condominiums is a different market and generally has a different set of potential buyers. Many buyers are not concerned at all with income from rentals as the intent is to use the building for their own business. For this reason it is appropriate for the County to value individual office condominiums based on comparable sales.

The County’s value was well supported by comparable sales, and although the Commission would also consider an income approach for valuing the subject property, the Property Owner failed to support the factors used in its income approach. Therefore, the Commission does not find the Property Owner to have shown error in the current value.

Upon that basis, the value for the subject property as of the lien date at issue should remain at its current value of \$\$\$\$\$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of DATE, is \$\$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.