

APPEAL #: 21-1078
TAX TYPE: PROPERTY TAX
TAX YEAR: 2020
DATE SIGNED: 7/11/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES
EXCUSED/RECUSED: R.ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNERS,</p> <p>Petitioners,</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. 21-1078</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:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER
For Respondent: RESPONDENT'S REP-1, Deputy District Attorney, COUNTY-1
RESPONDENT'S REP-2, Commercial Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 13, 2023, in accordance with Utah Code Ann. §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 Petitioners’ (“Property Owners”) appeal of the decision issued by the County Board of Equalization in regards to the assessed value of parcel no. ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is January 1, 2020.

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

4. The property at issue had not been appealed in 2019. The property had been appealed in 2018 and was the subject of a reduction in value resulting from that appeal. The County’s original assessed value for 2018 had been \$\$\$\$\$. The Property Owners had appealed that value to the County Board of Equalization for 2018 and the County Board of Equalization reduced the value to \$\$\$\$\$ based on a stipulation. The County’s representatives at the hearing stated that this reduction had been made by a “trainee appraiser.” The property was not appealed for tax year 2017.

5. The subject property is located at ADDRESS-1. It is ##### acres of land improved with a standalone retail building. The building has ##### square feet and based on the County record is a Rental Class B, with good grade of construction and in good overall condition. The County provided some photographs of the interior and exterior which supported the rental class, grade and condition. The Property Owner did not provide photographs of the building at the Formal Hearing. The building is divided into two separate retail units, one is being used as a custom picture frame shop and one an eyeglass repair shop.¹ The subject property is located directly across the street from BUSINESS-1, and in a good area for retail. The County asserted that

¹ Respondent’s Exhibit 1.

the highest and best use of the subject building was retail use. The Property Owners provided the information that the subject building had originally been constructed as an office and was used as such until 1991 when it was changed to retail.²

6. The County Board of Equalization had issued its decision for tax year 2020 for the subject property on DATE. The Property Owners timely filed an appeal of that decision to the Utah State Tax Commission and the appeal was forwarded to the Utah State Tax Commission on DATE. The matter was scheduled for a Mediation Conference on DATE. The appeal did not resolve at the Mediation Conference and a Formal Hearing was scheduled for DATE. The Formal Hearing was continued to DATE, at the Property Owners' request, as the Property Owners had filed for judicial review, which proceeding was eventually dismissed. The Property Owners then requested a continuance of the DATE hearing date, and the hearing was continued again to DATE, which is the hearing now before the Tax Commission.

7. The notice of the new date for the Formal Hearing for DATE, had been mailed to the parties on DATE, which should have given the parties ample time to prepare for the hearing and submit their evidence documents ten business days prior to the hearing. Both parties did submit and exchange evidence documents prior to the hearing and were given time to present their evidence and legal argument at the hearing, ask questions of the opposing side and present any rebuttal. The hearing record was then closed at the end of the Formal Hearing. Regardless, the Property Owners filed a post hearing submission on DATE, in which they made additional legal arguments or reargued arguments presented at the hearing and offered additional statements regarding evidence. This post hearing submission is not being received into this hearing record. A second post hearing submission was received from the Property Owners on DATE and will likewise not be received into this hearing record.

II. Property Owners' Evidence

8. The Property Owners did not submit an appraisal at the hearing. The Property Owners, instead submitted a basic income approach, some lease comparables and some assessment information for a number of neighboring

² Petitioner's Exhibit 4, pg. 8. The Property Owners had submitted as exhibits for the Formal Hearing via email eighteen individual documents, some of which were duplicative. The Property Owners had not labeled each document with an exhibit number or provided any type of exhibit index and at the hearing the Property Owner did not know the names under which he had saved and submitted the exhibits to refer to them during the hearing. During the course of the hearing each electronic document the Property Owners had submitted for the hearing was opened and assigned an exhibit number.

properties with a calculation for the percentage increase for the neighboring properties.

9. The subject property is leased to two retail tenants. The Property Owners did not provide the actual leases at this hearing. The Property Owners did, however, state in an exhibit that the “average current leases” were at \$\$\$\$ per square foot rent rate. They also stated in the exhibit that the Property Owners pay the property tax, maintenance, utilities, snow removal, yard care, insurance, as well as “[t]otal expenses are \$\$\$\$” and “Property Taxes alone are \$\$\$\$.”³ The Property Owners did calculate an income approach value based on the \$\$\$\$ per square foot rent rate and the actual expenses, as well as one using a \$\$\$\$ per square foot rent rate and actual expenses. The Property Owners’ income approach was stated as follows in their exhibit:⁴

TABLE REDACTED.

10. The Property Owners’ leases rate comparables, which the Property Owners had provided some documentation to substantiate the lease rates, were the following:

a. A lease dated DATE for a property located at ADDRESS-2. This lease is located on the same street as the subject. The tenant was a law firm. The lease indicated the leased space was “approximately ##### square feet.” The lease indicated two months of free rent and then starting month three a rent of \$\$\$\$ per month during the first 12 months. The lease indicated that the tenant was to maintain and repair all common areas including the parking areas, driveways, sidewalks and landscaped areas and was responsible for snow removal.⁵ The Property Owners’ also provided an advertisement for this space for lease, from CRES. The quality of the copy of the flyer that the Property Owners provided was poor, but it seemed to indicate ##### to ##### Square Feet available and \$\$\$\$ to \$\$\$\$ per square foot lease rate. It also showed that there were 2 units available and one was a “street level office” and one a “garden level” unit.⁶

b. The Property Owners’ provided a Lease Comps Report from CoStar for a property located at ADDRESS-3. This property was an in-line, second floor retail space based

³ Petitioners’ Exhibit 18, PDF # 2.

⁴ Petitioners’ Exhibit 18.

⁵ Petitioners’ Exhibit 1.

⁶ Petitioners’ Exhibit 14.

on the Lease Comp Report and located in a different city from the subject. The report indicated the property had been leased January 2021 and that the asking rate was \$\$\$\$ per square foot modified gross. The report indicated the size of the unit leased was ##### square feet.⁷

c. The Property Owners' provided a Lease Comps Report from CoStar for a property located at ADDRESS-4. This lease was for in-line retail space and the asking rate had been \$\$\$\$ per square foot. This property was leased in October 2020. The size of the unit leased was ##### square feet and it was located on the first floor.⁸ This property is located in a different city from the subject.

d. The Property Owners submitted a copy of an "Amendment No. 1 to Lease." This document indicated a lease for property at ADDRESS-5, which is located in CITY-1. The subject property is located in CITY-2. The amendment was entered into on DATE. The tenant was BUSINESS-1. The Amendment did not contain the size of the unit leased. It indicated the monthly rent was \$\$\$\$ for the period from DATE to DATE and \$\$\$\$ for the period from DATE to DATE.⁹

11. The Property Owners compiled some information about neighboring properties and how they were assessed. Petitioners' Exhibit 4, pg. 4, provides an aerial photograph from the County's Parcel Viewer on the Assessor website with a sq. ft. value listed by the subject and four comparables on the same street as the subject with the explanation "sq. ft. values per SIGMA data on neighboring comparable properties for 2021 tax years." This description is unclear because the values indicated are clearly not the assessed value per square foot of these properties.¹⁰ Then, in the following pages of the exhibit, the Property Owners have provided the aerial photograph of each of these parcels from the County's Online Parcel Viewer system which shows the parcel number and the assessed value history. The Property Owners did not provide the County's information that is publicly available that shows

⁷ Petitioners' Exhibit 2.

⁸ Petitioners' Exhibit 3.

⁹ Petitioners' Exhibit 6.

¹⁰ The Property Owners may have provided the explanation for these numbers listed in Exhibit 4 to Exhibit 18, but that is also not clear. Property Owners statement in Exhibit 18, PDF # 1, states exactly as follows:

Notes have been added to the assessors submitted with our perspective with more details. Including other comps for consideration are current lessors listed in notes. Parties that subject knows the lessors, and where willing to share their lease rates with me.

the actual land size, building size, age, grade and quality of building and a number of other valuation factors, which could demonstrate whether these buildings are comparable to the subject. However, the Property Owners had written on the exhibit a number for the square footage as well as made a calculation of the percentage increase of the assessed value from 2019 to 2020. In order to analyze this exhibit, a composite is made by the Commission from the data the Property Owners provided in Exhibit 4, as follows:

REDACTED TABLE

12. The Property Owners also provided the County's assessed value for two neighboring land parcels.¹¹ In the exhibit, the Property Owners note that the subject land was assessed at a value of \$\$\$\$\$. They provided that parcel #####, which was ##### acres, was assessed for tax year 2020 at \$\$\$\$\$. However, based on the County Assessor's data the Property Owners provided, this was a backage parcel with no frontage on STREET-1 or any other public street. It appeared to be accessed through a shared driveway from the properties that actually fronted STREET-1.¹² The Property Owners provided that the lease comparable at ADDRESS-6, parcel #####, was ##### acres in size and the land value was at \$\$\$\$\$ for tax year 2020.¹³ On that exhibit, the Property Owners pointed out that the land value on the subject parcel was \$\$\$\$\$ for ##### acres.

13. The Property Owners pointed out that for tax year 2022 the County's original assessed value for the subject property was only \$\$\$\$\$, lower than the 2020 value at issue in this hearing, which was \$\$\$\$\$.

14. The Property Owners provided some documents from the County Board of Equalization record as well as a transcript of a recording that the Property Owners had made of the County Board of Equalization hearing and made arguments that various actions during the County Board proceeding were improper. It is clear from this documentation submitted in this matter that the Property Owners filed an appeal to the County Board of Equalization, the County Board of Equalization heard the appeal in its hearing process and issued a decision. The Property Owners disagreed with the decision, so the Property Owners appealed the decision to the Utah State Tax

¹¹ Petitioners' Exhibits 10 & 12.

¹² Petitioners' Exhibit 10.

¹³ Petitioners' Exhibit 12.

Commission pursuant to Utah Code Sec. 59-2-1006. The Property Owners also point to Utah Code Subsection 59-2-1006(6) and argue that the State Tax Commission has been untimely in issuing its decision.

15. Additionally, the Property Owners argued that rents were going down during 2020 due to the COVID-19 pandemic.

III. County's Evidence

16. The County pointed out at the hearing that the lien date, or valuation date, for tax year 2020 was January 1, 2020. The County points out that the COVID-19 pandemic did not occur until after the lien date at issue for tax year 2020. Therefore, the County points out that the pandemic's effect on lease rates are not applicable to the 2020 assessment.

17. The County's representative acknowledged that the value had been reduced for tax year 2022, but the County's witness testified at the hearing that in 2022 the County switched from tabling to a modeling method of valuation and misclassified the subject as a rental class "C" property. The County's witness testified that it should have been left as rental class "B." The County pointed out that the 2022 change was a post lien date change and not applicable to the 2020 value.

18. The County's witness stated that the subject is a retail store and not an office. She also pointed out that the subject property was directly across the street from BUSINESS-1, and was in a good location for retail. The County's witness stated that the County valued retail property based on retail comparables and did not use office or other types of property as comparables for retail property.

19. The County's witness testified that the Property Owners' lease comparables were not very comparable to the subject.

a. The County pointed out that the property near to the subject at ADDRESS-2, was an office building and not a retail building.

b. The County stated that the Property Owners' lease comparable at ADDRESS-3, was a post lien date lease and was not in a good retail location like the subject. She also pointed out that it was on the second story of the building, which was not comparable to the subject. The lease date for this comparable had been January 2021, one year after the lien date at issue in this appeal and after the commencement of the pandemic.

- c. The County's representative stated that the Property Owners' lease at ADDRESS-4, was not near BUSINESS-1, was located in a strip-mall that had issues with vacancy, had only partial buildout and was a post lien date lease. This property was leased in DATE, which was during the pandemic. She also stated that strip centers generally lease differently and have higher vacancy than standalone buildings.
- d. The County stated that the lease at ADDRESS-5 supported the County's lease rate because that property was actually only ##### square feet.

20. The County also argued that none of the Property Owners' equalization comparables were comparable properties to the subject. She stated that only one of the buildings was a retail building, but even though retail, it was more like a warehouse building. The County pointed out that the Property Owners did not provide all of the data about these comparables, like the building type, size, age, condition, grade and quality of the building.¹⁴ The County pointed out that the one land parcel offered as a land equalization comparable that was similar in size to the subject, was a backage parcel with no frontage on a public street.

21. At the hearing, the County provided that the County's original assessed value had been determined based on the following income approach:¹⁵

REDACTED TABLE

22. At the hearing, the County also submitted new evidence compiled by RESPONDENT'S REP-2, COUNTY-1 Commercial Appraiser. The appraisal evidence contained both a capitalized income approach and a sales approach to value. For her Formal Hearing exhibit, the County's appraiser had considered rent comparables and other market factors and prepared a income approach based on market evidence, which did indicate a value considerably higher than the current value for the subject property.¹⁶ The County did not request a value increase, but instead had offered the income approach in support of the County's Original Assessed value. The County noted the Property Owners had not submitted a rent roll for the subject property. The County's original assessment had been based on a rent rate of \$\$\$\$ per square foot. The County submitted market lease rate comparables and concluded that the market lease rate for the subject would be even higher, at \$\$\$\$ triple net. The County's comparables were retail properties like the subject. The County's income approach for the subject property assumes lease rates on a

¹⁴ This information is publicly available on the County Assessor's Website at <https://slco.org/assessor/>.

¹⁵ Respondent's Exhibit 2.

¹⁶ Respondent's Exhibit 2, pgs. 6-10.

triple net basis, where the tenant pays the property tax, insurance and maintenance. Two of the County's lease comparables were triple net, the rest were modified from a triple net. The County did make an adjustment for lease structure to get the equivalent of triple net lease rates. The County's comparable leases are the following:¹⁷

REDACTED TABLE

23. In addition to the lease comparables, the County provided an excerpt from a Newmark Knight Frank year-end Report 2019, which indicated average achieved triple net retail rates for tenants in the ##### to ##### square foot size range to be \$\$\$\$ per square foot.

24. In its income approach the County used a %%% vacancy rate. The Property Owners did not apply any vacancy in their income approach. The County provided an excerpt from a Retail Wasatch Front Market Overview report that indicated vacancy rates for year-end 2019 to be %%%.

25. The County also used %%% expenses, on the basis that the lease rate the County had concluded was a triple net lease, where the tenant pays the expenses. This was different from the Property Owners' income approach which assumed the leases to be full service or modified gross.

26. In the original assessment, the County's capitalization rate had been %%%, which was a higher rate than the %%% rate used by the Property Owners and therefore, all else being equal, would result in a lower value. For the income approach at the Formal Hearing, the County lowered the capitalization rate to %%. The County provided capitalization rate comparables which supported its capitalization rate.

27. The County's leases had predated the lien date at issue in this appeal, January 1, 2020 by eight months to several years. The County provided that retail leases had been increasing %%% per year from 2017 to January 1, 2020, and that was how the County had based its time adjustment.¹⁸

28. The County's income approach submitted for the Formal Hearing was the following:¹⁹

REDACTED TABLE

¹⁷ Respondent's Exhibit 2, pg. 6.

¹⁸ Respondent's Exhibit 1, pg. 7.

¹⁹ Respondent's Exhibit 2, pg. 10.

29. The County also submitted a sales comparison approach to value with four comparable sales. The County's sales approach was as follows:²⁰

REDACTED TABLE

30. The County concluded from these sales a value for the subject property of \$\$\$\$ per square foot, which indicates a rounded value of \$\$\$\$\$, which is higher than the County's current value.

IV. Value Conclusion

31. The subject property is not a qualified real property for tax year 2021. It is only the Property Owners that are asking for a change to the current value set by the County and, therefore, it is the Property Owners that have the burden of proof. In order for the Property Owners to prevail, they 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 they propose. The Property Owners argued for an adjustment based on both equalization and a challenge to the County's fair market value conclusion. The Property Owners failed to meet the burden of proof of establishing error in the County's value for the subject property.

32. The subject property is a retail property located in a good area for retail, across the street from the BUSINESS-1. The County's assessed value for the subject property was based on a lease rate of \$\$\$\$ per square foot triple net. The County had offered at the hearing lease comparables which supported a higher lease rate. The Property Owners provided four leases or lease listing publications showing lease rates for 4 properties. However, as the County had pointed out, the subject is a retail building in a good location for retail. The Property Owners' lease comparables were not very comparable. One of these comparables was an office building, another was a chiropractic office. The two retail leases were not in as good of a location for retail as the subject and one of those was a second story in-line retail space. The Property Owners also stated some lease rates from neighboring properties but did not provide copies of the leases or even written statements from the building owners or tenants, so this information was not substantiated as well as unclear and hearsay. The County

²⁰ Respondent's Exhibit 2, pgs. 10-12.

points out that only one of these neighboring properties was a retail property and the retail property was more of a warehouse and of lower grade and condition compared to the subject. The other properties were office buildings and not retail spaces. The Property Owners have not submitted sufficient evidence to show that the County's triple net lease rate is in error.

33. Regarding equalization, the Property Owners did not show that a group of properties that were actually comparable to the subject property were valued more than %%%%% less than the subject.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2) 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 5% from the assessed value of comparable properties.
- (6) The Commission shall decide all appeals taken pursuant to this section not later than March 1 of the following year for real property and within 90 days for personal property, and shall report its decision, order, or assessment to the county auditor who shall make all changes necessary to comply with the decision, order, or assessment.

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.

The Administrative Procedures Act sets out the procedure for a Formal Hearing at Utah Code Sec. 63G-4-206, as follows:

- (1) Except as provided in Subsections 63G-4-201(3)(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted, as follows:
 - (a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.
 - (b) On the presiding officer's own motion or upon objection by a party, the presiding officer:
 - (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 - (ii) shall exclude evidence privileged in the courts of Utah;
 - (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document; and
 - (iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.
 - (c) The presiding officer may not exclude evidence solely because it is hearsay.
 - (d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.
 - (e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.
 - (f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.
 - (g) The hearing shall be recorded at the agency's expense.
 - (h) Any party, at the party's own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.
 - (i) All hearings shall be open to all parties.
- (2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

Utah Administrative Rule R861-1A-28 provides, as follows:

- (2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.
 - (a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.
 - (b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

Utah Administrative Rule R861-1A-9 provides, as follows:

- (6)(a) The Commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.
 - (b) A party may raise a new issue before the commission.

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, 438 P.3d 961 (Utah Ct. App. 2019). 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. The Property Owners had made statements about values going down during 2020 due to the COVID-19 Pandemic. However, for tax year 2020 the value is as of January 1, 2020,

and was unaffected by the pandemic, which did not begin until later in the year.²¹ “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. “Fair market value” may be determined based on a number of appraisal methods including a property's income potential, sales comparison approach and even a cost approach. Although it appears the County’s original assessment was based on an income approach, at the hearing the County also offered a sales comparison approach. Pursuant to Utah Admin. Rule R861-1A-9(6)(b), a party may raise new issues before the Tax Commission in the appeal hearing. The County is not limited to the evidence the County submitted to the Board of Equalization, and neither are the Property Owners.

3. The subject property is not a "qualified real property" for tax year 2020 pursuant to Utah Code §59-2-109(1)(c) because the value of the subject property was not reduced based on an appeal for tax year 2019.

4. Utah Code Ann. §59-2-301.4 is applicable in this matter because the subject property had been the subject of a “valuation reduction” in tax year 2018. The County's representatives argued at this hearing that the stipulation to reduce the value for tax year 2018 was a mistake made by a “rookie appraiser.” However, market values had been increasing over the period from January 1, 2018 to January 1, 2020 and the County has supported its value with current or at least time adjusted leases and sales. Utah Code Ann. §59-2-301.4 states, “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.” The County can meet this requirement by showing that it considered the reason for the prior year’s valuation reduction and supporting an increase based on lease comparables or sales current to the tax year at issue.

5. In this proceeding before the Tax Commission it is only the Property Owners who are requesting a value different from the County Board of Equalization

²¹ FEMA declared COVID-19 an emergency in Utah on March 13, 2020. *See* <https://www.fema.gov/covid-19>; viewed on June 12, 2023.

value and it is the Property Owners that have the burden of proof. For the Property Owners to prevail in this case, Utah Code Ann. §59-2-109(2) provides that they 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 they propose. The Property Owners did not meet this burden of proof.

6. Pursuant to Utah Code Sec. 59-2-1006, a property owner may appeal an assessment based on either fair market value or equalization. In this appeal, the Property Owners did present lease comparables as a challenge based on market value, but did not offer an appraisal or comparable sales. However, the Property Owners' comparables were dissimilar, three of the four comparables for which the Property Owners provided documentation to support the lease amount were not located in the same area or city as the subject and were not comparable. The fourth was an office building. The four unsubstantiated leases from neighboring properties on the same street as the subject provided in Petitioners' Exhibit 4 were not comparable properties to the subject. They were either warehouse retail properties or office building properties. This lease information was also hearsay, and pursuant to Utah Admin. Rule R861-1A-28(2)(b), although hearsay may be admitted, the Tax Commission's decision may not be based solely on hearsay. The Property Owners have not met the burden of proof to show error in the County's assessment based on market value.

7. The Property Owners did argue for an adjustment based on equalization, but they did not provide evidence that met the statutory requirement for a reduction based on equalization. Utah Code Subsection 59-2-1006(5) provides that the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if the issue of equalization is raised and "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." As the Court of Appeals recently explained in *Patience LLC v. COUNTY-1 Board of Equalization*, 2021 UT App 4, ¶28, "The Utah Constitution states that "all tangible property in the State . . . shall be taxed at a uniform and equal rate" in proportion to its fair market value. Utah Const. art. XIII, §2, cl. 1. Consistent with this constitutional mandate, a property owner may seek adjustment of a property tax valuation if the assessment "stands apart from a group of undervalued comparable properties." *Citing Mountain Ranch Estates v. Utah State Tax Comm'n*,

2004 UT 86, ¶ 15, 100 P.3d 1206. The court in *Patience* pointed out that “[a] taxpayer seeking equalization bears the burden of identifying comparable properties that deviate more than %%% from the valuation of the property.” *Id.* ¶29. Based on the court’s decision in *Patience*, a property owner must show a “group of undervalued comparables”²² were assessed at values that deviated at least %%% from the subject property. The Property Owners did not meet this requirement because they failed to show a group of ‘comparable properties’ that were valued at least %%% less than the subject property. The Property Owners showed that there were other properties on the same street that were valued differently from the subject, but did not show that they were actually comparable properties to the subject. Differences in building type, for example retail, warehouse or office, along with many other factors like age, grade, condition, and location all affect the market value of a property. The Property Owners have not shown that other standalone retail properties with similar characteristics and located in a good retail location, were valued more than %%% lower than the subject property. Therefore, the Property Owners have not established a basis for a reduction in value based on equalization.

8. The Property Owners point to Utah Code Subsection 59-2-1006(6), which states “The Commission shall decide all appeals taken pursuant to this section not later than March 1 of the following year . . .” The Property Owners indicate the Tax Commission failed to meet this statutory requirement as the Tax Commission should have issued its decision in this appeal by DATE, and instead the proceeding was still pending at the Tax Commission as of the hearing on DATE. The Tax Commission notes that Utah Code Subsection 59-2-1006(6) does not specify a different procedure or process where the Tax Commission, like in this appeal, was not able to meet this deadline because the appeal was not submitted to the Tax

²² See also *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶16, in which the Court explained:

“Intentional and systematic undervaluations of property may violate the equal protection and due process rights of property owners not granted preferential treatment. See Allegheny Pittsburgh Coal Co. v. County Comm’n, 488 U.S. 336, 343 (1989) (holding that the Equal Protection Clause allows states to divide property into classes and assign a tax burden to the property as long as the divisions and burdens are neither arbitrary nor capricious) . . . The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.”

Commission prior to DATE, and the length of time was due in part to continuance requests from the Property Owners. The County Board of Equalization had not issued its decision until DATE, and the Property Owners' appeal of that decision was forwarded to the Utah State Tax Commission on DATE. In addition, Utah Code Sec. 59-1-502.5 requires a two-step hearing process that creates the possibility of two events at the Tax Commission before the final decision is issued. The Tax Commission scheduled the Mediation Conference on DATE. The appeal did not resolve at the Mediation Conference and a Formal Hearing was scheduled for DATE. The Property Owners requested the Formal Hearing be continued two times prior to the third hearing date, DATE, which is the hearing subject to this decision.

9. After the Formal Hearing had been held and the Formal Hearing Record closed, the Property Owners filed a post hearing submission on DATE, in which they made additional arguments and offered additional evidence statements. The County objected to the post hearing submission on DATE, and the Property Owners submitted a further response on DATE. The Property Owners sent an additional post hearing submission DATE. The Tax Commission is not receiving the post hearing submissions into the Formal Hearing record and they are not being considered in this matter. The Property Owners had ample time with their multiple continuances to obtain evidence documents, analyze and organize their legal arguments and submit that information for consideration ten business days prior to the DATE Formal Hearing. The purpose of the Formal Hearing is so that each side can present its case to the Commission with recorded testimony under penalty of perjury and subject to cross examination. *See* Utah Code Subsection. 63G-4-206(1). It also allows the Tax Commission to ask questions of the parties. By submitting additional information and argument via post hearing documents, it deprives the County and the Commission of being able to ask questions of the Property Owners on the record and deprives the County of the ability to present a rebuttal response, unless the proceeding is reopened and a further hearing is scheduled. This further delays the timeliness of the administrative process. Additionally, the parties 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. The Property Owners should have presented their case at the Formal Hearing and have not provided a compelling reason to reopen the Formal Hearing record for the post hearing submissions.

Upon that basis, the value for the subject property as of the lien date at issue should remain at the current assessed value for tax year 2020.

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 January 1, 2020, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2023.

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