

APPEAL #: 22-949
TAX TYPE: PROPERTY TAX
TAX YEAR: 2021
DATE SIGNED: 6/15/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PROPERTY OWNERS,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 22-949</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2021</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, CITY-2, Utah 84134.

Presiding:

Jennifer N. Fresques, Commissioner
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 February 27, 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 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 January 1, 2021.

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 asked that the value be reduced to \$\$\$\$\$. At 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 for tax year 2020 and the value had been reduced as a result of that appeal. The 2020 original assessed value had been \$\$\$\$\$. The Property Owner had appealed that value to the County Board of Equalization, which reduced the value to \$\$\$\$\$. At the hearing, the County's representative testified that the value was reduced based on the County Hearing Officer's decision. The County testified the Inflation Adjusted Value (IAV) for tax year 2021 was \$\$\$\$\$. The County's representative explained that the County had calculated out no inflationary increase for this type of property from 2020 to 2021. The value that the Property Owner was requesting at this hearing was the IAV. The value that the County was requesting at this hearing was a value higher than the IAV.

5. The subject property is a qualified real property for tax year 2021. As discussed in the finding of fact above, the Property Owner had appealed the valuation of the property for tax year 2020 in accordance with Section 59-2-1004, and the 2020 appeal resulted in a value that was lower than the 2020 original assessed value. The original assessed value for tax year 2021 of \$\$\$\$\$ was higher than the inflation

adjusted value of \$\$\$\$\$. Furthermore, neither party represented that there had been any improvement or change to the property, or a zoning change or change in the legal description of the property on or after January 1, 2020 and before January 1, 2021.

6. The Property Owner had filed a valuation appeal for 2018 and 2019 to the County Board of Equalization and the County Board of Equalization had reduced the value as result of each of those appeals. For tax year 2018, the original assessed value had been \$\$\$\$\$ and the Board of Equalization had reduced the value to \$\$\$\$\$. For tax year 2019, the original assessed value had been \$\$\$\$\$ and the value was reduced to \$\$\$\$\$.

7. The subject property is a ##### unit multi-family apartment complex. The property is located at ADDRESS-1. The land size is ##### acres. The apartment units were constructed in 1999 and have an effective year built of 2001 based on the county's records. The apartment complex is a garden style project with a number of separate buildings organized around a green open space. The property has amenities such as green spaces between the buildings, and a swimming pool, spa, clubhouse, playground and basketball court. Most of the apartment units in the complex are two-bedroom units or larger and ##### of the ##### units have three bedrooms. The mix of apartment unit types are as follows:

TABLE REDACTED

II. Property Owner's Evidence

8. The Property Owner's representative did not submit an appraisal. He did, however, submit two income approaches and provided the actual rent rolls and expenses for the subject property for three years as well as some capitalization rate comparables. The Property Owner's representative provided the actual income and expenses for tax year 2020 and prepared a pro forma income analysis using the December 2020 rent roll for lease rates per unit.¹ The second income approach was submitted as a rebuttal response based on comments from the County that some of the actual leases were old leases and some of the expenses were not allowable appraisal expenses. In the second income approach, the Property Owner's representative prepared a pro forma approach based on only the newer leases to determine the rental income and he pointed out that even the newer leases were lower than the lease rates that the County had used.² In these income approaches, the Property Owner's representative did not

¹ Petitioner's Exhibit 1.

² Petitioner's Exhibit 2.

include the property tax as an expense and instead added the effective tax rate to the capitalization rate, which was done in the same manner as the County had done in its income approach. The Property Owner's actual income and expenses, and two income approaches were the following:

TABLE REDACTED

9. Although the Property Owner's income approaches were a little lower than the IAV, at the hearing the Property Owner requested that the value for tax year 2021 be set at the IAV of \$\$\$\$\$.

10. The Property Owner had concluded a capitalization rate of %%%%, which was the rate the Assessor had used to determine the assessed value for the subject property as indicated in the County's 2021 Building Card & Assessor CAMA Data. The Property Owner provided a copy of this with his exhibit to show that was how the assessment had originally been derived.³ The Property Owner's representative also provided ten capitalization rate comparables, which averaged a capitalization rate of %%%%. The Property Owner's capitalization rate comparables were the following:

TABLE REDACTED

11. The Property Owner's representative provided the information that as of the lien date at issue, the subject property's actual vacancy rate was %%%%. He also pointed out that the subject property's overall actual vacancy loss for 2020 had been %%%%. He pointed to the County's 2021 Building Card & Assessor CAMA Data, which indicated a vacancy rate for the subject property of %%%%.⁴

12. As seen in the two income approaches, the differences in rental rates used in the December 2020 pro forma income approach and the rates based on the newest leases entered into at the project were very minor. The Property Owner provided a spreadsheet to show the most recent leases and indicated that the average rental rates based on the most recent leases for each unit type were the following:⁵

REDACTED TABLE

³ Petitioner's Exhibit 1, PDF pg. 37-38.

⁴ Petitioner's Exhibit 1, PDF pgs 37-38.

⁵ Petitioner's Exhibit 2.

13. The bigger difference between the two approaches was actually due to expenses. The Property Owner’s representative provided that the total operating expenses less property taxes in 2018 had been \$\$\$\$\$, for 2019 had been \$\$\$\$\$ and for 2020 had been \$\$\$\$\$.⁶ He explained that the difference between 2019 and 2020 had been due to a large amount of legal/professional fees and he had confirmed that this had occurred because the property was refinanced in 2020 and the amount included \$\$\$\$\$ in refinance fees. He agreed this should have been excluded from the expenses. Additionally, there was a one time payment of \$\$\$\$\$ for repairs to the pool. He also agreed this should have been excluded from the expenses. His expenses for his second income approach were calculated as follows:⁷

TABLE REDACTED

III. County’s Evidence

14. The County did not submit an appraisal. The County did submit some comparable sales, but did not submit a comparable sales grid with appraisal adjustments, other than a time adjustment. The County also submitted an income approach.

15. The comparable sales offered by the County had all sold in 2018, in a time period prior to the COVID-19 pandemic. The County did not provide the actual addresses for these sales, just the city in which they were located. The subject property is located in CITY-1 and these comparables were in other cities. The County stated in its report, “[t]hese comparable sales have similar rents to the subject.”⁸ The County did not provide the unit mix for these sales or the size of the units. All properties were listed as having the property type of “199-Apt 99+ UNITS.” The only information in addition to the property type that was provided by the County about these comparables was the following:⁹

REDACTED TABLE

16. The County pointed out that its assessed value of \$\$\$\$\$ is an assessed value per unit of \$\$\$\$\$.¹⁰

17. For its income approach, the County did not use the actual rents for the subject property and the County’s report stated “[a]fter reviewing the rent roll, the County has determined that the reported rents from the appellant are low compared to the market.” Then, the only

⁶ Petitioner’s Exhibit 1, PDF #12.

⁷ Petitioner’s Exhibit 2, PDF pg. 2.

⁸ Respondent’s Exhibit 1, PDF pg. 3.

⁹ Respondent’s Exhibit 1, PDF pg. 3.

¹⁰ Respondent’s Exhibit 1, PDF #4.

support that the County provided of market rates was an excerpt from a CBRE, Inc. report titled “Greater CITY-2 Current Rental & Vacancy Rates.” This report indicated a rate conclusion for each unit type and rental class, although the excerpt does not provide the year to which these rents apply or any other information about the size of the study and number of apartment complexes studied. Based on the rent rate conclusion from the excerpt of the CBRE report, the County applied the following rents per unit:¹¹

REDACTED TABLE

18. In its income approach the County used a vacancy rate of %%%%. The County’s representative had included in his report an excerpt from a 2020 CBRE, Inc. study on vacancy rates which looked at the CITY-1 market and indicated an average vacancy in CITY-1 of %%%% for 2020. This statistic was just an average, and the study indicated that it was based on an average unit size of ##### square feet and an average unit rent of \$\$\$\$\$. Most of the subject property units are significantly larger than this average unit size and rented for more than the average unit rent. However, the County provided no other support for lowering its vacancy rate from %%%% to %%%%.

19. The bigger difference between the County’s income approach and the Property Owner’s income approach was due to the expenses. The County’s representative argued that the Property Owner’s expenses were too high. For its income approach, the County had used expenses that were only %%%% of the effective gross income plus a %%%% management fee and a %%%% reserve amount. These amounts were much lower than the amounts used by the Property Owner in either of the Property Owner’s income approaches. To support its expenses, the County provided an excerpt from the Trepp Expenses Data report, and another report that the County indicated was a “survey of 66 apartment complexes with 50 or more units.” These reports do not break out expenses based on unit square footage or even unit type. However, most of the subject units are 2-bedroom and many are 3-bedroom units. These expense reports instead looked at the average expenses per unit regardless of size or number of bedrooms. The County did acknowledge in its report that this data was obtained for the 2020 tax year assessment and had not been updated for 2021. The County used an expense amount of \$\$\$\$ per unit, which was a lower expense amount per unit than indicated by the Trepp report. The Trepp report indicated expenses of \$\$\$\$ per unit in a “garden” style apartment complex.

20. The County's capitalization rate was lower than the rate used by the Property Owner. The County’s rate was %%%%, while the Property Owner’s capitalization rate had

¹¹ Respondent’s Exhibit 1, PDF #4.

been %%%%. The County provided an excerpt of a report from CBRE, Inc., regarding capitalization rates for the second half of 2020 for properties in CITY-2. The CBRE report indicated a capitalization rate for rental class A properties of %%%%, rental class B properties of %%%% and rental class C properties of %%%%. In addition, the County provided a graph from Newmark Grubb Acres, which indicated a capitalization rate of %%%% for multi-family properties, but did not break that out into apartment complex sizes. The subject is a large apartment complex with ##### units. The County also provided some capitalization rate comparables. The County's comparables are mostly from CITY-2, and none are from CITY-1 or even neighboring cities to CITY-1 where the subject is located. The County's capitalization rate comparables were the following:¹²

REDACTED TABLE

The County did state that the capitalization rates would need to be adjusted for time, asserting that the rates were going down from 2017 through 2020. The County pointed out that the lowest of the rates were the ones that had sold in 2021 and 2019. However, the 2021 sale is nearly one year after the January 1, 2021 lien date that is at issue in this appeal. The 2019 sale had occurred prior to the COVID-19 pandemic.¹³

21. Given these factors, the County's income approach offered at the hearing was the following:

REDACTED TABLE

Although the County offered this income approach at the Formal Hearing, the County did not request the value be raised to the \$\$\$\$ amount derived in the income approach, but instead, that it remain at the County's current value of \$\$\$\$.

22. The County's representative provided some comments about the Property Owner's capitalization rate comparables. He stated that the BUSINESS-3 had sold in an "off market transaction" and was %%%% vacant at the time of the sale. He provided that BUSINESS-1 sold at a %%%% capitalization rate "based on the trailing 12 months." He stated that the BUSINESS-2 had sold at a %%%% capitalization rate based on the actual income and actual expenses. In addition, he stated that the sales that occurred in 2018 would need to be time adjusted.¹⁴

¹² Respondent's Exhibit 1, PDF pg. 8.

¹³ FEMA's declaration date for the COVID-19 pandemic in Utah was March 3, 2020. *See* <https://www.fema.gov/covid-19>.

¹⁴ Respondent's Exhibit 1, PDF pg. 11.

IV. Value Conclusion

23. After reviewing the evidence in this matter, as the property is a qualified real property for tax year 2021, and the only party asking for a change from the IAV is the County, it is only the County that has the burden of proof in this matter.

24. The County provided five unadjusted comparable sales and three of the comparables were located in CITY-3, which is more central to the CITY-2 urban core than where the subject is located in CITY-1, a more suburban area. There was one sale located in CITY-4 and one sale located in CITY-5. CITY-4 and CITY-5 are both east side cities, which generally have higher market values and are nearer to mountain recreation, while the subject is on the west side of the valley. The CITY-5 and CITY-4 sales were by far the two highest priced sales per rental unit. All five sales had occurred in 2018, and the County added substantial time adjustment increases to these sales, but did not make any other appraisal adjustments for the differences between the subject and these comparables. Because these sales occurred significantly prior to the lien date, were not in the same area and lacked appraisal adjustments, the comparable sales offered by the County are not convincing.

25. The County's income approach presented at the Formal Hearing concluded a value of \$\$\$\$\$, which was substantially higher than the County's current value of \$\$\$\$\$, but the current value was the value that the County was requesting at the hearing. There were several key changes that the County had made in its income approach, from the way the subject property had originally been assessed by the County. For its Formal Hearing income approach, the County decreased the vacancy rate from %%% to %%%. The subject property vacancy for year end 2020 was %%% and for all of 2020 was %%%. Units in the subject were larger than the average unit sizes and rented for higher rents than the average unit rents indicated in the County's vacancy rate study, which the County had offered as support for a lower vacancy rate. There was no information from the County on how this affected vacancy, so the County's vacancy rates are not persuasive.

26. For rent rates, the County used the rates stated in an undated report excerpt from CBRE, Inc. for the "GREATER CITY-2" area for Class B rental units. As it is not clear what time period this report is from and these are just average rates for all apartments in the County, this does not provide more persuasive rent rates than the actual rents from the most recent leases that the Property Owner had used in its second income approach. The County's rent rates are not persuasive.

27. For the income approach the County submitted at this Formal Hearing, the County also lowered its capitalization rate from the rate of %%% that had been used by the County for the original assessment, to a rate of %%%. For this the County appears to rely mostly on an average capitalization rate for all rental units as reported from Newmark Grubb ACRES for all of CITY-2. The subject is in a suburban location in CITY-1. The County's own capitalization rate comparables mostly predated or substantially post dated the lien date at issue in this appeal. If the December 2021 sale and all the 2017 sales are eliminated from the County's capitalization rate comparables, the remaining sales support the %%% capitalization rate. Additionally, the Property Owner has offered a number of capitalization rate comparables that support the %%% rate. Two of the Property Owner's capitalization rate comparables, the CITY-6 and CITY-7 comparables, are in locations more comparable to the subject. Additionally, the Property Owner found capitalization rate comparables that had sold much nearer to the lien date and they did support the Property Owner's and the County's original capitalization rate of %%%, even if the three capitalization rate comparables that the County criticized, BUSINESS-3, BUSINESS-1, and BUSINESS-2, were removed from consideration. The County's lowered capitalization rate is not supported.

28. The biggest difference between the County's and the Property Owner's income approaches were the expenses. In the County's original assessment, the County had noted total expenses, including management and reserves less property tax, of \$\$\$\$ or %%% of the effective gross income. However, at the Formal Hearing, in its income approach, the County had reduced its total expenses, including management and reserves, to %%% of the effective gross income, or \$\$. The County provided as support for these expenses only expense studies that had been conducted for the lien date January 1, 2020 and not for the tax year at issue. Furthermore, these studies broke down the expenses on a per unit basis, without taking into account the actual number of bedrooms, bathrooms and unit size. The subject property has mostly 2-bedroom and 3-bedroom units. The unit sizes are not being taken into account by the County. The Property Owner has shown its actual expenses in each year 2018 to 2020 were considerably higher, at more than \$\$\$\$ every year. As the County has provided only outdated studies to support its much lower expenses, the County's expenses are unpersuasive.

29. Considering all of the evidence submitted at this hearing, the County has not met its burden of proof to establish a value higher than the IAV.

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:

- (a) "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.
- (b) 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:
 - (a) 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; and
 - (b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.

...
- (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.

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, including a value based on a stipulation of the parties;
 - (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 the parties have entered a stipulation; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; 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 same as that term is defined in Section 59-2-1004.
 - (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) the appeal described in Subsection (1)(c)(ii)(A) resulted in 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, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not had a qualifying change.

- (d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:
 - (i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of the fair market value of the real property or \$20,000;
 - (ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or
 - (iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.
- (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 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.

For a qualified real property proceeding before the Tax Commission, Utah Code Ann. §59-2-109(4)(b) provides that the burden of proof is on the county, where the county proposes a value that is greater than or equal to the subject property's inflation adjusted value and where the taxpayer does not propose a value that is less than the property's inflation adjusted value. To prevail in this case, Subsection 59-2-109(2) provides that the county must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which its proposed value could be adopted.

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.

3. The subject property is a "qualified real property" for tax year 2021 pursuant to Utah Code §59-2-109(1)(c). Utah Code §59-2-109(1)(c) provides that a property is a “qualified real property if it is a property assessed by a county:

- (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) the appeal described in Subsection (1)(c)(ii)(A) resulted in 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, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not had a qualifying change.

As noted in the Findings of Fact above, the Property Owner had appealed the valuation of the subject property for tax year 2020 in accordance with Section 59-2-1004. The 2020 appeal resulted in a value that was lower than the 2020 assessed value, and the assessed value for tax year 2021 of \$\$\$\$ was higher than the inflation adjusted value of \$\$\$\$\$. Additionally, neither party represented that there had been any changes to the property on or after January 1, 2020 and before January 1, 2021. Therefore, there was no “qualifying change” as that was defined at Utah Code §59-2-109(1)(d) that would disqualify the property from being “qualified real property.”

4. Additionally, Utah Code Ann. §59-2-301.4 is applicable in this matter because the subject property was the subject of a “valuation reduction” for tax years 2020, 2019 and 2018, each of the three years preceding the tax year at issue. Utah Code Ann. §59-2-301.4 provides in “assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider . . . (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 testified the value was reduced for tax year 2020 due to a decision from the County Board of Equalization Hearing Officer. The County has not established that the County Assessor had considered the factors noted in Utah Code Ann. §59-2-301.4.

5. In this proceeding before the Tax Commission, because the property is a “qualified real property” for tax year 2021 and the Property Owner is requesting that the value be set at the IAV, while the County is asking for a value higher than the IAV, it is only the County that has the burden of proof in this proceeding. Utah Code Ann. §59-2-109(4)(b) provides that the burden of proof is on the county where the county proposes a value that is greater than or equal to the subject property’s inflation adjusted value. To prevail in this case, Subsection 59-2-109(2) provides that the County must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which the party’s proposed value could be adopted. As noted in the Findings of Fact above, the County has not met its burden

of proof to establish a value higher than the IAV. The value should be set at the IAV of \$\$\$\$\$ for tax year 2021.

Upon that basis, the value for the subject property as of the lien date at issue should be reduced to the IAV 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 January 1, 2021, is \$\$\$\$\$. The County Auditor is to adjust the records accordingly. 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.