

APPEAL #: 22-950  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2021  
DATE SIGNED: 11/21/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FREQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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PROPERTY OWNERS,

Petitioner,

v.

BOARD OF EQUALIZATION OF  
COUNTY-1, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
FINAL DECISION**

Appeal No. 22-950

Parcel Nos: ##### and #####

Tax Type: Property Tax

Tax Year: 2021

Judge: Phan

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**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, CITY-1, 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 July 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 Petitioner’s (“Property Owner’s”) appeal of the decision issued by the County Board of Equalization in regards to the assessed value of parcel nos. ##### and ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is January 1, 2021.

3. The County Assessor’s (“County’s”) original assessed value was upheld for both parcels by the County Board of Equalization (“BOE”) for the lien date at issue and those were the values the County was requesting be sustained at this hearing. The County’s value for each parcel and the value the Property Owner was requesting for each parcel are as follows:

REDACTED TABLE

4. The value of Parcel ##### was appealed to the BOE in tax year 2020. The 2020 tax year original assessed value had been \$\$\$\$ and there was no change in value resulting from the appeal. The BOE’s decision was not appealed to the Tax Commission for tax year 2020. There were no other appeals in the three years prior to tax year 2021 for either parcel.

5. The two parcels at issue form a single economic unit.

6. The subject parcels are located at ADDRESS-1. The parcels combined are ##### acres of land and they are improved with a ##### unit apartment complex, which is being operated as BUSINESS-1. The buildings were constructed in YEAR and YEAR. The buildings are four-stories high with surrounding courtyards and with some lawn and landscaping. The County considers the units to be garden-style units. The County assessed the apartment units as Class B rentals in good grade and good condition. The buildings have ##### 1-bed/1-bath units; ##### 2-bed/1-bath units and ##### 3-bed/2-bath units. The County testified at the hearing that the average unit size for the one bedroom units was ##### square feet, for the two bedroom units was ##### square feet and for the three

bedroom units was ##### square feet. There were differences in unit sizes in these categories and some units had balconies, while other units did not, so there were variations in the lease rates.

7. In addition to the apartment buildings, there are ##### garage parking spaces on the subject property, for which, based on the rent roll, the tenants who contracted for this parking were charged an additional \$\$\$\$ per month. Other than the parking garages, there was no off-street parking. Additionally, unlike more modern apartment complexes that have garage space conveniently below the apartment units, the garage space on the subject property was located away from the units themselves in a separate area on the subject property.

8. The units are located in the lower NEIGHBORHOOD-1, near the AREA-1 area and the central business district.

9. The subject property was sold in DATE for \$\$\$\$\$, or \$\$\$\$\$ per unit. The parties stated that the subject property was renovated after the sale. The renovations were completed in DATE. No information on the cost of the renovations or what was renovated was presented.

## II. Property Owner's Evidence

10. The Property Owner's representative submitted an income approach and appraisal information at the hearing. The Property Owner's representative pointed out at the hearing and in his exhibit that the subject apartment complex was "professionally managed by BUSINESS-2, a third-party, full-service manager." He stated, "BUSINESS-2 manages ##### units located in ##### states, including ##### complexes in Utah."<sup>1</sup> It was his argument that the management company would be trying to get as high of rents and as low of expenses as possible. The Property Owner's representative provided a copy of the DATE rent roll,<sup>2</sup> which indicated a monthly potential gross income of \$\$\$\$\$ at 100% occupancy. This equated to \$\$\$\$\$ annually. The representative pointed out that these leases were all mostly after 2019, so they were relatively new. However, the Property Owner's representative also provided the rents from the new leases that were entered into near the lien date January 1, 2021. These leases indicated the following rents:<sup>3</sup>

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<sup>1</sup> Petitioner's Hearing Testimony and Exhibit A, PDF# 5.

<sup>2</sup> Petitioner's Exhibit B.

<sup>3</sup> Petitioner's Exhibit A.

Unit #	Lease Start Date	Rental Amount
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1 Bed/1 Bath Units  
REDACTED TABLE

2 Bed/1 Bath Units  
REDACTED TABLE

3 Bed/2 Bath Units  
REDACTED TABLE

11. After considering the annual potential gross income from the actual December 2020 rent roll and a potential gross income based on the leases entered into nearest the lien date, the Property Owner’s representative concluded that the PGI from the average lease rates in place in December 2020 was higher. The representative for the Property Owner provided the following calculations.

PGI Based on Average Rents<sup>4</sup>

REDACTED TABLE

PGI Based on Rents Closest to 1/1/2021

REDACTED TABLE

12. For vacancy, the Property Owner provided a CBRE Market Report that indicates vacancy had increased slightly from %%% in 2019 to %%% in 2020. In his income approach, the representative for the Property Owner used a %%% vacancy rate, which was the same vacancy percentage used by the County.

13. The Property Owner had submitted 3 years of operating history which showed other income and expenses. Other income was as follows:

REDACTED TABLE

Regarding this other income, the Property Owner’s representative stated that the RUBS income consists of reimbursements tied to the subject’s expenses. He stated for that reason if actual other income is included in the income approach, then the actual expenses should also be given primary weight in anticipating the subject’s expenses.<sup>5</sup>

14. Regarding the actual expenses, the Property Owner’s representative pointed out that the subject was an old building and older buildings had higher

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<sup>4</sup> The average rents here appear to have been derived by using the above leases which were titled “Newest Leases By Unit Type” in Petitioner’s Exhibit A.

<sup>5</sup> Petitioner’s Exhibit A, PDF# 5.

expenses. It was his position that earthquake insurance was required for the older buildings. He also opined that the actual expenses of the subject property were not high compared to other old apartment buildings. The Property Owner submitted three years of operating history for the subject property as evidence of the actual expenses.<sup>6</sup> The Property Owner's Representative compiled from the statements the following expenses:<sup>7</sup>

REDACTED TABLE

15. The Operating Statements supported the Property Owner's representative's opinion regarding earthquake insurance. There was a separate line item on the operating statement for earthquake insurance. For the December 2020 operations summary, the year-to-date actual insurance cost was listed as follows:<sup>8</sup>

REDACTED TABLE

16. In addition, the December 2020 operations summary provided information on gas utility expenses. The December 2020 year-to-date gas expense had been \$\$\$\$ and the gas RUBS income \$\$\$\$\$, which was a difference per unit of \$\$\$\$.

17. In his income approach, the Property Owner's representative used a loaded capitalization rate of %%%%, which he pointed out was the same rate used by the County on its original 2021 Building Card. This rate consisted of an unloaded rate of %%%% and an effective tax rate of %%%%. Although the County had used this capitalization rate in the original assessment, at the hearing the County had used a slightly lower capitalization rate.

18. Using these factors, the Property Owner's income approach was the following:<sup>9</sup>

REDACTED TABLE

19. The Property Owner's representative pointed out that the County's assessed value per unit was \$\$\$\$\$. The representative submitted two comparable

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<sup>6</sup> Petitioner's Exhibit B-C.

<sup>7</sup> Petitioner's Exhibit A, PDF #5.

<sup>8</sup> Petitioner's Exhibit B-C, PDF #46.

<sup>9</sup> Petitioner's Exhibit A, PDF # 6. These numbers are taken directly from the Petitioner's exhibit as reported by the Petitioner. The Commission notes there are some mathematical and reporting inaccuracies, although the differences are nominal.

sales, which were properties that had sold for much less per unit. The first comparable was also a Class B rental and it was located fairly near to the subject property. These comparable sales were the following:<sup>10</sup>

REDACTED TABLE

20. In this matter, the County had pointed to a category on the rent roll, which was titled “LOTR-Loss to Lease in Force.” The County had made the assumption and argued that this must be the difference between the contract rent and the market rent. The Property Owner’s representative stated the County was incorrect in its assumption of what the LOTR category meant. The Property Owner’s representative explained in his rebuttal document, “Every single unit has an ‘LOTR – Loss To Lease In Force’ amount, even new leases signed near the lien date. These newer leases would be most indicative of market lease rates for the subject units. BUSINESS-2, the property manager, has previously indicated that the LOTR is not the difference between the subject’s contract rent and market rents. It is merely the difference between the contract rent and a placeholder amount for each unit type. The fact that all of the units have a substantial LTOR [sic] amount, even new leases signed near the lien date, further supports the conclusion that the placeholder amounts are well above market rents for each unit type.”<sup>11</sup>

21. The Property Owner’s representative pointed out that the County had submitted as an exhibit the current asking lease rates for the subject property, which were the rates in the summer of 2023. He pointed out that apartment rental rates increased substantially in the CITY-1 market area after the lien date at issue in this appeal, January 1, 2021, through the summer of 2023. He provided a report that showed a %%% increase during 2021 and a %%% increase during 2022. He pointed out that if that percentage was backed off of the currently listed rates, it results in the actual rates the Property Owner’s representative had used in its income approach, and thus actually supports the Property Owner’s lease rates.

### III. County’s Evidence

22. The County did not submit a formal appraisal, but did submit both an income approach and a sales comparison approach. For the income approach, the County used higher lease rates for the one-bedroom and two-bedroom units, and

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<sup>10</sup> Petitioner’s Exhibit F.

<sup>11</sup> Petitioner’s Rebuttal Document.

much lower expenses than the actual expenses. This resulted in a value significantly higher than the County's original assessed value. However, the County was not requesting an increase in value and offered the information in support of the County's current value for the subject property. The County's income approach was the following:<sup>12</sup>

REDACTED TABLE

23. The County's representative concluded its lease rates based on comparable leases, which he had determined suggested higher lease rates than the leases actually in place in December 2020 or even the leases that had been entered into for the subject property in late 2020 for the one-bedroom or two-bedroom units. The County provided very little information about these lease comparables. In fact, the address was not provided for the comparables, nor was the size of the unit<sup>13</sup> or the age, quality, condition, amenities or parking information. The County did adjust its comparables for unit size, and in some cases for age and condition, but did not make any other adjustments, including for the limited parking at the subject property. Additionally, the County did not provide the date of the leases. The County's lease comparables and all the information the County provided with the leases in its income approach exhibit were the following:<sup>14</sup>

1 BEDROOM, 1 BATHROOM RENT COMPARABLES ADJUSTMENT GRID  
REDACTED TABLE

2 BEDROOM, 1 BATHROOM RENT COMPARABLES ADJUSTMENT GRID  
REDACTED TABLE

3 BEDROOM, 2 BATHROOM APARTMENT RENT COMPARABLES ADJUSTMENT  
REDACTED TABLE

24. The County's expenses in its income approach were significantly lower than those used by the Property Owner. The Property Owner's operating expenses, excluding tax and management fees, had been \$\$\$\$ in its income approach, while the County's had been \$\$\$\$\$. Because the Property Owner's representative had included its RUBS income in the amount of \$\$\$\$ in its "other income" which it

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<sup>12</sup> Respondent's Exhibit 1.

<sup>13</sup> Although not provided in the submitted evidence, the County did provide the average square footage of each unit type for the comparables at the hearing.

<sup>14</sup> Respondent's Exhibit 1.

collected from its tenants as utility reimbursements, he also included the actual utility costs in its expenses. The County did not include the RUBS income in its “other income,” but also did not subtract it in its expenses. However, even subtracting the RUBS income from the expenses, the Property Owner’s actual expenses were \$\$\$\$ per unit, which is significantly higher than what the County was arguing were market expenses of \$\$\$\$ per unit.

25. The County did not give any consideration to the actual expenses, and instead relied on average expense data from three different reports. The County provided an excerpt from a County prepared apartment complex survey for apartments greater than ##### units. This survey did not state the date it had been prepared and when questioned the County’s representative indicated it had been prepared based on 2019 expenses as evidence for tax year 2020. This survey was broken out by average expenses per unit type, based on rental class and not apartment style. Additionally, the age of the building was not considered in this report. This report indicated an average of Class A and Class B rentals of \$\$\$\$ in expenses per unit. This report showed only the average for each category and not the range between high and low expenses. The County also provided a copy of some data from a Trepp expense report. This report did not state which year it was from and, thus, it was unclear whether this report was actually also based on 2019 data. The Trepp expense report was divided into Garden-Style and Mid & High Rise, with no differentiation for the age of the building and also provided only the average for each unit type and not the range. It indicated that the average expense minus management fees for garden style units was \$\$\$\$ per unit. The County also provided a nationwide expense study from NAA for 2020, which also did not differentiate between the age of the buildings and provided only the average from 1,999 properties nationwide. This indicated the average expenses minus taxes and management fees to be \$\$\$\$ per unit.

26. In looking at some individual line items on these reports for comparison to the actual expenses listed in the operating statements provided by the Property Owner, the County’s three reports indicated the following:<sup>15</sup>

Cost Per Unit Per Year For Class B Property/Garden-Style Units  
REDACTED TABLE

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<sup>15</sup> Respondent’s Exhibit 1.



27. The County also submitted a sales comparison approach. In this approach the County considered five comparable sales of apartment complexes that were relatively near in location to the subject property. Two of the sales, however, occurred in 2017. The subject property had also been sold in 2017. However, the lien date at issue is January 1, 2021. The County adjusted the sale price of the subject property in this sales comparison approach for time. The County made appraisal adjustments for the differences between the subject and the comparables. The County's sales comparison approach is as follows:

REDACTED TABLE

The County concluded from these sales a value per unit of \$\$\$\$\$, which indicated a value for the subject property of \$\$\$\$\$.

28. At the hearing the County submitted rebuttal information regarding capitalization rates.<sup>16</sup> The County's representative pointed out that only one of the Property Owner's capitalization rate comparables was located in or near the AREA-1 CITY-1 area. He stated in his rebuttal submission that the Property Owner's "remaining capitalization rate comparables were scattered throughout suburban COUNTY-1. It is my opinion that location is a key characteristic in determination of the appropriate cap rate for an income analysis of the subject property."<sup>17</sup> The County provided a report from CBRE that showed a %%% capitalization rate for class B properties and a number of capitalization rate comparables from 2019 and 2020 which indicated rates around %%% to %%%. The County also provided the capitalization rates from four of the County's comparable sales and these rates averaged %%%. The County had used a capitalization rate of %%% in its income approach, which was well supported.

29. The County also offered rebuttal information regarding the two sales comparables that the Property Owner had submitted as evidence.<sup>18</sup> The County pointed out that the property listed as the BUSINESS-3 was an independent senior living facility with resort-style amenities, including three meals a day, housekeeping and 24 hour staffing. The County's representative also stated that this property had been only %%% occupied at the time of sale. The County pointed out that

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<sup>16</sup> Respondent's Rebuttal Exhibit.

<sup>17</sup> Respondent's Rebuttal Exhibit, PDF # 3.

<sup>18</sup> Respondent Rebuttal Exhibit, PDF # 3-4.

BUSINESS-4 apartments consisted entirely of studio apartments with an average unit size of ##### square feet.

IV. Value Conclusion

30. The subject property is not a qualified real property for tax year 2021 because the value of the subject property was not reduced on appeal for tax year 2020. It is only the Property Owner that is asking for a change to the current value set by the County BOE and, therefore, it is the Property Owner that has the burden of proof. In order for the Property Owner to prevail, 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 for an adjustment based on an income approach that takes into account actual income and expenses. The representative for the Property Owner pointed out that the subject property is managed by a third party professional management company that manages ##### complexes in Utah and thousands of apartments nationwide. It was his position that the management company obtains the highest rent possible based on the market and the lowest expenses, so these actual rent and expense amounts should be considered and were market rates. Furthermore, the Property Owner's representative pointed out that the subject building is more than ##### years old and the expenses for older properties were higher than for newer properties. Based on the information presented at the hearing, it appears that the County has not given any consideration to the actual rents achieved in the subject property or the actual expenses. By giving no regard to the rents and expenses actually achieved, the County's position implies that if the subject property were better managed the subject property could achieve a higher net operating income. The County's position raises several points of concern in this case, because the subject building has unique features and the County appears to be valuing the subject property based on averages that do not take into account the features of the subject building and disregards actual rent and expenses that are reflective of these unique features.

31. Regarding lease rates, the County asserted that the Property Owner is leasing the subject building at below market rents. The County examined a few rent comparables and did not provide very much information about those comparables, but made upward adjustments for unit size to get to higher rent rates, without making other adjustments that could have affected rents. The County did not adjust for the

fact that there is no off street parking for almost half of the units, and even for those tenants who pay extra for a garage, the garages are not conveniently located. There may be other factors such as higher costs for utilities in these older, larger units that the County did not consider. Therefore, the Commission finds that consideration should be given to the actual rents in the subject building as of the lien date and the actual rents are lower than the rents used by the County in its income approach for the one-bedroom and two-bedroom units.

32. Additionally, without pointing to any single line item on the operating statements of the Property Owner as being too high, the County ignored the actual expenses in the subject building and instead used averages from reports that may be for a prior year or are from a national survey. They do not account for the age of the subject building or provide an upper and lower range. It appears that the unreimbursed portion of the gas expenses were significantly higher for the subject building than the averages provided by the County. Furthermore, a large difference is due to the insurance expenses. The Property Owner's representative pointed to the insurance costs, including earthquake insurance, being higher in an older building. The total insurance costs for the subject property were \$\$\$\$\$ or \$\$\$\$\$ per unit per year in 2020. The expenses listed for insurance in the County's reports ranged from \$\$\$\$\$ to \$\$\$\$\$ per unit per year, which is substantially lower than the actual expenses listed for the subject building. Some of this difference appears to be due to earthquake insurance. Earthquake insurance is a line item on the Property Owner's operating report and the earthquake portion of the insurance alone was \$\$\$\$\$ per year in 2020, which is \$\$\$\$\$ per unit per year. The Property Owner's representative had made the statement at the hearing that earthquake insurance was required for older buildings, but did not provide any information to support this contention. The County's use of average expenses and then applying those to the subject, which is a ##### year old building, is not persuasive, given the three year expense history provided by the Property Owner as evidence at this hearing, which was substantially higher than the County's average expenses. There are clearly expenses that are higher for a ##### year old building. Therefore the Commission concludes it is appropriate to determine an income approach based on the actual income and actual other income and actual expenses, minus the earthquake insurance expense. The Property Owner's statement that earthquake insurance would be required was unsupported.

33. There was a small difference between the Property Owner and the County's capitalization rates. The Property Owner's rate before adding the effective property tax rate was %%% and the County's was %%%. The County did provide capitalization rate comparables and a CBRE report to support its rate, as well as pointing out that the Property Owner's capitalization rate comparables were mainly from suburban areas. Although the rates are fairly close, the County has better supported its capitalization rate of %%%. The County had added the effective tax rate of %%%, for an overall rate of %%%.

34. Taking these considerations into account the Commission finds it is appropriate to use in the income approach the average of actual rates per unit from the leases entered into nearest the lien date, actual other income, and actual expenses, with the exception of earthquake insurance, and apply the County's capitalization rate. This results in an income approach value of \$\$. This income approach is calculated as follows:

REDACTED TABLE

35. Generally, in appraisals of large apartment complexes like the subject, more weight in an appraisal is given to the income approach. The County had also provided a sales comparison approach to value for the subject property. In that sales comparison approach, the County had adjusted for time, the sale price of the subject property. The subject property sold in DATE for \$\$. The County indicated a %%% time adjustment should be applied to the sale price of the subject property, which brought the value up to \$\$, as of the lien date. This does not account for any increase in value due to the remodeling that occurred in 2019. The County's value conclusion for the subject property from the sales comparison approach was nearly ten million dollars higher than the time adjusted DATE sale price. In the sales comparison approach, only one comparable was as old as the subject property, and appeared to have a similar parking issue like the subject property. That property did indicate the lowest value for the subject property in the County's sales comparison approach and also indicated a value lower than the County's assessed value. The County's sales comparison approach considered two properties constructed in 2012 and 2013, which were properties that had parking garages under the building and parking spaces for the units. The County did not adequately take the parking issues

into account. Therefore, more weight should be placed on the income approach in determining the value for the subject property.

36. After weighing the evidence presented at the hearing, for tax year 2021, the value of the subject property should be reduced to \$\$\$\$.

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.

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); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. COUNTY-1 Board of Equalization*, 2021 UT App 4. 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. “Fair market value” may be determined based on a number of appraisal methods including an income approach, a sales comparison approach and a cost approach.

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 2020. Utah Code Ann. §59-2-301.4 is not applicable in this matter because the subject property had not been the subject of a “valuation reduction” in the three tax years proceeding 2021.

4. In this proceeding before the Tax Commission it is only the Property Owner who is requesting a value different from the County Board of Equalization value and it is the Property Owner that has the burden of proof. For the Property Owner 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 the Property Owner proposes. The Property Owner met this burden of proof during the hearing, showing error in the County’s value and providing a sound evidentiary basis to support a lower value.

Upon that basis, the value for the subject parcels as of the lien date at issue should be reduced to a combined value of \$\$\$\$\$ for the tax year at issue in this appeal.

Jane Phan  
Administrative Law Judge

**DECISION AND ORDER**

Based upon the foregoing, the Tax Commission finds that the fair market value for each parcel at issue in this appeal as of January 1, 2021, to be as follows:

##### (Parcel #####) \$\$\$\$\$

##### (Parcel #####) \$\$\$\$\$

The County Auditor is hereby ordered 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.