

APPEAL #: 23-623
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 01/09/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER'S, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 23-263 Parcel No: ##### Tax Type: Property Tax Tax Year: 2022 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-1, Utah 84134.

Presiding:

Michael J. Cragun, 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 October 17, 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 Formal 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 no. ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is January 1, 2022.

3. The County Assessor’s original assessed value was upheld by the County Board of Equalization (“County”) for the lien date at issue and was the value the County was requesting be sustained at this Formal Hearing. The County’s value and the value the Property Owner was requesting were as follows:

County’s Value Request	Property Owner’s Value Request
\$\$\$\$\$	\$\$\$\$\$

4. The value of the subject property was not appealed to the County in tax years 2021 or 2020. For tax year 2019, the Property Owner had filed an appeal to the County, which sustained the original assessed value and then the Property Owner appealed that decision to the Utah State Tax Commission. The 2019 original assessed value had been \$\$\$\$\$. The Tax Commission reduced the value to \$\$\$\$\$. The County explained in its exhibit that it did consider the information and reasons for the 2019 value reduction, but the 2022 value was based on updated land values and an income approach for the 2022 lien date.¹

5. The subject property is located at ADDRESS-1. The parcel is ##### acres of land improved with a ##### square foot, multi-tenant distribution warehouse building. The subject property is located just off the LOCATION-1 Freeway exit in an industrial area. The building was constructed in 2014 of construction type C-Masonry/Concrete. The County considers the condition of the building to be very good and the building to be a Rental Class A property. The building has a ##### foot story height, %%% office finish and a land to building ratio of #####:#####. The County considered the land to building ratio to be typical for this type of

¹ Respondent’s Exhibit RA, pg. 1.

building. The subject building as of the lien date was divided into 4 different tenant spaces and was fully occupied.²

II. Property Owner’s Evidence

6. The Property Owner’s representative submitted an income approach as evidence at the formal hearing, which was based on the actual rents in the subject property as of the lien date and the same capitalization rate used by the County. The Property Owner’s representative provided a copy of the December 2021 rent roll, which showed the dates when the leases were signed and indicated annual rent increases. A summary of information from the rent roll showing the lease rates in place nearest to the lien date is as follows:

Unit	Square Ft	Original Lease Date	Escalation Date	Rent Rate
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REDACTED TABLE

7. Although the original lease date for Unit ##### was shown as January 1, 2021, the rent roll showed that the occupation date was DATE, which indicated that the January 1, 2021 lease was a new lease for the tenant already in place in the building since 2015.

8. From these leases in place, the Property Owner’s representative concluded a lease rate for the subject building of \$\$\$\$ per square foot.

9. The Property Owner’s representative also provided a “Lease Comps. Summary” that provided eleven lease comparables from eight different buildings.³ Nine of these were asking rates and only two were leases in place. Most of these leases predated the lien date by one year or more. This information is summarized as follows:

Building #	Address	Sq.Ft. Leased	Floor	Sign Date	Rent	Rent Type
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REDACTED TABLE

10. For its income approach, the Property Owner’s representative used the same vacancy rate, expense rate and capitalization rate as the County in its valuation of the subject property. The Property Owner’s income approach is summarized as follows:⁴

Potential Gross Income	##### ⁵ x \$\$\$\$ Per square Foot	\$\$\$\$\$
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² Respondent’s Exhibit RA, Petitioner’s Exhibit P1.

³ P1, PDF #30.

⁴ Exhibit P1, PDF #12.

⁵ The Property Owner’s representative had considered the subject to have ##### rentable square feet, which is ##### square feet more than the County. The County considered the subject property to have ##### square feet. The Commission finds this difference to be inconsequential.

REDACTED TABLE

11. The Property Owner’s representative also provided information on three industrial/distribution properties located in CITY-1, which he offered as “equity comps.” While the subject property was assessed at a value of \$\$\$\$ per square foot, these comparables were all assessed at a much lower value per square foot. A summary of the information provided by the Property Owner for these three comparables is as follows:⁶

Address	Building SF	2022 Assessed Vale	Rental Class	Year Built	Land Size in Acres
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REDACTED TABLE

12. The Property Owner’s representative had also submitted actual expense information and published capitalization rate studies. However, in his income approach he used the same percentages for expenses and capitalization rate as were used by the County at this Formal Hearing.

III. County’s Evidence

13. The County’s appraiser pointed out the following as rebuttal information: “Of the additional 11 Costar leases, only two are actual executed leases. The others are listings, asking rates only.”⁷ The County pointed out that the leases in place in the subject building had been entered into in 2015 or 2018. The County’s appraiser noted in his exhibit that although the leases in place did have some escalations, the escalations did not keep pace with the market and were “not indicative of current market conditions.” In his exhibit, the County’s appraiser stated, “Industrial market reports for the area agree that growth (lease rates and sale prices) has been unprecedented from year-end 2020 to year-end 2021, which requires a significant market condition (time) adjustment for older leases. Using the in-place leases to value the subject would result in a leased-fee value. The in-place leases for the subject are not representative of the current market . . .”⁸

⁶ Exhibit P1, PDF#46-49.

⁷ Exhibit RA, pg. 3.

⁸ Exhibit RA, pg. 3. Regarding the market conditions relevant to the time period at issue, the County’s report states as follows:

Overall, the industrial market with its high construction activity, low vacancy rates, record high achieved lease rates, preleasing commitments, low cap rates and record cost per square foot on investment sales in COUNTY-1 for 2021 is unprecedented.

Price-weighted overall cap rates for industrial properties dropped 80 basis points (5.1% to 4.3%) from end of year 2020 to end of year 2021, with some transactions selling at sub 4 cap rates. Industrial vacancy rates are also at historic lows, reported to be between 2% to 3% overall, while some publications reported below 2% vacancy in some market areas

14. 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’s appraiser concluded the market lease rate as of the lien date was a higher rate than the rate used by the Property Owner. There were no other differences between the County’s and the Property Owner’s income approaches. To support his lease rate, the County’s appraiser provided six triple net lease comparables that were entered into near the lien date of January 1, 2022. All comparables were considered to be Rental Class A like the subject and had the same construction class and grade as the subject. Two of the comparables were located on the same street and were very near the subject. The County’s appraiser then made a number of appraisal adjustments for the differences between the subject and these lease comparables. The County’s comparables and adjusted lease rates are as follows:⁹

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

15. In his exhibit, the County’s appraiser had also included a number of paired sales of industrial properties to support the time adjustment he had made to the leases. These sales indicated a %%% increase in rent rates in 2021. This was why the County had made time adjustments to the leases, even though most of the leases were entered into in late 2021.¹⁰

16. The County’s appraiser did use the same vacancy, expenses and capitalization rate as the Property Owner’s representative in his income approach, so the only difference was the rent rate. In the income approach, the County’s appraiser had used a market rent rate of \$\$\$\$ per square foot. This rate is supported by the County’s comparable lease grid. The County’s income approach was the following:¹¹

REDACTED TABLE

17. The County’s appraiser also offered a sales comparison approach to value, providing four comparable sales and making appraisal adjustments. All properties had the same construction class and quality of construction as the subject property. All properties had been sold with a leased fee interest. His sales comparison approach is as follows:¹²

within the county. Overall achieved average-first year lease rates grew 24.8 % year over year, with bulk distribution and general-purpose buildings experiencing the strongest growth.

Net absorption in 2021 reached 9 million square feet, shattering the previous high watermark of 5.9 million square feet set in 2020.

⁹ Exhibit RA, pg. 6.

¹⁰ Exhibit RA, pg.7.

¹¹ Exhibit RA, pg. 11.

¹² Exhibit RA, pg. 12.

REDACTED TABLE

The County's appraiser concluded from these comparables a value per square foot of \$\$\$\$\$, which indicated a value for the subject property of \$\$\$\$\$.

18. Although the County appraiser's value conclusions from both the income and sales comparison approaches were higher than the County's current assessed value for tax year 2022, the County's appraiser stated he was offering them to support the 2022 assessed value and not asking to increase the value.

IV. Value Conclusion

19. With regard to the income approach, the only issue presented by the Property Owner's representative is the lease rate. The representative for the Property Owner had provided lease information for the leases in place in the subject property. Two of the four leases had been entered into in 2015 and one had been entered into in 2018. The fourth lease showed a lease date in January 2021, but an occupancy date in July 2015, suggesting that this was a new lease for a tenant that had already been in the building for six years. Although the leases had escalation clauses, so the actual rent was a little higher by 2022 than when the leases were first negotiated, the County argued the lease rates did not keep up with the unprecedented increase in lease rates seen in 2020 and 2021. The County did provide evidence that market lease rates as of January 1, 2022 were substantially higher than the actual lease rates in the subject building. The County's comparables were reasonable comparables and the income approach derived from the County's lease rates more than supported the County's 2022 assessed value. The County had argued that the Property Owner's representative was providing a leased fee value, while the assessment needed to be based on a fee simple value. The County's comparable sales information also more than supported the County's current assessed value for tax year 2022.

20. In addition to the income approach based on lease rates in place, the Property Owner's representative had presented three properties as "equity comps." However, the Property Owner's representative did not provide evidence to establish that these properties were actually comparable to the subject property. Two of these properties were older buildings with a lower rental class than the subject property. The third property, located at ADDRESS-2, although more comparable in age and rental class, was in a different location. The subject property is located in CITY-1, and is visible and easily accessible from the LOCATION-1 Freeway. The property on ADDRESS-2 is located on the northwest side of COUNTY-1, near the LOCATION-2. The Property Owner has not met its burden of proof to establish an adjustment based on equalization.

21. As discussed below in the Conclusions of Law, it is the Property Owner who has the burden of proof and the Property Owner has failed to establish error in the County's current assessed value for tax year 2022. Therefore the value should remain as set by the County.

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. Therefore, to determine the fair market value of the property as of the lien date at issue in the appeal, the Tax Commission must consider what the property would have sold for on that date. For an income producing property like the subject

property, value may be estimated based on an income approach. However, the Commission does determine the value on a fee simple ownership basis. As argued by the County, the Property Owner's representative submitted an income approach based on the actual leases in place, which are outdated and below market lease rates. As previously concluded by the Tax Commission, for property tax assessment purposes, which is a "fair market value" standard, the valuation must be based on an assumption of fee simple ownership.¹³ The reason for this was explained by the Tax Commission in *Utah State Tax Commission Initial Hearing Order Appeal No. 12-2733* (2013), as follows:

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the real issue before us. The evidence indicates that the lease is essentially a "below-market" lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor's interest is diminished, but the value of the lessee's interest is increased. See *The Appraisal of Real Estate* (10 th Ed. 1992), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor's and the lessee's interest.

Therefore, the Tax Commission does not use the actual rent rates from below market leases in an income approach. If the Property Owner is leasing the units at below market lease rates, the Property Owner is reducing its interest in the subject property, but increasing the tenant's interest. The value of the subject property for property tax assessment purposes is the combination of both interests. The County's evidence indicates that the market lease rate, as of the lien date, would be higher than the actual lease rates in the subject building.

3. In addition to the income approach based on actual leases in place, the Property Owner's representative argued for an adjustment based on equalization. However, the Property Owner's representative 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 5% 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

¹³ See *Utah State Tax Commission, Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 15-319* (06/13/2016). This and other Tax Commission decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

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 5% 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”¹⁴ were assessed at values that deviated at least 5% from the subject property. The Property Owner’s representative did not meet this requirement because the Property Owner’s representative failed to show a group of ‘comparable properties’ that were valued at least 5% less than the subject property. The Property Owner’s representative showed that there were other properties that were valued differently from the subject property, but did not show that they were actually comparable properties to the subject property. Differences in factors like rental class, age, grade, condition, and location all affect the market value of a property. The Property Owner’s representative has not established a basis for a reduction in value based on equalization.

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. *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. 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

¹⁴ *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.”

basis for changing the subject property's current value to the amount the Property Owner proposes. The Property Owner has not met this burden.

5. The subject property is not a "qualified real property" for tax year 2022 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 2021.
6. 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 one of the three tax years proceeding 2022. 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." In this case, the County has shown that it met the requirements of Utah Code Ann. §59-2-301.4 in assessing the value of the subject property, by explaining that it considered the reasons for the valuation reduction in 2019, but concluded the 2022 value based on income and sales relevant to tax year 2022.

Based on these Findings of Fact and Conclusions of Law, the value for the subject parcel should remain as set by the County Board of Equalization as of the lien date at issue.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject parcel as of January 1, 2022, is \$\$\$\$\$. It is so ordered.

DATED this ____ day of ____, 2024.

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.