

12-1402  
TAX TYPE: LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2011  
DATE SIGNED: 9-30-2016  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 12-1402  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011  Judge: Chapman
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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 mail the response to the address listed near the end of this decision.**

**Presiding:**

John L. Valentine, Commission Chair  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative (by telephone)  
For Respondent: RESPONDENT-1, Salt Lake County Assessor's Office (by telephone)  
RESPONDENT-2, Salt Lake County Assessor's Office (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 22, 2016. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2011, with a lien date of January 1, 2011.

3. At issue is the fair market value of Parcel No. #####. The subject property is a commercial manufacturing property located at SUBJECT ADDRESS in CITY-1, Utah.

4. The subject property is owned by TAXPAYER, (“Petitioner” or “taxpayer”). The taxpayer brings this appeal from a decision of the Salt Lake County Board of Equalization (“County BOE”).

5. The Commission issued an Initial Hearing Order in this matter on May 22, 2013, and the taxpayer timely requested to proceed to a Formal Hearing. Subsequently, the parties submitted a Joint Motion to Stay this matter until the Utah Supreme Court issued its decision in *Decker Lake Ventures, LLC v. Board of Equalization of Salt Lake County*, Appeal Number 20130757-SC. The Commission granted the Motion to Stay on March 21, 2014. On August 11, 2015, the Court issued its decision in *Decker Lake Ventures, LLC v. Utah State Tax Comm’n*, 356 P.3d 1243, 2015 UT 66 (Utah 2015), after which this matter was scheduled for Formal Hearing.

6. The County BOE sustained the \$\$\$\$ value at which the subject property was assessed for the 2011 tax year. The taxpayer asks the Commission to reduce the subject’s value to \$\$\$\$\$. The County asks the Commission to sustain the subject’s current value of \$\$\$\$.

7. The subject property consists of #####-acres of land and an industrial manufacturing building that is #####-square feet in size (10% of which is office space). The subject property was built in YEAR, and its manufacturing space has #####-foot ceiling heights.<sup>1</sup>

8. The County assessed the subject property using an income approach. Once the County derived an income approach value for the subject property, it subtracted approximately \$\$\$\$ from the income approach value to derive the subject’s current value of \$\$\$\$\$. The County explained that it made the negative adjustment of approximately \$\$\$\$ because of problems associated with the subject property. The subject’s current value of \$\$\$\$ equates to \$\$\$\$ per square foot (\$\$\$\$ divided by #####-square feet).

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1 Respondent’s Exhibit 2.

9. The County allocated the subject's current total value of \$\$\$\$ between a land value of \$\$\$\$ and an improvements value of \$\$\$\$\$. The County did not explain how it allocated the subject's total value into these separate land and improvements values. Nevertheless, it is assumed that the County first determined the value of the subject's land to be \$\$\$\$\$, after which it subtracted this amount from the subject's total value of \$\$\$\$\$ to derive an improvements value of \$\$\$\$\$. This assumption is supported by an excerpt from a Tax Commission decision that the County submitted into evidence, which showed how the County determined separate land and improvements values for another property it assessed with the income approach.<sup>2</sup> The taxpayer did not indicate that the County determined the subject's separate land and improvements values differently.

10. The taxpayer contests the subject's current total value of \$\$\$\$ on the basis of equalization.<sup>3</sup> The taxpayer, however, does not use the *total* assessed values of comparable manufacturing properties to show that the subject's total current value of \$\$\$\$ is inequitable. Instead, the taxpayer uses the assessed *land* values of four comparables to argue that the subject's land value of \$\$\$\$ is inequitably high and should be reduced to \$\$\$\$\$.<sup>4</sup> In addition, the taxpayer uses the assessed *improvements* values of three different comparables to argue that the subject's improvements value of \$\$\$\$ is too high and should be reduced to \$\$\$\$ (rounded).<sup>5</sup> The taxpayer added its proposed land value of \$\$\$\$ and its proposed improvements value of \$\$\$\$ to derive a total proposed value of \$\$\$\$ for the subject property.<sup>6</sup> The taxpayer's total proposed value of \$\$\$\$ equates to \$\$\$\$ per square foot (\$\$\$\$ divided by #####-square feet).

11. The County contends that where it has used an income approach to determine a total value for the subject property and where the improvements value is merely the mathematical difference

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2 Respondent's Exhibit 1, p. 2.

3 The taxpayer does not contest the subject's current value on the basis of its fair market value (i.e., the taxpayer does not contend that the subject's current value does not represent its "fair market value," as defined in Utah Code Ann. §59-2-102(12) (2011)).

4 Petitioner's Exhibit 1, p. 3.

5 Petitioner's Exhibit 1, pp. 4-5.

6 Petitioner's Exhibit 1, p. 8.

between the subject's total value and its land value, it is inappropriate to separately contest the improvements value. The County further posits that where total value has been derived with the income approach, any reduction to the allocated land value would necessitate a corresponding increase in the allocated improvements value (and vice versa) unless the subject's total value was shown to be incorrect. For these reasons, the County asks the Commission to reject the taxpayer's methodology to separately contest the subject's land and improvements values.

12. The Commission agrees with the County that where a property's *total* assessed value has been determined with an income approach, a separate equalization argument to contest the property's allocated land and/or improvements is suspect. The Commission acknowledges that in *USTC Appeal No. 09-3842* (Initial Hearing Order Nov. 11, 2010),<sup>7</sup> it stated that "we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently." However, in that appeal, the property at issue was assessed using the cost approach, where the values of the property's land and improvements were determined separately with individual valuation methodologies. In the present case, the values of the subject's land and improvements were not valued separately with individual valuation methodologies. Only the subject's land was valued with an individual valuation methodology. As previously mentioned, the subject's improvements value is simply the mathematical difference between the subject's total value and its land value.

13. Moreover, the Commission's discussion of *Appeal No. 09-3842* in a subsequent appeal is relevant to the instant matter. In *USTC Appeal No. 09-3838* (Initial Hearing Order April 18, 2011), the Commission stated that it "is unaware of any appraisal principle that would allow for an improvement to be compared with other improvements, and then allow for comparisons of land based on different improved properties." The Commission further stated that "[i]f a party cannot find comparable properties for land and improvements, it may be extremely difficult to make an equalization argument."

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<sup>7</sup> Redacted versions of this and other Commission decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

14. The Commission also notes that because the subject property's total value was determined with an income approach, its improvements value is merely the mathematical difference between its total value and its land value. As such, the subject's allocated improvements value may depend more on the value of its land than to its improvements themselves. Unless the subject property and the comparables used to contest the subject's improvements value all have land values that comprise a similar proportion of their total values, a separate equalization argument for the subject's improvements value could itself result in valuation problems that did not originally exist.<sup>8</sup>

15. For these reasons, the Commission finds the taxpayer's equalization methodology to separately contest the subject property's allocated land and improvements values to be suspect and unconvincing. Nevertheless, the Commission will also address the deficiencies of the comparables that the taxpayer used to separately contest the subject's land value and improvements value.

#### Taxpayer's Land Value Comparables

16. The taxpayer's first equalization argument concerns the subject's \$\$\$\$ land value (which equates to \$\$\$\$ per square foot). To contest this value, the taxpayer provides the assessed land values of four comparables that appear to be located in the same general area of the County where the

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<sup>8</sup> For example, consider two identical commercial properties, each with #####-acres of land and identical #####-square foot buildings. Assume that a county used the income approach to derive an assessed value of \$\$\$\$ for each property and that this value represents each property's total "fair market value." However, because one of the commercial properties was located in an area of the county where land prices were significantly higher, the county determined that the land value of the first property was \$\$\$\$ and that the land value of the second property was \$\$\$\$\$. Subtracting these land values from the \$\$\$\$ total values of both properties would result in allocated improvements values of \$\$\$\$ for the first property and \$\$\$\$ for the second property.

A person employing the taxpayer's equalization methodology to contest the second property's value would argue that the second property's improvements value of \$\$\$\$ is inequitable in comparison to the first property's improvements value of \$\$\$\$\$. If this equalization argument were accepted, the second property's \$\$\$\$ improvements value would be reduced to \$\$\$\$ to equalize it with the improvements value of the first property. Such a reduction would reduce the second property's total value to \$\$\$\$ (\$\$\$\$ land value plus \$\$\$\$ improvements value). This reduction, however, would cause an equalization problem that did not originally exist because the two identical properties would now be taxed at different values, the first property at \$\$\$\$ and the second property at \$\$\$\$.

subject property is located.<sup>9</sup> The assessed land values of the four land comparables equate to \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, all of which are lower than the subject's land value of \$\$\$\$\$ per square foot. On the basis of these comparables, the taxpayer asks the Commission to reduce the subject's land value from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot (which would reduce the subject's current land value of \$\$\$\$\$ to \$\$\$\$\$).

17. The taxpayer's proposed value of \$\$\$\$\$ per square foot for the subject's land is higher than the assessed land values of all four of its comparables. As a result, the taxpayer appears to admit that the subject's land value is higher than all of the comparables' assessed land values. The taxpayer, however, has not explained how it determined that a value of \$\$\$\$\$ per square foot is equitable for the subject's more valuable land while its current value of \$\$\$\$\$ per square foot is not. REPRESENTATIVE FOR TAXPAYER, the taxpayer's representative who appeared at the Formal Hearing, explained that he did not know how the "summary" document he submitted to support the taxpayer's equalization arguments (Petitioner's Exhibit 1) was prepared, nor could he answer any questions about the comparables contained or conclusions reached in the document.

18. Because the taxpayer was unable to provide any information about its land comparables, the Commission does not know if the comparables are raw lands or, like the subject property, are lands that have already been commercially developed. In addition, the Commission does not know if the four comparables have the same zoning as the subject property. Moreover, the Commission does not know the characteristics of the four comparables, such as parcel configuration, availability of utilities, road frontage, topography, etc. Without such information, the Commission does not know whether the taxpayer's land comparables are similar enough to the subject property to be considered reliable comparables for equalization purposes. Without knowing if the land comparables are, indeed,

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<sup>9</sup> Petitioner's Exhibit 1, p. 3. It appears that the subject property and the four land comparables are located in the same general area of the County because all of their parcel numbers begin with the number "#####."

comparable to the subject's land, the assessed values of the four comparables are not useful in determining whether or not the subject property's current land value of \$\$\$\$ per square foot is equitable.

19. Furthermore, as will be discussed in more detail below, the taxpayer is using three manufacturing properties as comparables to contest the subject's allocated improvements value.<sup>10</sup> One of the taxpayer's improvements value comparables has a parcel number beginning with the number "#####." Thus, it appears to be located in the same general area of the County where the subject property and the taxpayer's four land comparables are located. While the taxpayer did not provide the value at which this manufacturing property's land is assessed, the County showed that its land is assessed at \$\$\$\$ per square foot,<sup>11</sup> which the taxpayer did not refute. This \$\$\$\$ per square foot value for land that, like the subject property, is improved with a manufacturing building is higher than the subject's current land value of \$\$\$\$ per square foot. As a result, this manufacturing property, unlike the taxpayer's four land comparables, is *known* to be an improved manufacturing property, and, thus, appears to be more comparable to the subject property than the taxpayer's four land comparables. Its assessed land value of \$\$\$\$ per square foot supports the subject's current land value of \$\$\$\$ per square foot. For these various reasons, the taxpayer's argument that the subject's land value should be reduced for purposes of equalization is not convincing.

#### Taxpayer's Improvements Value Comparables

20. The taxpayer's second equalization argument concerns the subject's \$\$\$\$ improvements value (which equates to \$\$\$\$ per square foot). To contest this value, the taxpayer provides the improvements values of three manufacturing properties located throughout the County.<sup>12</sup> Whereas the

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10 Petitioner's Exhibit 1, p. 4. The three manufacturing properties the taxpayer has used as improvements value comparables are all different from the four properties the taxpayer has used as land comparables.

11 Respondent's Exhibit 2 (third comparable).

12 Petitioner's Exhibit 1, pp. 4-5. Although the taxpayer did not provide addresses for these comparables, the County provided them in Respondent's Exhibit 2. The addresses show that the distances between the taxpayers' improvements value comparables and the subject property are approximately ##### blocks (first comparable), ##### blocks (second comparable), and ##### blocks (third comparable).

subject property's building is #####-square feet in size, the taxpayer's three comparables have buildings that are #####, #####, and #####-square feet in size. The taxpayer's three comparables also have assessed improvements values of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$, which equate to values of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, respectively.<sup>13</sup>

21. In the summary document the taxpayer submitted to support its equalization arguments, the taxpayer indicates that its three improvements value comparables "have been adjusted for differences in age, and then the subject was equalized to the average value of the comparable properties."<sup>14</sup> Because the taxpayer's representative did not know whether these three comparables were adjusted for any differences other than age, the Commission must conclude that they were only adjusted for age. Once the taxpayer adjusted its three improvements value comparables, the taxpayer concluded that the subject's \$\$\$\$\$ improvements value (which equates to \$\$\$\$\$ per square foot) was inequitably high and should be reduced to \$\$\$\$\$ (rounded) (which equates to \$\$\$\$\$ per square foot).<sup>15</sup>

22. The taxpayer has not shown that the subject's improvements value is inequitable on the basis of its three improvements value comparables. First, the taxpayer made upwards adjustments of 6%, 9%, and 25% to its three improvements value comparables (which, as explained in the prior paragraph, must be considered adjustments only for age).<sup>16</sup> These age adjustments do not make sense. The taxpayer made an upward adjustment of 6% to its first comparable, even though it was built in YEAR and, thus, is three years newer than the YEAR-built subject property. Because the first comparable is newer than the subject property, any age adjustment to this comparable should be a downward adjustment, not an upward adjustment. Furthermore, the taxpayer adjusted the other two comparables upward by 9% and 25%, even though their buildings have ages ranging between 1997 and 2006 (for the second comparable) and 2000

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13 Respondent's Exhibit 2. The Commission takes administrative notice that the County generally uses the income approach to derive total assessed values for manufacturing properties. The taxpayer has not shown that the County derived total assessed values for the manufacturing properties it used as its improvements value comparables with a valuation approach other than the income approach.

14 Petitioner's Exhibit 1, p. 4.

15 Petitioner's Exhibit 1, pp. 4-5.

16 Petitioner's Exhibit, p. 5.

and 2006 (for the third comparable).<sup>17</sup> As a result, it appears that the latter two comparables may have weighted building ages similar to the subject's age (the subject was built in YEAR). If so, only minimal age adjustments may be appropriate for these two comparables and certainly not the 25% upward adjustment the taxpayer made to the third comparable.<sup>18</sup>

23. Second, the County contends that one characteristic that significantly impacts the value of a manufacturing building is its ceiling height, which the taxpayer does not refute. The taxpayer does not appear to have adjusted its three improvements value comparables for ceiling height, even though all of the comparables have ceiling heights that are lower than the subject's 24-foot ceiling heights (i.e. 22-foot ceiling heights for the taxpayer's first and third comparables and 16-foot ceiling heights for taxpayer's second comparable).<sup>19</sup> The County contends that the taxpayer's second comparable is not actually comparable to the subject property because of the difference between its 16-foot ceiling height and the subject's #####-foot ceiling height. The County's argument is convincing and may explain, in part, why the second comparable has an improvements value of only \$\$\$\$ per square foot (which is anomalously low when compared to the improvements values (per square foot) of the subject property and the taxpayer's other two improvements value comparables). For these reasons, the taxpayer's use of the second comparable in its equalization analysis (where the taxpayer gives it as much as or more weight than its other two comparables) is suspect and could generate a value for the subject's improvements that would be inequitably low.

24. Third, as previously discussed, the Commission finds it suspect to compare improvements values that are mere mathematical differences between properties' total values and land

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17 Petitioner's Exhibit 1, p. 5; Respondent's Exhibit 2.

18 Petitioner's Exhibit 1, pp. 4-5; Respondent's Exhibit 2.

19 Respondent's Exhibit 2. In Petitioner's Exhibit 1, p. 4, the taxpayer shows the second comparable's "street height" to be 24 feet. The taxpayer, however, could not explain whether "street height" equates to ceiling height and, if it does, why the ceiling height it provided for this comparable is so different from the ceiling height shown by the County. The taxpayer has the burden of proof, and has not shown that its second comparable has a ceiling height of 24 feet instead of 16 feet (as shown by the County).

values, especially where land values can differ greatly based on location. As already explained, the taxpayer's second comparable's improvements value of \$\$\$\$ per square foot may be anomalously low because of its low ceiling height. However, the second comparable's anomalously low improvements value may also be explained, in part, because of its relatively high land value of \$\$\$\$ per square foot,<sup>20</sup> which accounts for 77% of its total value. In comparison, the land values of the subject property and the taxpayer's other two improvements value comparables account for much less of their total values.<sup>21</sup> As a result, when the second comparable's relatively high land value is subtracted from its total value, the mathematical difference that is allocated to the second comparable's improvements is relatively low when compared to the mathematical differences that are allocated to the improvements of the subject and the taxpayer's other two comparables. For these reasons, using the \$\$\$\$ per square foot value assessed to the second comparable's improvements to equalize the improvements values of other properties may, again, lead to inequalities that did not originally exist. Accordingly, the Commission finds that the taxpayer's second improvements value comparable is not a convincing comparable with which to determine whether the subject's improvements value is equitable or not.

25. Fourth, the taxpayer's first improvements value comparable has a land-to-building ratio that is more than double the land-to-building ratios of the subject property and the taxpayer's other two improvements value comparables.<sup>22</sup> Thus, it appears that the taxpayer's first improvements value comparable has excess or surplus land, which the taxpayer could not refute. If the first comparable has excess or surplus land, it is arguable that it is not similar enough to the subject property to be a convincing comparable for equalization purposes. Furthermore, the existence of excess or surplus land may explain

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20 Respondent's Exhibit 2. The land values of the subject property and the taxpayer's other two improvements value comparables only range between \$\$\$\$ per square foot and \$\$\$\$ per square foot.

21 The land values of the subject property and the other two improvements value comparables only account for 35% (subject property), 59% (first comparable), and 39% (third comparable) of their total values.

22 Respondent's Exhibit 2. The first comparable's land-to building ratio is 6.79, whereas the land-to building ratios for the subject property and the other two comparables are 2.80 (subject property), 2.33 (second comparable), and 2.29 (third comparable).

why the first comparable's land value accounts for 59% of its total value, whereas the land values of the subject property and the taxpayer's third improvements value comparable only comprise 35% and 39% of their total values. Because the first comparable's improvements value is a mathematical difference between its total value and a land value that may be high because of excess or surplus land, its improvements value may be relatively low in comparison to the improvements values of properties without excess or surplus land. As a result, using the \$\$\$\$ per square foot value assessed to the first comparable's improvements to equalize the improvement values of other properties may also lead to inequalities that did not originally exist. Accordingly, the Commission also finds that the taxpayer's first improvements value comparable is not a convincing comparable with which to determine whether the subject's improvements value is equitable or not.

26. Fifth, the allocated improvements value of the taxpayer's third improvements value comparable is \$\$\$\$ per square foot.<sup>23</sup> If this comparable's improvements value were adjusted upward to account for its lower ceiling height, its adjusted improvements value may be relatively close to the subject's current improvements value of \$\$\$\$ per square foot. Regardless, the County contends that this comparable is not similar enough to the subject property to be a convincing comparable for equalization purposes. Whereas the subject property is #####-square feet in size, the third comparable is only #####-square feet in size. In addition, more than 27% of the third comparable's #####-square feet of total space is cold storage space, not manufacturing space.<sup>24</sup> For these reasons, the Commission agrees with the County that this comparable is not similar enough to the subject property to be a reliable equalization comparable.

27. Based on the foregoing, the taxpayer's three improvements value comparables are not convincing comparables either because their improvements are too dissimilar to the subject's improvements or because the comparables' allocated improvements values are relatively low because of

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23 Respondent's Exhibit 2.

24 Respondent's Exhibit 2.

their relatively high land values. As a result, the taxpayer's improvements value comparables do not show that the subject property's current improvements value of \$\$\$\$ (which equates to \$\$\$\$ per square foot) is inequitably high.

28. Furthermore, even if the taxpayer's three improvements value comparables had been similar enough to the subject property to be convincing comparables for purposes of equalization, the Commission is not convinced that three manufacturing comparables from different locations in the County are sufficient to demonstrate the "systematic practice of undervaluation" that is necessary to warrant an equity adjustment, especially where the taxpayer has not presented evidence to show that any of the comparables have been assessed at values below their "fair market values."<sup>25</sup> The Commission has previously raised this concern in *Appeal No. 09-3838*, (a case where a petitioner had presented three equalization comparables), in which the Commission stated that "[i]t is difficult to establish that properties are not equalized based on a limited number of comparables." For these various reasons, the taxpayer's argument that the subject's improvements value should be reduced for purposes of equalization is not convincing.

#### Summary

29. The taxpayer's equalization methodology to separately contest a property's allocated land value and improvements value is suspect where that property's total value was derived with an income approach and where its improvements value is merely the mathematical difference between its total value and its land value. For such a property, a more convincing equalization argument would rely on total values to show that a property's value is inequitable in comparison to the values of comparable properties.<sup>26</sup> Finally, the Commission does not find the taxpayer's land value or improvements value comparables to be convincing. Accordingly, the taxpayer's equalization argument fails.

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<sup>25</sup> See *Mt. Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, 100 P.3d 1206 (Utah 2004).

<sup>26</sup> In Respondent's Exhibit 2, the County provided the total assessed values of the taxpayers' three improvements value comparables. Because the taxpayer did not argue that the total assessed values of these comparables were inequitable in comparison to the subject's total assessed value, the Commission will not address the total values of these comparables any further.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) (2011)<sup>27</sup> provides that “[a]ll 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.”

2. For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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, may appeal that decision to the commission. . . .

. . . .

(4)<sup>28</sup> In reviewing the county board’s decision, 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.

. . . .

4. In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property’s current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property’s current value to the amount it proposes. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax*

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27 The substantive law cited is the 2011 version of Utah law, unless otherwise indicated.

28 Subsequent to the 2011 tax year at issue, Subsection 59-2-1006(4) was renumbered to Subsection 59-2-1006(5).

*Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. The taxpayer has the burden of proof in this matter.

2. The taxpayer is contesting the subject property's current total value of \$\$\$\$ on the basis of two separate equalization arguments, specifically arguing that the subject's allocated land value of \$\$\$\$ and its allocated improvements value of \$\$\$\$ are inequitably high. A party may contest a property's value on the basis of equalization pursuant to Subsection 59-2-1006(4), which provides that:

(4) . . . 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.

Because the taxpayer has raised the issue of equalization, the requirement set forth in Subsection 59-2-1006(4)(a) has been satisfied.

3. Remaining at issue is whether the second requirement necessary to adjust a property's value for purposes of equalization, as found in Subsection 59-2-1006(4)(b), has been satisfied. For this requirement to be satisfied, the taxpayer must show that the subject property "deviates in value plus or minus 5% from the assessed value of comparable properties." Because the subject property's total value was assessed with an income approach, the Commission finds that an equalization methodology that uses one set of land value comparables and a completely different set of improvements value comparables is suspect. As a result, it is doubtful whether such a methodology is useful in determining whether the subject's value deviates 5% from the assessed values of comparable properties or whether the County has engaged in a systematic practice of undervaluation.

4. Furthermore, even if the taxpayer's equalization methodology to separately contest the subject's allocated land and improvements values were not inherently suspect, the Commission rejects the comparables that the taxpayer used to contest the subject's land and improvements values. As explained

earlier, too little information is available about the taxpayer's four land value comparables to show that they are comparable to the subject's land. In addition, the taxpayer's three improvements value comparables are not convincing equalization comparables because they are either too dissimilar to the subject property or because they have relatively low improvements values due to their relatively high land values. As a result, the taxpayer has not shown that the subject property's value deviates 5% from the values of *comparable* properties, as required under Subsection 59-2-1006(4)(b).

5. Lastly, the parties had asked for a stay in the instant case until the Utah Supreme Court issued its decision in *Decker Lake*, which is another case in which the Commission found the same equalization methodology used by the taxpayer in the instant case to be unconvincing. In *Decker Lake*, the Court affirmed the Commission's determination that the separate land and improvements comparables that Decker Lake had used were insufficient to support its equalization claim. While the Court acknowledged the Commission's skepticism about Decker Lake's equalization methodology to separately contest the land and improvements values of a property assessed with the income approach, the Court did not rule on the appropriateness of such a methodology. Instead, the Court noted that the Commission proceeded to analyze and reject Decker Lake's separate land and improvements comparables, and the Court affirmed the Commission's rejection of these comparables. In the instant case, the Commission has also analyzed and rejected the land and improvements comparables that the taxpayer separately used to contest the subject's land and improvements values.

6. Based on the foregoing, the taxpayer has not shown that the subject property's current value of \$\$\$\$ should be adjusted for purposes of equalization. Accordingly, the Commission should sustain the subject's current value.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject property's current value of \$\$\$\$ for the 2011 tax year. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.