18-177
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 02/11/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-177 Parcel No. ##### Tax Type: Property Tax Tax Year: 2017 Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Representative
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, COUNTY Assessor
REPRESENTATIVE FOR RESPONDENT-2, Chief Deputy Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on October 2, 2018 in accordance with Utah Code §59-1-502.5. The COUNTY Assessor's

Office valued the subject property at $$$$$ as of the January 1, 2017 lien date. The County Board of Equalization ("the County") reduced the value to $$$$$. At the hearing, the Property Owner requested a reduction to $$$$$. The County asked the Commission to sustain the BOE value at $$$$$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

> (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(13), as follows:

> "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of 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, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board…
> (3) In reviewing the county board's decision, 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.
> (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
> (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
> (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 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.

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 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 46, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS, Utah. The property is ##### acres of land and is improved with a full service, lodge style hotel known as the HOTEL-1 at CITY-1. The hotel was constructed in 2009 and was in good condition as of the lien date. The hotel has #### square feet of building area and 100 hotel rooms. There is both a bar and grill in the hotel property as well as a restaurant. Other amenities include two meeting rooms, indoor pool, indoor and outdoor Jacuzzis, spa, fitness room, and business area. The property is located near the CITY-1 Ski Resort and recreation area. Its peak season is the winter ski season. There is also summer recreation, but the hotel experiences slow periods in portions of the spring and fall. As of the lien date, there was no franchise associated with this property.

The personal property in this hotel, including the furniture, fixtures and equipment ("FF&E") are also subject to property tax. However, for tax year 2017 the Property Owner had claimed $$$$$ in value for the FF&E on its personal property schedules. Hotels are generally sold with the FF&E and net operating income used in income approaches to value generally are based on the assumption that the FF&E is in place. Therefore, when valuing a hotel property using these approaches an adjustment generally needs to be made for the FF&E being taxed separately as personal property.

The representative for the Property Owner submitted as evidence a full narrative appraisal that had been prepared by CBRE and concluded effective as of July 11, 2016 that the combined value of the real and personal property was $$$$$. The CBRE report then subtracted $$$$$ for the personal property and reached a value of $$$$$ for the property. The Property

Owner also submitted what was titled a "Market Based Analysis" prepared by National RESP, which he had helped prepare. This report concluded as of September 9, 2017, the combined value of the real and personal property was $$$$$. In addition, the Property Owner pointed out that the hotel, both real and personal property, had sold to an unrelated party for $$$$$.[1]

The CBRE appraisal had been prepared by NAME-1, MAI & Certified General Appraiser. Although his appraisal was submitted as evidence at the hearing, NAME-1 did not attend the hearing to provide information or explain his appraisal. NAME-1 had looked at a sales approach and an income approach, both of which indicated to him a value for the real and personal property of $$$$$. For the sales approach, NAME-1 considered four sales of hotel properties. None of the sales were located near CITY-1 and it was not clear whether any were also located in rural ski resort areas. One of the hotels was located in CITY-2, Utah, which is the nearest city to the subject property. His other comparables were located in STATE-1, STATE-2 and CITY-3, Utah. NAME-1 explained in his appraisal, pg. 53, why he had used the comparables in his appraisal as follows:

> The sales utilized represent the best data available for comparison with the subject. However, it needs to be stated that there are no sales of lodging properties that are highly similar to the subject. There are very few hotels within a similar tourist oriented location and no sales of such facilities were discovered.
>
> The hotels summarized above, for the most part, are comparable in that they generate an income stream generally similar to the subject. They were selected from the western region of the country, with an emphasis on properties in more rural areas.

NAME-1's comparables and his value per room from the comparables are the following:

Property	Sale Price/Price Per Room	Year Built	# of Rms	NOI Per Room	Occu-pancy	Indicated Value Per Room
Subject HOTEL-1-CITY-1 UT		2009	100	$$$$$	47%	
COMPARABLE-1	$$$$$/$$$$$	1995	47	$$$$$	N/A	$$$$$
COMPARABLE-2	$$$$$/$$$$$	2006	72	$$$$$	70%	$$$$$
COMPARABLE-3	$$$$$/$$$$$	1985	72	$$$$$	59%	$$$$$
COMPARABLE-4	$$$$$/$$$$$	1996	60	$$$$$	N/A	$$$$$

From these four sales comparables, NAME-1 had developed a value range of $$$$$ to $$$$$ per room or $$$$$ to $$$$$ for the property.

NAME-1 also considered a gross rooms revenues multiplier which reflects the relationship between gross revenue and sales price. He concluded from this gross income of

[1] The Property Owner did not provide closing documents or other evidence of the sale, which occurred sometime in 2017, but the fact that the property had sold was not disputed by the County.

$$$$$. He considered a gross income multiplier of 1.8 and 2.0, which indicated values of $$$$$ and $$$$$ respectively.

NAME-1's appraisal states he placed more weight on the sales per room approach, concluding a stabilized value of $$$$$. However, he then made a deduction of $$$$$ as a "stabilized discount" which, after rounding, results in a sales indicator of $$$$$ or a value per room of $$$$$. He explains the "stabilized discount" on page 89 of his appraisal was necessary because the subject hotel is not currently "stabilized" and that it is a deduction for the losses occurring during stabilization. He explained the amount of the adjustment was "calculated based on the differential in indicated value between the DCF's as is and as stabilized cash flows."

In his income approach, NAME-1's appraisal considers the six hotel properties that he concluded were the primary competition for the subject property. One of these hotel properties was located in CITY-1 very near the subject; four were located in nearby CITY-2 and the last in CITY-3, which was farther away. He considered these comparables as far as occupancy rates ADR and RevPar information to develop his income approach. These primary competition properties were the following:

Property	Year	# of Rms	Occ.	ADR	RevPar
Subject: HOTEL-1	2009	100	39%	$$$$$	$$$$$
HOTEL-2	1984	46	45%-50%	$$$$$	$$$$$
HOTEL-3	2006	72	70%-75%	$$$$$	$$$$$
HOTEL-4	2004	80	70%-75%	$$$$$	$$$$$
HOTEL-5	2003	58	65%-70%	$$$$$	$$$$$
HOTEL-6	2008	81	70%-75%	$$$$$	$$$$$
HOTEL-7	2005	150	65%-70%	$$$$$	$$$$$

NAME-1 then used this information to develop both a direct capitalization value and a discounted cash flow value. From both of these income approaches, NAME-1's valuation conclusion was exactly the same, a value of $$$$$. In his discounted cash flow, he concluded net income or EBITDA of $$$$$ for year 2017 and projected increases every year through year 10 in his analysis. His conclusion was based on a capitalization rate of 11%, although he had calculated a range of values using rates of 10.75%, 11% and 11.25%. In his direct capitalization method, he had concluded a stabilized net income of $$$$$ and used an overall capitalization rate of 10.50%. This indicated a stabilized value of $$$$$. Because the property was not currently stabilized, he then made the $$$$$ stabilization discount. This indicated a rounded value of $$$$$, or $$$$$ per room.

The representative for the Property Owner who attended the hearing had prepared what was titled a "Market Based Analysis" that he also had submitted at the hearing, and this report indicated a value of $$$$$ as of September 9, 2017. This report was not a formal appraisal. It included information about three CITY-4 hotel properties in a section titled "Sales Data" and provided no explanation as to how the value conclusion of $$$$$ was derived from the CITY-4 Hotel information. On further review, although the page with the CITY-4 hotel information was titled "Sales Data" it appears the information might actually have been the COUNTY assessment values. There were lines that said "Land Value," "Improvement Value" and "Total Value" like would be on a property tax assessment. The "Total Value" listed there was the same value listed on the line for "Sales Price." On the line for "Sale Date" January 1, 2017 was listed for all three of these properties, which is the lien date for tax purposes and again makes it appear that this is property tax assessment information and not sales information. The analysis does not present information from which a market value may be determined.[2]

The County did not submit an appraisal at the hearing, but had considered some hotel sales in the area and submitted a sales comparison approach by which it had made adjustments based on average daily rates ("ADR") and occupancy rates. The County offered three comparable sales, two of which were located in rural recreation areas similar to the subject and the third in CITY-2, which is near the subject. The County's sales information is the following:

Property	Sale Price/Price Per Room	Sale Date	# of Rms	Total Revenue	GRM
Subject HOTEL-1		100			
HOTEL-8	$$$$$/$$$$$	12/16	71	$$$$$	4.70
HOTEL-3	$$$$$/$$$$$	2/15	72	$$$$$	4.04
HOTEL-4	$$$$$/$$$$$	12/13	80	$$$$$ 3.66	

The County then provided the RevPar for each of the comparables, which is calculated by multiplying the ADR by the occupancy rate. The County's appraiser compared that to the RevPar for the subject of $$$$$, which the County's appraiser stated had come from NAME-1 in the CBRE appraisal. A $$$$$ RevPar is lower than the RevPar from any of the County's comparables. The County's appraiser made an adjustment to the sales comparables based on the

[2] It also fails under Utah Code Subsection 59-2-1006(5) to establish an adjustment based on equity because the Property Owner has not provided enough information to show that these hotels located in another county and much different market area were comparable to the subject.

percentage difference between the subject RevPar and the comparable's RevPar. The County then applies this adjustment factor to the sales price per room. The County's Sales Adjustment Chart was as follows:

Property	Sales Price Per Room	Rev Par	Adjustment Factor	Adjusted Price Per Room
Subject HOTEL	$$$$$			
HOTEL-8	$$$$$	$$$$$	0.61	$$$$$
HOTEL-3	$$$$$	$$$$$	0.74	$$$$$
HOTEL-4	$$$$$	$$$$$	0.78	$$$$$
Averages	$$$$$			$$$$$

Noting that the HOTEL-8 was at the high end of the range, the County averaged the other two comparables and concluded a value per room for the subject of $$$$$, or rounded to $$$$$ per room. This resulted in the value of $$$$$ that had been set by the County Board of Equalization.

The County also submitted a list of seven hotel properties that had sold in CITY-2 or other recreation areas in Utah. These sales were the following:

Property	Sale Price/Price Per Room	Sale Date	# of Rms	Year Built
Subject HOTEL-1		100	2009	
HOTEL-9	$$$$$/$$$$$	12/16	71	2004
HOTEL-3	$$$$$/$$$$$	2/15	72	2006
HOTEL-10	$$$$$/$$$$$	12/12	70	1946/1975-82
HOTEL-11	$$$$$/$$$$$	8/14	48	
HOTEL-12	$$$$$/$$$$$	11/13	44	1988
HOTEL-13	$$$$$/$$$$$	7/15	101	1978
HOTEL-14	$$$$$/$$$$$	8/16	40	1992

Although the County's analysis does support a value of $$$$$, it is based on sales that would have included the FF&E, so an adjustment would need to be made for the $$$$$ in value assessed as personal property.

The County's representative argued that he gave no weight to the recent sale of the subject property because it was a distressed sale. The County did provide copies of a lien recorded against the property in April 2016 and two foreclosure notices, one dated September 2016 and one in April 2017. There was also a receivership appointment in April 2016. The County pointed out that the subject property was never listed for sale to the public with a real-estate agent or on a public listing service. However, the representative for the Property Owner argued that hotel properties do not sell over listing services and the subject property had been marketed privately to the type of buyers who would purchase the property.

The County's representative criticized the sales comparables used in the CBRE appraisal because, except for the HOTEL-3 hotel in CITY-2, they were from other states or locations that were not even comparable. The HOTEL-3 property had sold for $$$$$ per room, more than supporting the County's value for the subject at $$$$$ per room. The CBRE appraiser, NAME-1, had made very large location adjustments for each comparable, subtracting 20% to 25% from each for location, without providing an explanation of how this amount was calculated. He did indicate the adjustment was because the comparable hotels attracted year-round guests. For the CITY-2 comparable, NAME-1 appeared to have double counted his location adjustment, making a location adjustment of 25% for location and a second adjustment of 25% for "economic factors." This was not well explained or supported in the appraisal. All of NAME-1's sales comparables in the CBRE appraisal were of a lower quality grade of construction than the subject.

Upon reviewing all of the evidence submitted in this matter, the Property Owner has submitted: an appraisal; a recent, although distressed sale, of the subject; and an analysis based on assessed values in a different county. The Property Owner has the burden of proof in this matter and the Property Owner needs to show error in the County's value and produce a sound evidentiary basis to support a lower value. The County has not submitted an appraisal, but has submitted comparable sales and sales analysis based on the sales. The County did call into question some of the information presented by the Property Owner, especially the sales comparison approach included in the Property Owner's CBRE Appraisal. However, the CBRE appraisal had also included an income approach, which the County did not substantially challenge. Additionally, the Property Owner points out that the County has failed to subtract from its value of $$$$$ the furniture, fixtures and equipment, which is being taxed as personal property.

Based on all this information submitted, an adjustment to value is warranted. The County has offered sales comparables and made adjustments for the sales comparables based on the RevPar. The County used as comparables properties more similar to the subject as far as location and better supported its sales conclusion at $$$$$ than had the Property Owner's appraiser, due to the dissimilar comparables in the CBRE appraisal. However, the CBRE appraisal also provided two income approaches that indicated a value of $$$$$ for the subject. This did take into account actual income and other factors. Weighting both the County's sales and the Property Owner's income approach equally indicates a value of $$$$$. From this, a value of $$$$$ needs to be subtracted for the FF&E that has already been assessed as personal property, resulting in a real property value of $$$$$. The County did establish at the hearing that the recent sale of the subject, for $$$$$ was a distressed sale, so little weight is given to the sale price. The value of the real property should be lowered to $$$$$ as of the lien date at issue in this appeal.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was $$$$$, as of the January 1, 2017 lien date. The COUNTY Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ___________day of __________________, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner