

18-634

TAX TYPE: PROPERTY TAX

TAX YEAR: 2017

DATE SIGNED: 6/14/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, L. WALTERS

EXCUSED: R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 18-634
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY,	Tax Type: Property Tax
STATE OF UTAH,	Tax Year: 2017
Respondent.	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:

Michael J. Cragun, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

REPRESENTATIVE FOR PETITIONER

For Respondent: RESPONDENT, from the COUNTY Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 11, 2019, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax year at issue is 2017, with a lien date of January 1, 2017.

3. The subject was originally valued at \$\$\$\$\$ by the COUNTY Assessor's Office for the January 1, 2017 lien date. The County Board of Equalization ("County") sustained that value. The Petitioner ("Property Owner") is requesting a reduction to \$\$\$\$\$. At the hearing, the County recommended reducing the value to \$\$\$\$\$ for the lien date at issue in this appeal.

4. The subject property, parcel number #####, is located at SUBJECT ADDRESS in CITY-1, Utah. It is a 0.37-acre lot improved with an office warehouse building that was built in 1965. There is 6,000 rentable square feet in the subject building. The building is divided into two rental units and the Property Owner has been renting the building to two tenants. The subject is considered to have a construction grade of 'Fair' and the overall condition of 'average.'

5. The County has valued the subject property with the effective age of 1996. The Property Owner argues that this is arbitrary because the building was constructed in 1965. At the hearing, the representative for the County testified that for the 2018 tax year the County had viewed the property site and lowered the effective age. The County's representative stated that by applying this change to the subject year also supports the value of \$\$\$\$\$, which was the value the County recommended at this hearing.

6. The Property Owner uses this property as an investment property and argued the assessed value should be based on the actual income and actual expenses that he receives for the property. He argued as an investment property that would be the most relevant to a prospective buyer. He also testified that he was receiving the highest lease rates he could get for the property. It was his argument that the County was ignoring the actual information and the fact that the subject leases are modified gross leases and not triple net.

7. As evidence at this hearing, the Property Owner provided copies of the leases with the two tenants in the building.¹ The Property Owner prepared an income approach, which he submitted at the hearing, based on his actual income and expenses. His income approach indicated a value of \$\$\$\$\$ as follows:²

Rent Roll as of 1/1/17	Per Month	Annual	Mod. Gross
BUSINESS-1	\$\$\$\$\$	\$\$\$\$\$	#####/ft
BUSINESS-2	\$\$\$\$\$	\$\$\$\$\$	#####/ft
Total		\$44,100	
Income Statement	Y/E 12/31/15	Y/E 12/31/16	

¹ Petitioner's Exhibit 5.

² Petitioner's Exhibit 3.

Income	\$\$\$\$\$	\$\$\$\$\$
Expenses		
Insurance	\$\$\$\$\$	\$\$\$\$\$
Professional	\$\$\$\$\$	\$\$\$\$\$
Repairs & Maintenance		\$\$\$\$\$
Property Tax	\$\$\$\$\$	\$\$\$\$\$
Management	\$\$\$\$\$	\$\$\$\$\$
Supplies		\$\$\$\$\$
Utilities	\$\$\$\$\$	\$\$\$\$\$
Misc.	\$\$\$\$\$	\$\$\$\$\$
Total Expenses	\$\$\$\$\$	\$\$\$\$\$
NOI	\$\$\$\$\$	\$\$\$\$\$
@7.999% Cap		\$\$\$\$\$

8. The Property Owner used the 7.999% capitalization rate pointing out that the County had used a 7.999% rate on a similar property that was the same age as the subject building, one mile south and on the same street as the subject. The Property Owner pointed to a list of cap rate comparables that the County had provided at the County Board of Equalization proceeding which indicated a mean of 7.8% and a median of 7.76%.

9. The Property Owner also submitted seven modified gross lease comparables to show that the subject's modified gross lease rates were at market or even higher than market. He testified that he was getting market rents for the subject property. The Property Owner was able to find two leases that were located on the same street as the subject, West Temple, although these properties were several blocks away from the subject building and it is not clear whether they were within the same zoning as the subject. The Property Owner's lease comparables were the following:³

Address	Rent Per Month	Square Foot	Rent Per Foot	Year Built
SUBJECT PROPERTY	\$\$\$\$\$	#####	\$\$\$\$\$	1965
	\$\$\$\$\$	#####	\$\$\$\$\$	1965
ADDRESS-1	\$\$\$\$\$	#####	\$\$\$\$\$	1966
ADDRESS-2	\$\$\$\$\$	#####	\$\$\$\$\$	1966
ADDRESS-3	\$\$\$\$\$	#####	\$\$\$\$\$	1976
ADDRESS-4	\$\$\$\$\$	#####	\$\$\$\$\$	1976
ADDRESS-5	\$\$\$\$\$	#####	\$\$\$\$\$	1986
ADDRESS-6	\$\$\$\$\$	#####	\$\$\$\$\$	1977
ADDRESS-7	\$\$\$\$\$	#####	\$\$\$\$\$	1978
Median			\$\$\$\$\$	
Mean			\$\$\$\$\$	

³ Petitioner's Exhibit 4.

10. The representative for the County testified at the hearing that the subject property was located in an area that was transitioning from industrial to a multi-family residential neighborhood with commercial properties, so “gentrification” of the area was occurring. He pointed out that the subject was near the streetcar line that went up to the CITY AREA, which would be a benefit for residential properties. The County’s representative testified that the subject neighborhood had been rezoned a few years ago from industrial to a DT zone. The DT zone is CITY-1’s Downtown District, which is meant for multi-family housing units, retail, office, commercial space, parks and greenways in a walkable area with social attractions.⁴ The Property Owner indicated he was not aware of this change.

11. The County’s representative testified that four properties had sold near the lien date that were located within walking distance to the subject property. He testified that the buildings were similar to the subject building as far as age and size. It was the County’s position that these sales supported a value for the subject of \$\$\$\$\$. This is a small reduction from the value set by the County Board of Equalization.

12. The County’s four comparable sales with the appraisal adjustments made for the differences were as follows:⁵

	Subject	Comp. 1	Comp. 2	Comp. 3	Comp. 4
Address	SUBJECT ADDRESS	ADDRESS-8	ADDRESS-9	ADDRESS-10	ADDRESS-11
City	CITY-1	CITY-1	CITY-1	CITY-1	CITY-1
Acres	0.37	0.48	0.45	0.49	0.47
Year Built	1965	1963	1965	1962	1979
Eff. Year Built	1993	1997	2002	1986	2009
Building Sq./Ft.	6,000	10,060	10,196	9,492	11,276
Land to Bldg. Ratio	2.69	2.47	2.97	2.25	2.16
Rental Class	Class C	Class B	Class B	Class C	Class B
Constr. Class	Masonry-Wall	Masonry-Wall	Masonry-Wall	Masonry-Wall	Masonry-Wall
Quality Constr.	Average	Average	Average	Average	Average
Condition	Average	Average	Average	Average	Good
Office %	40%	12%	27%	40%	23%
Warehouse	12’	18’	18’	16’	16’
Story Height					
Sales Information					
Sale Date		2/10/17	5/5/17	4/22/16	2/22/17
Sale Price		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Price Sq./Ft.		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Location		0%	0%	0%	0%
Size		0%	0%	0%	0%

⁴ Respondent’s Exhibit A, pg. 2.

⁵ Respondent’s Exhibit A.

Age/Condition	-4%	-9%	7%	-16%
Quality/Appeal	-5%	-5%	0%	-5%
Office/Finished Area	21.00%	9.75%	0%	12.8%
Functional Utility	0%	0%	0%	-5%
Land to Bldg. Ratio	0%	0%	0%	0%
Warehouse Story Height	-6%	-6%	-4%	-4%
Net Adjustments	6.00%	-10.25%	3.00%	-17.25%
Gross Adjustments	36%	30%	11%	43%
Adjusted Value Sq./Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Average Sq./Ft.	\$\$\$\$\$	Indicated Rate	Square Feet	Indicated Value
Median Sq./Ft.	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$
		Rounded Value		\$\$\$\$\$

13. The County also submitted an income approach, which indicated a value for the subject of \$\$\$\$\$. The County's income approach is as follows:⁶

	Rate / %	PSF	Dollar / \$
Potential Gross Income			
Market Rent	##### sq./ft.	\$\$\$\$\$	\$\$\$\$\$ = \$\$\$\$\$
Vacancy and Collection Loss	-7.00%		(\$\$\$\$\$)
Effective Gross Income			\$\$\$\$\$
Operating Expenses			
Management & Reserves	-5.00%		(\$\$\$\$\$)
Net Operating Income			\$\$\$\$\$
Capitalization Rate			7.500%
Value Indication (As-is):			\$\$\$\$\$
CZ Adjustment (actual cap rate 7.95%)			(\$\$\$\$\$)
Market Value Total of all Adjustments=Value			\$\$\$\$\$

14. Although the County's lease rate of \$\$\$\$\$ appears similar to the actual lease rates for the subject property, the County's income approach was based on the rate being a triple net rate and the actual lease rates were modified gross. This results in a large difference in value because expenses for a modified gross lease are significantly higher than the County's estimated expenses based on a triple net lease. The County used only 5% total for expenses and reserves. The Property Owner testified this would be inadequate even if the lease was triple net due to the age of the building and that no reputable management company would manage the property for such a small fee.

⁶ Respondent's Exhibit A.

15. The County did not provide lease comparables. In its income approach, the County had provided excerpts from publications. One indicated the asking lease rate for properties in CITY-1 was \$\$\$\$\$, but this graph did not specify the type of property. A second graph indicated the “Achieved Average lease Rate PSF (NNN)” but did not specify the location. In this graph, the County had highlighted the lease rate for general purpose buildings, which was \$\$\$\$\$. It is not clear from the income approach the County submitted that the County had considered that the subject property was actually leased on a modified gross basis.

16. Although it appeared from how the County had written up its direct capitalization income approach that the County used a 7.5% capitalization rate, the County had reduced the value by a “CZ Adjustment” which adjusted the value so that it was the same as if the rate had been a 7.95% capitalization rate.

17. The Property Owner argued at the hearing that the County’s sales comparables were post lien date. Three of the County’s four comparable sales had sold in 2017 and the lien date at issue in this appeal is January 1, 2017, so three sales technically closed after the lien date. The fourth sale occurred in April 2016. However, two of the 2017 sales had closed in February 2017, near the lien date. If these two sales were not under contract as of the lien date, it is likely these properties were at least listed for sale as of the lien date. The third comparable had sold in May 2017.

18. After reviewing the evidence submitted by all the parties in this matter, the value should be reduced to the \$\$\$\$\$ indicated from the County’s sales comparison approach. With the neighborhood having been rezoned and transitioning away from industrial to the residential and commercial uses, the properties in the neighborhood are selling for more than would be indicated by the Property Owner’s income approach. The highest and best use of the property is no longer the current use as is shown by the sales of similar buildings in the area.

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 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).

CONCLUSIONS OF LAW

1. Property tax is based on the property's "fair market value" 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 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. There have been sales in the same neighborhood of the subject that indicate the price at which these properties would exchange between a willing buyer and willing seller.

2. In a proceeding before the Tax Commission, the burden of proof is generally on the Petitioner to support its position that the value is lower than that set by the County Board of Equalization based on case law.⁷ As recently noted by the Utah Court of Appeals in *Fraughton v. Tax Commission*, 2019 UT App 6, ¶10, “the protesting taxpayer is required not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation (Citation Omitted).” In this appeal, the County has conceded that the value set by the County Board was too high and recommended a small adjustment.

3. The area where the subject property is located has been rezoned to DT or Downtown District Zoning. This is a transition away from the prior industrial use and the change appears to be impacting the market value with four sales very near the subject property supporting the value of \$\$\$\$\$. The Property Owner points out some of the sales are post lien date. However, these sales did all occur in 2016 or early in 2017. Utah Code Ann. §59-2-1006(4) provides that the Commission is to consider the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date and also that the Commission may consider other evidence that is relevant to determining the fair market value of the property. The sales of similar properties near the lien date in this matter are relevant, especially the two comparables which closed in February 2017, and the April 2016 comparable. If no weight were given to the May 2017 sale, the average adjusted value per square foot would actually be higher.

4. The Property Owner’s income approach may be a valid approach to show the value as industrial property but it is not reflective of the current zoning and the highest and best use of the property as of the lien date, which is transitioning away from industrial.

Upon review of the Findings of Fact and Conclusions of Law, the value should be reduced to \$\$\$\$\$ as of the lien date at issue in this appeal.

Jane Phan
Administrative Law Judge

⁷ See *Fraughton v. Tax Comm’n*, 2019 UT App 6; *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).

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the value of the subject parcel as of January 1, 2017 is \$\$\$\$\$. The County Auditor is to adjust the value accordingly. It is so ordered.

DATED this ____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.