

20-62

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2019

DATE SIGNED: 6/23/2020

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INTERIM ORDER Appeal No. 20-62 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2019 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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Partner (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, COUNTY Deputy Attorney (by telephone)
RESPONDENT-1, COUNTY Assessor (by telephone)
RESPONDENT-2, from the COUNTY Assessor's Office (by telephone)
RESPONDENT-3, from the COUNTY Assessor's Office (by telephone)

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decision of the COUNTY Board of Equalization ("Respondent" or "County BOE"). On June 9, 2020, this matter came before the Commission for an Interim Hearing to determine whether the subject property is a "qualified real

property” for 2019 tax year appeals purposes (which may affect which party has the burden of proof when the Commission determines the subject’s 2019 value at a later proceeding).

APPLICABLE LAW

1. Utah Code Ann. §59-2-1004 (2019)¹ provides that a property taxpayer may file an appeal to a county board of equalization, as follows in pertinent part:

- (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 after the appeal;
 - (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
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal; 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 value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection (2)(c).
 - (c) "Median property value change" means the midpoint of the property value changes for all real property that is:
 - (i) of the same class of real property as the qualified real property; and
 - (ii) located within the same county and within the same market area as the qualified real property.
 - (d) "Property value change" means the percentage change in the fair market value of real property between January 1 of the previous year and January 1 of the current year.
 - (e) "Qualified real property" means real property:
 - (i) 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) as a result of the appeal described in Subsection (1)(e)(i)(A), a county board of equalization or the commission gave a final assessed value that was lower than the assessed value; and

1 All applicable law citations will refer to the 2019 version of Utah law, unless otherwise stated.

- (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and
 - (ii) that, between January 1 of the previous taxable year and January 1 of the current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.
- (2) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal
- (b) (i) The county board of equalization shall make a rule describing the contents of the application.
 - (ii) In addition to any information the county board of equalization requires, the application shall include information about:
 - (A) the burden of proof in an appeal involving qualified real property; and
 - (B) the process for the taxpayer to learn the inflation adjusted value of the qualified real property.
 - (c) (i) The county assessor shall calculate inflation adjusted value by changing the final assessed value for the previous taxable year of the real property that is the subject of the appeal by the median property value change.
 - (ii) (A) The county assessor shall notify the county board of equalization of a qualified real property's inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a taxpayer filed an appeal with the county board of equalization.
 - (B) The county assessor shall notify the commission of a qualified real property's inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a person dissatisfied with the decision of a county board of equalization files an appeal with the commission.
 - (iii) A person may not appeal a county assessor's calculation of inflation adjusted value but may appeal the fair market value of a qualified real property.
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- (4) (a) Except as provided in Subsection (4)(b), the taxpayer shall include in the application under Subsection (2)(a)(i) the taxpayer's estimate of the fair market value of the property and any evidence that may indicate that the assessed valuation of the taxpayer's property is improperly equalized with the assessed valuation of comparable properties.
- (b) (i) For an appeal involving qualified real property:
 - (A) the county board of equalization shall presume that the fair market value of the qualified real property is equal to the inflation adjusted value; and
 - (B) except as provided in Subsection (4)(b)(ii), the taxpayer may provide the information described in Subsection (4)(a).
 - (ii) If the taxpayer seeks to prove that the fair market value of the qualified real property is below the inflation adjusted value, the taxpayer shall provide the information described in Subsection (4)(a).
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- (7) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as described in Section 59-2-1006.
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2. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Commission, as follows in pertinent part:

(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. . . .

. . . .

(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.

. . . .

3. UCA §59-2-109 provides that when determining the *value* of a property, the party or parties that bear the burden of proof may be different depending on whether the subject property is or is not a “qualified real property,” 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 after the appeal;

(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

(B) a county board of equalization, if the commission has not yet issued a decision in the appeal; 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 value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection 59-2-1004(2)(c).

(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) as a result of the appeal described in Subsection (1)(c)(ii)(A), a county board of equalization or the commission gave 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, between January 1 of the previous taxable year and January 1 of the

- current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.
- (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.

4. When determining whether the subject property is or is not “qualified real property,” the burden of proof is upon the petitioner to show that the requirements set forth in the definition of “qualified real property” are met (as found in Subsections 59-2-109(1)(c) and 59-2-1004(1)(e)). *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 49, 5 P.3d 652 (Utah 2000).

DISCUSSION

At issue is whether the subject property is a “qualified real property” for 2019 property tax appeal purposes. The County contends that the subject property is not a qualified real property for 2019 appeal purposes, while the taxpayer contends that it is.

The subject property is a four-story, multi-tenant office building that was built around 1985 and is approximately #####-square feet in size. At the time the taxpayer purchased the subject property in March 2017, the subject property was experiencing vacancy of approximately 20%. In July 2017, the taxpayer obtained a permit to have the subject’s lobby and bathrooms on three of the subject’s floors remodeled. This remodeling work was performed prior to January 1, 2018, and no other permits for the subject property have been obtained for remodeling or other purposes since July 2017.

Between January 1, 2018 and January 1, 2019, however, the subject elevator required maintenance, which resulted in the elevator's motor either being repaired or replaced.² Between the 2018 and 2019 lien dates, the taxpayer also "modified" the building's light fixtures and changed the light fixtures' old, less efficient light bulbs to new, more efficient light bulbs. However, this did not involve replacing the old light fixtures for new light fixtures or changing the ballasts in the old light fixtures. Furthermore, the taxpayer has been able to reduce the subject's vacancy since purchasing the subject property in 2017. Between the 2018 and 2019 lien dates, tenant improvements needed for new tenants occurred for some offices, which included painting walls, changing carpeting, and/or even moving some walls to accommodate a new tenant's needs. The taxpayer stated that in an office building such as the subject property, constant maintenance is needed because of tenants moving in and out, but noted that no permits were needed to perform the tenant improvements that occurred between the 2018 and 2019 lien dates.³

Upon appeal, the subject property's 2018 original assessed value of \$\$\$\$\$ was reduced to \$\$\$\$\$. For the 2019 tax year, the subject property was assessed a value of \$\$\$\$\$, which is higher than the subject's 2019 "inflation adjusted value" of \$\$\$\$\$. The taxpayer appealed the subject's 2019 assessed value of \$\$\$\$\$, which the 2019 County BOE reduced to \$\$\$\$\$. The taxpayer then appealed the 2019 County BOE's decision to the Tax Commission.

In 2019 General Session House Bill 11 ("HB 11"), the Utah Legislature modified the burdens of proof for property tax appeals involving certain real property for which there was a reduction in value as a result of an appeal for the prior tax year. HB 11 was enacted with a January 1, 2019 effective date and, thus, is applicable to 2019 tax year property tax appeals. Specifically, in Subsection 59-2-109(4), HB 11 provided that in an appeal concerning the value of a "qualified real property," a county assessor or a

2 REPRESENTATIVE FOR TAXPAYER stated that he does not recall if the motor was repaired or replaced because he did not arrange for the maintenance (the property manager hired to oversee the property is the person who arranged for the maintenance). Because the taxpayer has the burden of proof to show that the subject property is a "qualified real property," the Commission will assume that the elevator motor was replaced for purposes of making its decision in this Interim Order.

county board of equalization has the burden of proof if the county assessor or the county board of equalization proposes a value that is greater than or equal to the property’s “inflation adjusted value;” and/or that the taxpayer has the burden of proof if the taxpayer proposes a value that is less than the property’s inflation adjusted value.

To ensure that a taxpayer who filed a 2019 appeal was aware of the HB 11 burden of proof provisions involving qualified real property, Subsection 59-2-1004(2)(b) provides that an application to a county board of equalization “**shall** include information about . . . the burden of proof in an appeal involving qualified real property [and] the process for the taxpayer to learn the inflation adjusted value of the qualified real property” (emphasis added).⁴

To ensure that the County BOE applies the correct burden of proof in regards to an appeal of a qualified real property, Subsection 59-2-1004(2)(c) provides that “[t]he county assessor **shall** calculate inflation adjusted value by changing the final assessed value for the previous taxable year of the real property that is the subject of the appeal by the median property value change” and “notify the county board of equalization of a qualified real property’s inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a taxpayer filed an appeal with the county board of equalization” (emphasis added).⁵ For the 2019 County BOE hearing, the County Assessor initially determined that the subject property was a “qualified real property” because it notified the County BOE

3 The County concurred that it is customary for tenant improvements to occur when a new tenant moves into an office building.

4 The front page of the 2019 County BOE application that the taxpayer completed contained the following statements about qualified real property and inflation adjusted value: “If this appeal involves a qualified real property, the inflation adjusted value may alter the burden of proof. Please contact the county for more information on burden of proof, or the inflation adjusted value.” Because the back page of the application was not forwarded to the Tax Commission, it is unclear whether any additional information about qualified real property and burdens of proof were provided on the application.

5 It does not appear that a county assessor is required to notify a county board of equalization of a property’s inflation adjusted value if the property is not a qualified real property. However, as will be discussed in more detail later in the decision, a county assessor may not decide unilaterally whether a property is or is not a qualified real property.

that the subject property was a “HB 11” property and that the property’s “HB 11 Value” (i.e., its inflation adjusted value) was \$\$\$\$\$.⁶

To ensure that the Tax Commission applies the correct burden of proof in regards to an appeal of a qualified real property, Subsection 59-2-1004(2)(c)(ii)(B) provides that “[t]he county assessor **shall** notify the commission of a qualified real property's inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a person dissatisfied with the decision of a county board of equalization files an appeal with the commission” (emphasis added). In the instant appeal, the County Assessor did not notify the Tax Commission of the subject property’s inflation adjusted value. In addition, the “cover page” that the County Assessor provided to the County BOE (which showed an “HB 11 Value” of \$\$\$\$\$) was not forwarded to the Tax Commission, and none of the information forwarded to the Commission provided notice that the subject property was a qualified real property for 2019 appeal purposes and/or provided notice of the subject’s 2019 inflation adjusted value.

However, for the instant appeal, the County BOE did forward the Tax Commission’s decision in *USTC Appeal No. 18-2088* (Initial Hearing Order Nov. 7, 2019), in which the Commission reduced the subject’s 2018 value to \$\$\$\$\$.⁷ After seeing that the subject’s 2018 value was reduced and that the

6 The County Assessor indicates that it provided the subject’s 2019 “HB 11 Value” of \$\$\$\$\$ to the County BOE on a “cover sheet” prior to the County BOE hearing (although the County Assessor admits that his office did not provide this information within the 15 business days’ timeframe set forth in Subsection 59-2-1004(2)(c)(ii)). It appears, however, that the County BOE did not realize that it had received notice of the subject’s 2019 inflation adjusted value or did not know what to do with the inflation adjusted value because the 2019 County BOE decision makes no mention of the subject’s 2019 inflation adjusted value of \$\$\$\$\$ and does not discuss burden of proof in regards to a qualified real property.

7 It is unclear which party provided this 2018 tax year decision to the County BOE. Regardless, the 2018 decision resulted in a reduction to the subject’s assessed value within the three years prior to the 2019 tax year currently at issue (it is unknown if there were also valuation reductions for the 2016 and 2017 tax years). Effective for tax year 2013, Utah Code Ann. §59-2-301.4(1) and (2) provide that where a property’s value has been reduced within the three years before the lien date at issue, a county assessor shall consider “any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal” and “whether the reasons for the valuation reduction continue to influence the fair market value of the property.” As a result, for a current year’s appeal for which Section 59-2-301.4 is applicable, a county is expected to provide evidence to show that it followed Utah law and gave meaningful consideration to the prior valuation reduction when assessing the property whose value is at issue. A county’s failure to provide such evidence may be a factor that is considered when determining the property’s current year value. Subsection 59-2-301.4, unlike the provisions of HB 11, does not affect which party has the burden of proof. Nevertheless, under the

County BOE decision did not mention inflation adjusted value or burden of proof, the Commission became concerned that the subject property could be a qualified real property for 2019 appeal purposes. As a result, on May 26, 2020, the Commission held a Telephone Status Conference with the parties and asked the County to provide the subject's 2019 inflation adjusted value.

In response, the County Assessor eventually provided information to show that he had notified the County BOE that the subject's 2019 "HB 11 Value" was \$\$\$\$\$. However, the County Assessor also indicated that he was no longer convinced that the subject property was a qualified real property for 2019 appeal purposes because of changes that took place at the property between 2018 and 2019. Regardless, a county assessor may not decide unilaterally whether a property is or is not a qualified real property. Whereas Subsection 59-2-1004(2)(c)(iii) provides that a person may not appeal a county assessor's "calculation" of inflation adjusted value, no provision of HB 11 provides that a county assessor has an unappealable right to determine whether a property is or is not a qualified real property.

For this reason and because the party who has the burden of proof may be different if a property under appeal is a qualified real property, the Commission must decide the preliminary issue of whether the subject property is a qualified real property for 2019 appeal purposes before it addresses the underlying valuation issue. As a result, for a property that meets the first two requirements of being a qualified real property (as set forth in Subsections 59-2-109(1)(c)(i) and (ii)), but for which a county assessor does not believe meets the third requirement concerning the improvements being "improved" or "changed" (as set forth in Subsection 59-2-109(1)(c)(iii)); a county assessor should provide to the county board of equalization and/or the Tax Commission: 1) notice of the inflation adjusted value; *and* 2) notice that the preliminary issue exists as to whether the property is or is not a qualified real property. By so doing, the county board of equalization and/or Tax Commission will know to address the preliminary qualified real property issue before it addresses the underlying valuation issue.

circumstances present in the instant 2019 appeal, Section 59-2-301.4 and the 2018 valuation reduction should have been considered by the 2019 County BOE. The 2019 County BOE's decision, however, makes no mention of Section 59-2-301.4 or the 2018 valuation reduction.

Subsections 59-2-109(1)(c) and 59-2-1004(1)(e) provide that a property is a “qualified real property” if several requirements are met, specifically that the property’s value was reduced in the appeal process for the prior tax year; that the property’s current year’s assessed value is higher than its inflation adjusted value; and that between the prior year’s lien date and the current year’s lien date, the property’s improvements have not been “improved” or “changed.” Both parties agree that the subject’s 2018 original assessed value of \$\$\$\$ was appealed and that the subject’s 2018 value was reduced to \$\$\$\$. They also agree that the subject’s 2019 original assessed value of \$\$\$\$ is higher than its 2019 inflation adjusted value of \$\$\$\$.⁸ The parties, however, disagree as to whether the subject property’s improvements were “improved” or “changed” between the January 1, 2018 and the January 1, 2019 lien dates.

The taxpayer contends that the physical changes and/or improvements that occurred at the subject property between the 2018 and 2019 tax years, as described earlier in the decision, are the types of changes or improvements that commonly occur in an office building and should not disqualify the subject property from being considered a qualified real property for 2019 appeal purposes. The County, however, contends that the physical changes that occurred at the subject property between the 2018 and 2019 lien dates should disqualify it from being a qualified real property for the 2019 tax year. Furthermore, the County contends that changes other than physical changes may occur that should disqualify a property from being considered a qualified real property. Specifically, the County contends that changes in management, contract rents, tenants, and/or vacancy rates are changes that may affect a property’s value. As a result, the County contends that these types of changes that also occurred at the subject property between the 2018 and 2019 lien dates should be sufficient to disqualify the subject property from being a qualified real property for 2019 appeal purposes.⁹

⁸ Although not relevant to determining whether a property is or is not a qualified real property for 2019 appeal purposes, the Commission notes that the \$\$\$\$ value established by the 2019 County BOE is also higher than the subject’s 2019 inflation adjusted value of \$\$\$\$.

⁹ Regardless of which party has the burden of proof in regards to the underlying valuation issue, the petitioner has the burden of proof in regards to the preliminary issue of whether the property is or is not a qualified real property.

The only qualified real property requirement at issue is found in Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(e)(ii), which provide that the property at issue, “between January 1 of the previous taxable year and January 1 of the current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.” Critical to determining whether a property meets or does not meet this qualified real property requirement is how the terms “improved” and “changed” are interpreted.

For purposes of Sections 59-2-109 and 59-2-1004, the terms “improved” and “changed” are not defined in statute, nor has the Commission defined the terms in rule. In *Keene v. Bonser*, 2005 UT App 37, ¶ 10 (Utah Ct. App. 2005), the Utah Court of Appeals stated that when interpreting statutory provisions, “[w]e look first to the plain language of the statute to discern the legislative intent.... 'Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations.’” (quoting *Gohler v. Wood*, 919 P.2d 561 (Utah 1996)) (other citations omitted). The Court further stated in *Keene* that “[i]n construing the plain language of a statute, words 'which are used in common, daily, nontechnical speech, should, in the absence of evidence of a contrary intent, be given the meaning which they have for laymen in such daily usage.’” (quoting *Mesa Dev. Co. v. Sandy City Corp.*, 948 P.2d 366 (Utah Ct. App. 1997)) (other citations omitted).¹⁰ The Court also stated in *Keene* that “courts often refer to the dictionary to define statutory terms” and “adopt common, nontechnical, dictionary-definition meanings.”

In *Gohler*, the Court also stated we “will interpret a statute according to its plain language, unless such a reading is unreasonably confused [or] inoperable. . . .” (quoting *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290 (Utah 1996)). See also *Rent-A-Center West, Inc. v. Utah State Tax Comm’n*, 2016 UT 1, ¶ 15 (Utah 2016), in which the Court stated that “these possible [dictionary] definitions ‘will often

¹⁰ See also *Ambassador Athletic Club v. Utah State Tax Comm’n*, 27 Utah 2d 377 (Utah 1972), in which the Utah Supreme Court stated that where the Legislature has not provided a definition of a statutory term, “it must be assumed it was intended to have a meaning generally understood and accepted by the public.” See also *Hercules Inc. v. Utah State Tax Comm’n*, 2000 UT App 372, 21 P.3d 231 (Utah Ct. App. 2000).

fail to dictate what meaning a word *must* bear in a particular context” and that “[w]here this is the case, we must identify the meaning of the statutory language ‘based on other indicators of meaning evident in the context of the statute (including, particularly, the structure and language of the statutory scheme).’” (quoting *Hi-Country Prop. Rights Grp. v. Emmer*, 2013 UT 33, ¶ 19, 304 P.3d 851 (Utah 2013)) (other citations omitted) (emphasis in original).

Neither party presented dictionary definitions of “improved” or “changed” to support their respective positions. However, on June 9, 2020 (the date of the Interim Hearing), the following definitions for “improved” and “changed” (or definitions for the present tense versions of these words) could be found on the internet. The words “improve” and/or “improved” were defined by Merriam-Webster.com and Dictionary.com, in part, to mean: to enhance in value or quality (make better); to increase the value of (land or property) by making it more useful for humans (as by cultivation or the erection of buildings); to make (land) more useful, profitable, or valuable by enclosure, cultivation, etc.; and to increase the value of (real property) by betterments, as the construction of buildings and sewers.¹¹ In addition, the words “changed” and/or “change” were defined by Merriam-Webster.com and Dictionary.com, in part, to mean: to make different in some particular (alter); to make radically different (transform); to become different; and to become altered or modified.¹²

These various definitions of “improved” and “changed” vary greatly in scope and meaning and could, if considered in isolation without considering the context of HB 11, be used to support either party’s position. However, if the Commission were to interpret “improved” and “changed” to include most, if not all, alterations or modifications to a property (as the County suggests), it would essentially render HB 11 meaningless. Such an interpretation would result in few, if any, properties ever meeting the qualified real property requirement found in Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(c)(ii), which would lead to the burdens of proof prescribed in HB 11 for qualified real property rarely, if ever,

11 See <https://www.merriam-webster.com/dictionary/improve> for a definition of the word “improve” and <https://www.dictionary.com/browse/improved> for a definition of the word “improved.”

coming into effect. The Commission will not interpret “improved” and “changed” in a manner, as the County proposes, that would essentially render HB 11 meaningless or inoperable. Pursuant to the Utah Supreme Court’s guidance in *Gohler*, the Commission will not interpret the definition of “qualified real property” in a manner that would result in the HB 11 provisions becoming inoperable and having little, if any, effect.

Furthermore, where ambiguity exists in how a term should be interpreted, the Utah Supreme Court, in *County Bd. of Equalization of Wasatch County v. Utah State Tax Comm'n*, 944 P.2d 370 (Utah 1997), stated that “our practice is to construe taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive if such intent exists” (citing *Salt Lake County v. State Tax Comm'n*, 779 P.2d 1131, 1132 (Utah 1989)). For these reasons, the Commission will interpret the words “improved” and “changed,” as found in Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(c)(ii), liberally in favor of a taxpayer. As a result, the Commission does not consider non-physical changes, such as changes in management, contract rents, tenants, and/or vacancy rates, to be the type of improvements or changes that would disqualify a property from meeting the qualified real property requirement of Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(c)(ii).¹³

Moreover, the Commission will not find that all or almost all physical improvements or changes are sufficient to disqualify a property from being a qualified real property. Because most properties incur repairs and/or some sorts of improvements every year, finding that all or almost all improvements or changes preclude a property from meeting the qualified real property requirement of Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(c)(ii) would, again, render HB 11 essentially meaningless. The physical improvements and changes that occurred at the subject property between the 2018 and 2019 lien dates are not close to being the types of improvements and changes that would disqualify the subject property from

12 For definitions of the word “change,” see <https://www.merriam-webster.com/dictionary/change> and <https://www.dictionary.com/browse/change>.

13 That being said, such factors are relevant to determining value and will be considered when the Commission subsequently determines the subject property’s 2019 value. That these factors are not relevant in determining which party has the burden of proof in the subsequent valuation hearing does not

meeting the definition of “qualified real property.”¹⁴ For these reasons, the Commission finds that the taxpayer has met its burden of proof and shown that the subject property meets all of the qualified real property requirements, including the requirement set forth in Subsections 59-2-109(1)(c)(iii) and 59-2-1004(1)(c)(ii). Accordingly, the Commission finds that the subject property is a qualified real property for 2019 appeal purposes.

As a result, the Commission will schedule an Initial Hearing, at which the Commission will receive evidence concerning the subject’s 2019 value and after which the Commission will issue an Initial Hearing Order establishing the subject’s 2019 value. Because the subject property is a qualified real property for 2019 appeal purposes, Subsection 59-2-109(4)(b) provides that at the valuation hearing, the County will have the burden of proof if it proposes a value that is greater than or equal to the subject’s inflation adjusted value of \$\$\$\$\$, and/or the taxpayer will have the burden of proof if it proposes a value that is less than the subject’s inflation adjusted value of \$\$\$\$\$.

Kerry R. Chapman
Administrative Law Judge

mean that these factors will not impact the subsequent valuation determination. In fact, such factors are often critical in determining a property’s value.

14 Clearly, enlarging or completely remodeling a property would be the type of physical improvements or changes that would preclude a property from being deemed a qualified real property. In addition, there may be certain circumstances where a lesser degree of physical improvements may preclude a property from being deemed a qualified real property. Such determinations, however, will be construed liberally in favor of the taxpayer to follow the rules of statutory construction and to give full import to the provisions of HB 11.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property is a qualified real property for 2019 appeal purposes. As a result, at the subsequent valuation hearing in this matter (i.e., at the Initial Hearing), the burden of proof will be on the County if the County requests a value that is greater than or equal to the \$\$\$\$ inflation adjusted value and/or on the taxpayer if the taxpayer requests a value that is less than the \$\$\$\$ inflation adjusted value. Notice of the date and time of the Initial Hearing will be mailed separately. It is so ordered.

DATED this _____ day of _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner