

TAX TYPE: PROPERTY TAX
TAX YEAR: 2019
DATE SIGNED: MAY 11, 2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER , Petitioner, v. BOARD OF EQUALIZATION OF COUNTY 1, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 20-429 Parcel No. ##### Tax Type: Property Tax Tax Year: 2019 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: REPRESENTATIVE FOR TAXPAYER 1, Representative
REPRESENTATIVE FOR TAXPYAYER 2, Representative
For Respondent: REPRESENTATIVE FOR RESPONDENT, Commercial Appraiser,
COUNTY 1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 11, 2021, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. The hearing was conducted by

teleconference. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Tax Commission at the Formal Hearing is Petitioner's ("Property Owner's") appeal of the decision issued by the COUNTY 1 Board of Equalization in regards to the fair market value of the subject property for property tax assessment purposes, as of the lien date January 1, 2019.

2. The County Assessor had originally assessed the subject parcel for the lien date at issue at \$\$\$\$\$. The Property Owner had appealed the 2019 assessed value to the COUNTY 1 Board of Equalization and the COUNTY 1 Board of Equalization upheld the value. The Property Owner timely filed this appeal and the matter eventually proceeded to a Formal Hearing before the Utah State Tax Commission.

3. At the Formal Hearing, the Property Owner requested a reduction in value to \$\$\$\$\$. The County requested that the value remain at its current value as upheld by the County Board of Equalization at \$\$\$\$\$.

4. The parties testified that there had been no appeal and no valuation reduction resulting from an appeal in the tax years 2016, 2017 or 2018. Therefore, Utah Code Sec. 59-2-301.4 is not applicable and the subject property is not "qualified real property" pursuant to Utah Code Sec. 59-2-109.

5. The subject property is parcel ##### and is located at PROPERTY ADDRESS. PROPERTY LOCATION. DESCRIPTION OF BUILDING. The County has classified the subject building as a Rental Class B building, a Construction Class C and Construction Grade of Good. The County valued the building as being in average condition. The Property Owner did not provide any evidence that refuted any of these classifications. The subject building was %%%% occupied as of the DATE lien date, and based on the age of the leases in place in the building, it had been %%%% occupied for several years.

6. The County records indicate the building has ##### total square feet and the parties were in agreement that the total rentable area of the building was ##### square feet. However, there was a difference as to how the ##### total rentable square feet was configured between above grade office area and basement office area. The County valued the property as having ##### above grade office area and ##### square feet of basement office area. The representatives for the Property Owner agreed that the building had ##### rentable square feet in total, but stated that only ##### square feet were above grade and ##### were in the basement. The only evidence they submitted to support this contention was the rent roll that stated there was a lease of ##### square feet of the basement unit. However, as the County pointed out at this hearing, other information indicated that the subject building had approximately ##### rentable square feet per above grade floor. So, the above grade office area would be the ##### square feet as indicated on the County records, not the ##### the Property Owner was arguing. To demonstrate this, the

County had included the rent toll from 2020 and on that rent roll the entire third floor was listed as one unit at ##### square feet and the entire fourth floor was listed as one unit at ##### square feet.¹ In addition, the Property Owner had submitted as evidence the County Board of Equalization record and in that record was an advertisement flyer for space available in the subject building that showed the rentable square footage for all of the units on the second floor totaled #####. That flyer and the photograph of the building provided by the County² indicated each above grade level would be relatively the same size. If the above grade was ##### as the Property Owner argued, that would mean the four above grade floors of this property were only around ##### square feet, which is contradicted directly by the evidence regarding the second, third and fourth floors submitted at the hearing. Upon reviewing this evidence and arguments of the parties on the configuration of the square footage, the Commission finds the evidence supports that the above grade square footage is the ##### that the County used. If the basement is actually larger by ##### rentable square feet than the above grade floors of the building, as the Property Owner's representatives are asserting, as opposed to the ##### basement square footage that the County used in this matter in its valuation, the overall value should be higher. The Property Owner has the burden of proof at this hearing and has failed to establish that the above grade area of the subject building is ##### square feet, so the Tax Commission will value the property based on the configuration in the County record and as had been done by the County.

7. The Property Owner did not present an appraisal in this matter, and did not present comparable sales or comparable lease information. The Property Owner did not submit any evidence specifically for the Formal Hearing, but stated that their evidence had all been submitted to the County Board of Equalization, so the County Board of Equalization Record was received as evidence at this hearing. The Property Owner's representatives did make the argument that the property tax assessment should be based on an income approach derived from the actual contract rents that were in place as of the lien date, because a prospective buyer would look at and consider the leases in place. This seemed to be a primary argument for why the County's assessment was in error. However, another factor that substantially contributed to the difference between the Property Owner's requested value and the County's current value is the much higher vacancy rate the Property Owner was applying.

8. At the Formal Hearing, the representatives for the Property Owner stated that they were requesting the value be reduced to \$\$\$\$\$. They did not provide an income approach that supported this

¹ Respondent's Exhibit C.

² Respondent's Exhibit D.

amount as evidence,³ although they did state during the hearing how they calculated their new income approach. It was their statement at the hearing that the potential gross income should be \$\$\$\$ based on the rents in place as of the lien date. They then subtracted a %%% vacancy rate. They also subtracted \$\$\$\$\$, which they stated was the actual expenses, excluding property tax, and an additional amount for management fees and reserves. They stated that their net operating income was \$\$\$\$\$. At the hearing, they conceded to the capitalization rate used by the County of %%%%, to which they added the effective property tax rate of %%%%, just as the County had done in its income approach, for a total capitalization rate of %%%%. This resulted in the value of \$\$\$\$ that they were requesting at this hearing.

9. One difference between the Property Owner’s income indicator of value and the County’s was that the Property Owner had applied a vacancy rate of %%%%, which was significantly larger than the County’s vacancy rate. The only support for such a high vacancy rate the Property Owner offered was a one page excerpt from a report titled “Research & Forecast Report, COUNTY 1/Office, Mid-Year 2019, from Colliers International.” However, it is not clear the context from which this one page was taken. The report did indicate that for mid-year 2019 for class B office rentals in the CBD, the vacancy rate was %%%% and the lease rate \$\$\$\$\$. However, someone had written on this page in regards to the lease rate “Typo-\$\$\$\$\$.” It is not clear whether this was a correction made by TEXT REMOVED, or the Property Owner’s representatives.⁴ The vacancy rate of %%%% was higher than any of the other vacancy rates reported for other areas of COUNTY 1 or rental classes, so may also have been a typo. Regardless, it was

³ The income approach the Property Owner had submitted in the County Board of Equalization Record, which contained the only documentation the Property Owner submitted in this matter, had reached a lower value conclusion and was the following:

Actual Rental Income Total			\$\$\$\$
Expense Reimbursement Income		+	\$\$\$\$
Market Vacancy & Collection Loss	%%%	-	(\$\$\$\$\$)
Effective Gross Income			\$\$\$\$
Operating Expenses (Full Service)	\$\$\$\$	-	(\$\$\$\$\$)
Net Operating Income			\$\$\$\$
Capitalization Rate	%%%		
Capitalization			\$\$\$\$
Less Absorption/Lease-up Suite 2006		-	(\$\$\$\$\$)
Total Value ‘As Is’			\$\$\$\$

In this income approach, the Property Owner had included property taxes in its total expenses and had not added the taxes to the capitalization rate. *See* County Board of Equalization Record, PDF, pg. 39.

⁴ County Board of Equalization Record, PDF pg. 33.

also a post lien date vacancy rate and the Property Owner did not provide any report or study for the vacancy rate as of the year end 2018 or January 1, 2019.

10. The Property Owner did provide the 2018 Income Statement to show actual income and expenses and had provided the rent schedules to show the actual rents in place.

11. The County submitted an income approach in this matter, which did support the current value. The income approach had been prepared by REPRESENTATIVE FOR RESPONDENT for COUNTY 1. REPRESENTATIVE FOR RESPONDENT provided an analysis of the rent roll and indicated it showed that the subject building was %%%% occupied as of DATE and that the rent roll showed that some of the leases were actually modified gross as some of the tenants paid some CAM charges. REPRESENTATIVE FOR RESPNDENT pointed out that all the existing leases in the building predated the lien date by a number of years. Several of the leases had been entered into in 2013 and 2014. For that reason, he looked at current lease comparables and time adjustments in his income approach. It was his position that the income approach value needed to be based on market lease rates as of the lien date. He

indicated that as of the lien date, the rent roll indicated the following leases in the subject building, some of which included a CAM charge as noted:

Suite #	Lease Start Date	Lease Area	Lease Rate	CAM	Full Service
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	#####	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####	DATE	##### ⁵	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

12. REPRESENTATIVE FOR RESPONDENT market lease rate comparables of current leases near the lien date were the following:

	Subject	One	Two	Three	Four
Address	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS
Lease Type		Full Service	Modi Full Ser	Full Service	Full Service
Leased Area	#####	#####	#####	#####	#####
Year Built	DATE	DATE	DATE	DATE	DATE
Rental Class	B	B	B	B	B
Quality	Good	Good	Good	Good	Good
Condition	Average	Average	Average	Average	Average
Leased Date		DATE	DATE	DATE	DATE
Unadjusted Lease Rate		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Adjusted Lease Rate		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

From these comparables, REPRESENTATIVE FOR RESPONDENT concluded that the market lease rate of the subject property for the above grade square footage was \$\$\$\$\$. He indicated his lease rate for the basement was \$\$\$\$\$ per square foot, which was based on the actual rate in the rent roll for the basement office area.

13. At the hearing, the Property Owner’s representatives argued that the County is required to consider the actual leases in place as of the lien date and not current market lease rates. It was the Property Owner’s argument that a potential buyer would consider the leases in place, not current market leases and they argued that an appraiser would as well, although they provided no support or documentation in regards

⁵ This was square footage stated on the lease. As noted previously, the Commission is using ##### as the basement square footage. If the Commission were to use ##### square feet, the value would be higher overall.

to what an appraiser would or would not consider when determining the fee simple value of the property. The Property Owner’s representatives argued the County’s income approach was an outright error because it was not based on the contract leases in place. Based on this argument, the Property Owner appears to be arguing for a leased fee value for the subject property, rather than a fee simple value. For property tax assessment purposes, property tax is based on the fee simple value, not the leased fee value. For a fee simple value, the County was correct to look at what the property would lease for as of the lien date at issue in this hearing. The Property Owner has the burden of proof in this matter and did not show error in the County’s value based on the argument that the County should have used the lease rate from the leases in place.

14. Using the market rent determined from the comparable sales for the above grade office space and the \$\$\$\$ per square foot for the basement space, the County’s income approach was the following:

Rentable Square Feet (Office)	\$\$\$\$	
Rent Per Square Foot (Office)	\$\$\$\$	
Rentable Square Feet (Bsmt Office)	\$\$\$\$	
Rent Per Square Foot (Bsmt Office)	\$\$\$\$	
Potential Gross Income		\$\$\$\$
Vacancy Percent	%%%%	
Vacancy Amount		(\$\$\$\$\$)
Effective Gross Income		\$\$\$\$
Expense Percent	%%%%	
Expense Amount		(\$\$\$\$\$)
Expense Per Square Foot	\$\$\$\$	
MGMT & Reserves	%%%%	
MGMT & Reserves Amount		(\$\$\$\$\$)
Net Operating Income		\$\$\$\$
Overall CAP Rate	%%%%	
Tax Rate	%%%%	
Total CAP Rate	%%%%	
Value By Income Approach		\$\$\$\$
Rounded to:		\$\$\$\$

15. To support its vacancy rate of %%%%, which was substantially lower than the Property Owner’s %%%% vacancy rate, the County provided an excerpt from the TEXT REMOVED Year-end 2018 Report, which indicated the vacancy rate for Class B office rentals countywide was %%%%. This report is specific to the lien date at issue and the report the Property Owner had provided indicating a %%%% vacancy rate was post lien date and also had contained another error in regards to the Class B

spaces in the CBD. The Property Owner does have the burden of proof in this proceeding and has not provided sufficient evidence to refute the County's vacancy rate.

16. In its income approach, the County had used a %%% expense rate plus %%% for management and reserves. This was supported by the actual expenses and expense studies submitted by the County. The Property Owner did not submit information that called this into question.

17. Although in its Board of Equalization income approach, the Property Owner had used an %%% capitalization rate, at this hearing the Property Owner's representatives had conceded to the County's capitalization rate. The County provided capitalization rate comparables as well as an excerpt from a TAXT REMOVED Year-end Report 2018 that indicated capitalization rates for Class B office space was %%%. The County used a capitalization rate of %%% in its income approach, to which it added the effective tax rate of %%% for a total rate of %%%.

18. The County's income approach value of \$\$\$\$ is higher than the County's current value of \$\$\$\$\$. The County did not request an increase to the \$\$\$\$ and the income information indicates that the current value is conservative.

19. The Property Owner has not shown error in the value set by the County Board of Equalization and therefore the value should remain at its current value.

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.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4, below, in pertinent part:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
- (a) within the three years before the January 1 of the year in which the property is being assessed; and
 - (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
- (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property...

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
- (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the

- value given to the real property by a county board of equalization 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.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. See *Nelson v. Bd. of Equalization of 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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

CONCLUSIONS OF LAW

1. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."

2. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property's "fair market value" as of January 1 of the tax year at issue pursuant to Utah Code Sec. 59-2-103. "Fair market value" is defined by statute as the "amount for which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." See Utah Code Sec. 59-2-102.

3. Based on the information the parties presented at the hearing, the property was not the subject of a "valuation reduction" in 2016, 2017, or 2018. Because there was no valuation reduction for the three years prior to the 2019 tax year, Utah Code §59-2-301.4 is not applicable in this appeal. Because there had not been a valuation reduction for tax year 2018 this property is not a "qualified real property" as that is defined at Utah Code §59-2-109.

4. The Property Owner's representatives argued that the County is required to consider the actual leases in place in its income approach as of the lien date because a buyer would do that. The Property Owner's representatives appear to be arguing for a leased fee value for the subject property. However, in Utah for property tax assessment purposes, property tax is based on the fee simple value or the full bundle of ownership rights and not the leased fee value. Therefore, the Property Owner's argument is contrary to the law on this point. The County was correct to look at what the market lease rate would be for the subject property as of the lien date at issue, instead of relying solely on leases in place that were several years old. If a property owner has given some of the ownership rights to a tenant pursuant to a below market lease, the bundle of rights has been divided between the owner and the tenant. The County then does not issue an assessment separately to the owner for the owner's leased fee value and to the tenant for the value the tenant has retained. Instead, the full fee simple value is assessed to the property owner. This issue has been addressed in prior decisions before the Tax Commission. In *Utah State Tax Commission Findings of Fact*,

Conclusion of Law and Final Decision Appeal 15-319, pgs. 10-11 (June 13, 2016)⁶ the Tax Commission explained:

The Property Owner's representative argues that for property tax assessment purposes, which is a "fair market value" standard, the valuation must be based on fee simple ownership. For this reason he asks that a comparable sale which was sold with an above market, long term lease not be considered as a comparable in this matter. He cites for support the Utah State Tax Commission's Standards of Practice 6.2.1, which provides, "For ad valorem tax purposes, properties are generally appraised as if all ownership rights and interests are attached, i.e., fee simple interest." The Commission has previously considered issues regarding this and has found consistent with the Property Owner's contention that the fair market value standard means the property is to be valued based on fee simple ownership.

In *Utah State Tax Commission Initial Hearing Order Appeal No. 12-2733* (2013) the Commission explained:

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the real issue before us. The evidence indicates that the lease is essentially a "below-market" lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor's interest is diminished, but the value of the lessee's interest is increased. See *The Appraisal of Real Estate* (10th Ed. YEAR-3), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor's and the lessee's interest.

5. In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. See *Nelson v. Bd. of Equalization of 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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the Property Owner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. The Property Owner has not met this burden of proof.

Upon that basis, the value for the subject property as of the lien date at issue should remain at its current value.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

⁶ These and other redacted decisions are available for review at tax.utah.gov/commission-office/decisions.

Based on the foregoing, the Commission finds the value of the subject property as of the January 1, 2019 lien date at issue in this appeal to be \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
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.