

20-641

TAX TYPE: PROPERTY TAX

DATE SIGNED: 3/30/2021

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

PENDING JUDICIAL REVIEW

BEFORE THE UTAH STATE TAX COMMISSION	
PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 20-641 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:

Lawrence C. Walters, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER , Attorney at Law
REPRESENTATIVE-2 FOR PETITIONER , MAI CRE Appraiser,
REPRESENTATIVE-3 FOR PETITIONER , Tax Manager for TAXPAYER,
Witness
For Respondent: REPRESENTATIVE-1 FOR RESPONDENT , Deputy District Attorney,
COUNTY
RESPONDENT , Certified General Appraiser, COUNTY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2021, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. The hearing was conducted via video conference. 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 appeal of the decision issued by the COUNTY Board of Equalization in regards to the fair market value of the subject parcel, as of the lien date January 1, 2019.

2. The original value set by the County Assessor as of the lien date had been \$\$\$\$\$. The County Board of Equalization (“County”) upheld that value. At the hearing, Petitioner requested a reduction to \$\$\$\$\$. The County did submit an appraisal that indicated a value of \$\$\$\$\$ as of the lien date at issue. However, the County offered the appraisal in support of the County Board of Equalization value and asked that the value of \$\$\$\$\$ be upheld. The County did not request that the value be raised to its appraisal value.

3. There was no valuation reduction after an appeal for the subject property for any of the years 2016 through 2018. The value of the property had been appealed to the County Board of Equalization in 2016 and 2018 but the County’s witness testified that there had been no reduction in value for either year.

4. The property is subject to a long term ground lease. The building itself is owned by TAXPAYER, Inc., but TAXPAYER, Inc. leases the ground from The PETITIONER. TAXPAYER, is the taxpayer in this matter (“Taxpayer.”) This appeal was filed by the Taxpayer.

5. The subject property is located at SUBJECT PROPERTY in CITY-1. It is a ##### acre parcel of land improved with a fast food restaurant currently used as a TAXPAYER. The building was constructed in YEAR and has ##### square feet of rentable area.¹ The County lists the building as construction class D and rental class A. The property has a drive through and is in a good location for a fast food restaurant, being located in the community shopping center known as THE SHOPPING CENTER. It is also visible from both HIGHWAY and ##### South, which are major traffic arteries in the southwest area of COUNTY. The property has not been substantially remodeled since construction. The County lists the subject property as being in good condition and notes that the building contributes to the overall value. The County’s appraiser provided the opinion that the subject property has been well maintained and appears similar to newer buildings.

6. The highest and best use of the subject property is its current use as a fast food restaurant.

¹ Respondent’s Exhibit 1, Petitioner’s Exhibit 1.

7. REPRESENTATIVE-3 FOR PETITIONER , Tax Manager for TAXPAYER, attended the hearing and testified that TAXPAYER does not generally buy old restaurant properties and retrofit them. He testified that instead TAXPAYER generally purchases land or land with old buildings that are demolished and new buildings constructed and that sometimes TAXPAYER would prefer to buy the land but has to lease it from the developer. He testified that TAXPAYER does try to get the best deal it can regarding purchases of land or entering into leases. He testified that “there are often instances where we do lease at market rates” and if “we want to be in that location we will pay more.” He also testified that if TAXPAYER leases the property, the property is often sold to a new owner and he provided the opinion that TAXPAYER’s credit worthiness is why the new owner would buy the property subject to the lease.

8. The Taxpayer argued in this appeal that the County had started using a different method of valuing fast food restaurants beginning in tax year 2018. In its income approach, the County started using % vacancy and % expenses. It was the Taxpayer’s position that the County was “pushing the envelope” and trying a “new novel theory.” The County argued in this matter that when these fast food properties were sold the buyers and sellers assumed a % vacancy and % expenses and that is how the capitalization rates were reported. The County also indicated that in 2018 the County had looked at how it was valuing fast food restaurants, determined that such properties were being undervalued in prior years and attempted to get them back to market value for assessment purposes.

9. As evidence that the County’s approach was resulting in a value above fair market value, the Taxpayer submitted an appraisal prepared by REPRESENTATIVE-2 FOR PETITIONER, MAI CRE, and APPRAISER-1, , MAI (“REPRESENTATIVE-2 FOR PETITIONER Appraisal”). It was the conclusion of the REPRESENTATIVE-2 FOR PETITIONER Appraisal that the market value of the fee simple estate of the subject property as of the lien date January 1, 2019, was \$\$\$\$.² REPRESENTATIVE-2 FOR PETITIONER attended the hearing and testified in regards to this appraisal and his opinion of value. In the appraisal, they had considered a cost approach, an income approach and a sales comparison approach to value. They gave “limited weight” to the cost approach in the reconciliation of values noting in the appraisal that “market participants do not typically place weight on this approach for properties similar to the subject.” The REPRESENTATIVE-2 FOR PETITIONER Appraisal stated the appraisers gave “considerable weight” to the income and sales comparison approaches in reaching the final reconciled value.³ The REPRESENTATIVE-2 FOR PETITIONER Appraisal conclusions from each approach are the following:

Cost Approach to Value : \$\$\$\$

² Petitioner’s Exhibit 1.

³ Petitioner’s Exhibit 1, pg. A000039-0040.

Income Approach to Value:	\$\$\$\$
Sales Comparison Approach to Value:	\$\$\$\$
Reconciled Value	\$\$\$\$

10. As little weight was given to the cost approach, and the Commission agrees that market participants would place little weight on this approach for a fast food property similar in age to the subject, very little discussion is needed on the cost approach. In his cost approach, REPRESENTATIVE-2 FOR PETITIONER did look at land sale comparables and determined a value for the land of \$\$\$\$\$. He prepared a Marshall Valuation Cost Summary that indicated the total replacement cost new was \$\$\$\$\$, and he considered actual costs from other quick serve restaurant projects, concluding that based on the actual cost information the cost new to build the subject would have been \$\$\$\$\$. His cost conclusion was as follows:⁴

Replacement Cost New	\$\$\$\$
Depreciation	- (\$\$\$\$\$)
Depreciated Improvement Replacement Cost	\$\$\$\$
Plus Land Value	+ \$\$\$\$\$
Rounded Cost Approach Value	\$\$\$\$

11. The REPRESENTATIVE-2 FOR PETITIONER Appraisal placed “considerable” weight on the income approach to value, as had the County in the appraisal submitted by the County. However, there were significant differences between the two parties on all of the factors of their respective income approaches. Regarding the REPRESENTATIVE-2 FOR PETITIONER Appraisal, for the market rental rate, the appraisal concluded a rate of \$\$\$\$\$ per square foot from lease comparables. The REPRESENTATIVE-2 FOR PETITIONER Appraisal listed five lease comparables, all of which were fast food properties. None of the REPRESENTATIVE-2 FOR PETITIONER comparables, however, were located in THE SHOPPING CENTER or another regional shopping center and they were all located in different cities within COUNTY. REPRESENTATIVE-2 FOR PETITIONER’s lease comparables and his concluded value from the comparables were as follows:⁵

TAXPAYER ⁶	COMPANY-1	COMPANY-2	COMPANY-3	COMPANY-4	COMPANY-5
SUBJECT ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS
CITY-1	CITY-2	CITY-3	CITY-4	CITY-4	CITY-5
Lease Date --	DATE	DATE	DATE	DATE	DATE

⁴ Petitioner’s Exhibit 1, pg. A000026.

⁵ Petitioner’s Exhibit 1, pg. A000028.

⁶ This property is also the REPRESENTATIVE-2 FOR PETITIONER Appraisal sales comparable #5.

Year Blt/Renvtd	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
Lease Area (Size)	#####	#	#	#	#	#
Lease Term	N/A	YEAR	YEAR	YEAR	YEAR	YEAR
Lease Rate/Sq.Ft.		\$	\$	\$	\$	\$
Market Conditions		%	%	%	%	%
Adjusted Rate		\$	\$	\$	\$	\$
Location/ Exposure		%	-%	%	%	%
Physical Characteristics						
Size		%	%	-%	-%	-%
Age/Condition		-%	%	%	%	%
Quality/Appeal		-%	-%	%	%	%
Net Adjustments		-%	-%	%	%	%
Adjusted Value/Sq.Ft.		\$	\$	\$	\$	\$

12. In the REPRESENTATIVE-2 FOR PETITIONER Appraisal income approach the appraisers had used a %%% vacancy rate. They pointed for support to a report published by BUSINESS-1 and BUSINESS-2 regarding retail vacancy in the greater CITY-6 market. The BUSINESS-1 report indicated %%% vacancy for COUNTY mid-year 2019. BUSINESS-2 was showing retail vacancy a t%%% mid-year 2019, up from %%% at mid-year 2018. The REPRESENTATIVE-2 FOR PETITIONER Appraisal provided a chart that showed vacancy rates declining from 2012 to 2018, showing that they were below 4% in 2018, then started to rise in 2019. The REPRESENTATIVE-2 FOR PETITIONER Appraisal adopted a rate of %%%, noting that the five-year average vacancy rate was just under %%% and the outlook was for vacancy to remain steady in the near term.

13. The next income approach factor was expenses. The REPRESENTATIVE-2 FOR PETITIONER income approach was based on a triple net lease basis, where the tenant is responsible for paying all operating expenses and the landlord’s expenses are limited to management fees and reserves. In the REPRESENTATIVE-2 FOR PETITIONER Appraisal, the appraisers allowed for %%% expenses and a %%% reserve. REPRESENTATIVE-2 FOR PETITIONER noted in the appraisal that Management fees typically range from %%% to %%% of effective gross income and single tenant properties like the subject “have a management fee on the lower end of the range.” He stated in the appraisal regarding the reserves that a “prudent owner would set aside funds to cover short-lived building components.”⁷

14. Another income approach factor and item in contention between the parties was the capitalization rate. In the REPRESENTATIVE-2 FOR PETITIONER Appraisal the capitalization rate used was %%%. REPRESENTATIVE-2 FOR PETITIONER provided a summary of the data he considered for this rate in his appraisal. He stated: “BUSINESS-2 indicates average capitalization rates for the REGION retail investments at %%% percent at Q4 2018. BUSINESS-3 Q4 2018 report shows that

⁷ Petitioner’s Exhibit 1, pg. A000031.

overall capitalization rates (OARs) for national strip center investments averaged %%% percent with power center capitalization rates averaging %%% percent.” The BUSINESS-2 report was for all retail and not limited to fast food restaurants. The REPRESENTATIVE-2 FOR PETITIONER Appraisal discussed some reported national rates. For example, WEBSITE reported Q4 2018 overall capitalization rates for fast-food restaurants ranged from %%% to %%%. He noted that the BUSINESS-3 survey only included institutional grade investments while WEBSITE included a broader range of investment classes. He also cited to a report published by the BUSINESS-4 that studies national fast-food or quick serve restaurants specifically. This report, which was for the national market, indicated a second quarter 2018 median capitalization rate at %%% percent for corporate quick serve restaurants and that corporate leased properties were ### basis points below franchisee leased properties.

15. In addition to the broader regional or national reports, the REPRESENTATIVE-2 FOR PETITIONER Appraisal offered some capitalization rate comparables derived from recent sales in the Utah regional market. Most of these sales were from COUNTY. The first four of these capitalization rate comparables, comparables 1 through 4, were also the sales comparables from the REPRESENTATIVE-2 FOR PETITIONER Appraisal comparable sales approach. The REPRESENTATIVE-2 FOR PETITIONER Appraisal capitalization rate comparables were as follows:

Address	Sale Date	Brand	Size Size	Year Built	Sale Price	Cap Rate	Rent Per Square Ft
1) ADDRESS, CITY-7	DATE	COMPANY-6&1	#	YEAR	\$	%	\$
2)ADDRESS, CITY-4	DATE	COMPANY-7	#	YEAR	\$	%	\$
3)ADDRESS, CITY-4	DATE	COMPANY-5	#	YEAR	\$	%	\$
4)ADDRESS, CITY-4	DATE	COMPANY-4	#	YEAR	\$	%	\$
S,ADDRESS, CITY-6	DATE	COMPANY-7 ⁸	#	YEAR	\$	%	\$
SADDRESS, CITY-10	DATE	COMPANY-1	#	YEAR	\$	%	\$
S-ADDRESS, CITY-11	DATE	COMPANY-1	#	YEAR	\$	%	\$
S-ADDRESS, CITY-4	DATE	COMPANY-7	#	YEAR	\$	%	\$
S-ADDRESS, CITY-8	DATE	COMPANY-1	#	YEAR	\$	%	\$
S-ADDRESS, CITY-4	DATE	COMPANY-1	#	YEAR	\$	%	\$
S-ADDRESS, CITY-9	DATE	COMPANY-1	#	YEAR	\$	%	\$

The combined average from these capitalization rates indicated a rate of %%%. The REPRESENTATIVE-2 FOR PETITIONER Appraisal explained how these capitalization rates were

⁸ The REPRESENTATIVE-2 FOR PETITIONER appraisal indicates this property is a COMPANY-7. It is currently a COMPANY-1. No explanation was offered for the discrepancy.

calculated: “These rates are based on net operating income after deducting for vacancy and expenses as opposed to simply capitalizing gross income.”⁹ Additional explanation was offered in the appraisal: “Sales #2 and #3 are for franchisees with inferior credit but the sales also included long-term leases. They suggest a loaded rate near %%% percent. The other local capitalization rate comparables suggest a much lower rate, but include national credit tenants and the rates are biased toward lower rates.”¹⁰

16. Despite the average capitalization rates being only %%%, REPRESENTATIVE-2 FOR PETITIONER had made the appraisal judgment that the capitalization rate of %%% would be appropriate to use in his income approach where he was deducting for vacancy and expenses. The REPRESENTATIVE-2 FOR PETITIONER Appraisal explained that the capitalization rate from the four comparable sales he used in his sales comparison approach ranged from %%% to %%% and averaged %%%. In addition, as stated in the REPRESENTATIVE-2 FOR PETITIONER Appraisal: “Rates for corporate backed leases are generally lower than those for franchisee or regional tenants. In addition, capitalization rates are also lower for properties that have longer terms remaining. In this case, we are looking for market rates that do not factor in credit strength or lease term since we are trying to capture the fee simple value of the subject. This suggests a rate above the average would be expected.”¹¹

17. The REPRESENTATIVE-2 FOR PETITIONER Appraisal did make an additional adjustment to its %%% capitalization rate for property taxes by adding %%% to the rate. This small change increased the capitalization rate to %%%. The explanation for this as stated in the appraisal was that although all operating expenses including the taxes were paid by the tenant except for management and reserves, “the landlord is responsible for all expenses during periods of vacancy, including property taxes. As such, a vacancy adjusted property tax rate of %%% percent is added to the capitalization rate to account for this expense.” This had been calculated by multiplying the tax rate, which was %%% by the %%% vacancy rate. He cited as support for this adjustment a prior Tax Commission decision, *Utah State Tax Commission Initial Hearing Order Appeal No. 15-161 (8/28/15)*.

18. With all of these factors, the REPRESENTATIVE-2 FOR PETITIONER Appraisal’s income approach was the following:

Potential Gross Income	
##### sq.ft. x \$ =	\$
Less: Vacancy and Collection Loss: %	<u>\$(\$)</u>
Effective Gross Income	\$
Operating Expenses	

⁹ Petitioner’s Exhibit 1, pg. A000033.
¹⁰ Petitioner’s Exhibit 1, pg. A000033.
¹¹ Petitioner’s Exhibit 1, pg. A000033.

Management (2% of Effective Gross Income)	(\$)
Reserves (2% of Effective Gross Income)	<u>(\$)</u>
Net Operating Income	\$
Capitalization Rate	%%%
Tax Rate (Vacancy Only)	<u>%</u>
Loaded Capitalization Rate	%
Income Approach to Value	\$
Rounded	\$

19. The REPRESENTATIVE-2 FOR PETITIONER Appraisal also considered a sales comparison approach to which it gave significant weight. In this approach, five sales of fast food restaurants were considered. None of the comparables were located in THE SHOPPING CENTER, or in CITY-1 like the subject, but from neighboring areas. The REPRESENTATIVE-2 FOR PETITIONER Appraisal made appraisal adjustments for differences between the comparables and the subject property and the adjusted values from each are as follows:

	Subject	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5
	TAXPAYER	CO.-1	CO.-7	CO.-5	CO.-4	CO.-9 ¹²
	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS
	CITY-1	CITY-6	CITY-4	CITY-4	CITY-4	CITY-5
Rentable Size	#	# ¹³	#	#	#	#
Sale Price		\$	\$	\$	\$	\$
Yr Blt/Remld	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
Date of Sale		DATE	DATE	DATE	DATE	DATE
Rent Income/sq.ft.		\$	\$	\$	\$	N/A
Capitalization Rate ¹⁴		%	%	%	%	N/A
PRICE/SQ.FT.		\$	\$	\$	\$	\$

¹² This property is now a COMPANY-5. This property is also used as the REPRESENTATIVE-2 FOR PETITIONER Appraisal lease comparable #5. The property was vacant as of the sales date.

¹³ In the appraisal addendum, the leasable area for this property is listed as #####-square feet. The addendum further states this property was formerly a COMPANY-6 and had been remodeled when it became a COMPANY-1.

¹⁴ The capitalization rates listed in this sales grid appear to be presented based on how the sale was reported. These same sales were also used as capitalization rate comparables in the REPRESENTATIVE-2 FOR PETITIONER Appraisal and listed in Finding of Fact #14. However, when considered as a capitalization rate comparable in Finding #14, REPRESENTATIVE-2 FOR PETITIONER had made adjustments, which resulted in the lower capitalization rates listed from these same comparables in Finding #14. It appears the capitalization rates in this sales comparison grid were determined using the method the County has followed.

PROPERTY RIGHTS ¹⁵	-%	-%	-%	-%	%
ADJUSTED PRICE/SQ.FT.	\$	\$	\$	\$	\$
Time Adjustment	%	%	%	%	%
Location/Access	%	%	%	%	%
Size	%	-%	-%	-%%%	-%
Quality/Appeal	%	%	%	%	%
Age/Condition	%	%	%	%	%
Site Coverage/Parking	%	%	%	%	%
Functional Utility/Amenity	%	%	%	%	%
ADJUSTED PRICE/SQ.FT.	\$	\$	\$	\$	\$

The average adjusted price per square foot from these comparables was \$\$\$\$\$. After reviewing these comparables, the REPRESENTATIVE-2 FOR PETITIONER Appraisal conclusion was that they indicated a value per square foot of \$\$\$\$\$ for the subject property. Multiplying the ##### square feet of the cost approach by \$\$\$\$\$ results in a sales comparison approach to value, rounded, of \$\$\$\$\$.

20. The County submitted an appraisal in this matter that had been prepared by RESPONDENT, Certified General Appraiser, COUNTY.¹⁶ It was RESPONDENT’s appraisal conclusion that as of the lien date January 1, 2019, the value of the subject property was \$\$\$\$\$, although the County offered the appraisal to support the value upheld by the County Board of Equalization of \$\$\$\$\$ and was not requesting that the value be increased to the appraisal value. In the appraisal, RESPONDENT did not prepare a cost approach but considered both an income approach and a sales comparison approach to value. In reconciling these two approaches to value he gave both the sales and the income approaches “significant weight.” His conclusions from these were the following:

Cost Approach	Not Developed
Sales Comparison Approach	\$
Income Capitalization Approach	\$
Market Value Conclusion	\$

21. For his income approach, RESPONDENT also looked at lease comparables to determine a market rent rate. However, he did conclude a significantly higher rent rate of \$\$\$\$\$ per square foot than the \$\$\$\$\$ per square foot rate from the REPRESENTATIVE-2 FOR PETITIONER Appraisal.

¹⁵ The REPRESENTATIVE-2 FOR PETITIONER Appraisal adjusted %%% for each property that sold with a lease in place, regardless of the lease terms.

¹⁶ Respondent’s Exhibit 1.

RESPONDENT’s lease comparables were all fast food restaurants. His lease comparables were the following:

Address	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS
City	S. JORDAN	TAYLOR	CITY-2	SJORDAN	SJORDAN	CITY-6
	TAXPAYER	COMPANY-10	COMPANY-1	COMPANY-9	COMPANY-11	COMPANY-9
Date of Lease	N/A	DATE	DATE	DATE	DATE	DATE
Leased Area(SF) #		#	#	#	#	#
Year Built	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
Effrt Yr Built	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
Construction	X					
Condition	X	X	X	X	X	X
Parking	X	X	X	X	X	X
Lease Rate/SF		\$	\$	\$	\$	\$
Market Conditions (Time)		%	%	%	%	%
Adjusted Lease Rate/SF		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

OTHER ADJUSTMENTS

Location	%	%	%	%	%
Size	-%	%	-%	%	-%
Age/Condition	-%	-%	-%	-%	-%
Quality/Appeal	%	%	%	%	%
Functional Utility	%	%	%	%	%
Parking	%	%	%	%	%
NET ADJUSTMENTS	-%	%	-%	-%	-%
GROSS ADJUSTMENTS	%	%	%	%	%
ADJUSTED LS RATE/SF	\$	\$	\$	\$	\$

The average adjusted lease rate per square foot from these comparables was \$\$\$\$\$. RESPONDENT concluded that they indicated a market lease rate for the subject property of \$\$\$\$\$ per square foot. Because RESPONDENT was using a capitalization rate that had been calculated without making an adjustment for vacancy or expenses, the County had used % vacancy and % expenses in its appraisal. RESPONDENT explained in his appraisal, “buyers and sellers in the competitive market for quick service/fast food restaurants were transacting on the basis of zero vacancy and absolute net (% Vacancy/% Expenses). Most of the sales that were verified from the past several years had sold on this basis, which is an indication that it is an expectation of buyers and sellers in the market.”¹⁷ The capitalization rate that RESPONDENT used in his income approach was %%%. Although this rate is not that far from the REPRESENTATIVE-2 FOR PETITIONER Appraisal capitalization rate of %%% there are significant differences so a direct comparison between the rates should not be made. RESPONDENT provided capitalization rate comparables in his appraisal to support the capitalization rate that he had chosen. He stated in the appraisal: “In an effort to reflect the true nature of the

¹⁷ Exhibit R1, pg. 000034.

market, all of the cap rate comparables . . . are sales of similar fast food restaurant properties that have sold with % vacancy, and % expenses.” His capitalization rate comparables were the following:						
Location	Sale Date	Square Feet	Year Built	CAP Rate	Vac/Exp	Adj.Cap Rate
ADDRESS	DATE	#	YEAR	%	%/ %	%
ADDRESS	DATE	#	YEAR	%	%/ %	%
ADDRESS ¹⁸	DATE	#	YEAR	%	%/ %	%
ADDRESS	DATE	#	YEAR	%	%/ %	%
ADDRESS ¹⁹	DATE	# [YEAR	%	%/ %	%
ADDRESS	DATE	#	YEAR	%	%/ %	%
ADDRESS	DATE	#	YEAR	%	%/ %	%
ADDRESS	DATE	#	YEAR	%	% %	%

The mean from these capitalization rate comparables was %%%%. The appraisal did not state what brand of fast food restaurant had been in the property when the property sold.

22. As further support for his capitalization rate, RESPONDENT cited to a BUSINESS-2 report that the average capitalization rate for the fourth quarter of 2018 had been %%%%, but that was for retail property in general, not specific to fast food properties. He also cited a BUSINESS-1 report that was specific to quick service restaurant property, but not specific to the region. It is not clear if this was a national report. This report showed capitalization rates per fast food brand type, for example in 2018 COMPANY-12 had the highest capitalization rate, %%%, and in 2018, COMPANY13 had the lowest at %%%. The report showed both the 2017 and the 2018 rates. For the fast food/quick services restaurant sector as a whole the rate was %%% in both 2017 and 2018. However, various brands had increased or

¹⁸ This is the County’s Sales comparable 3, which was a COMPANY-1. It is also the REPRESENTATIVE-2 FORPETITIONER Appraisal Capitalization rate comparable S-1.

¹⁹ This is Taxpayer’s Capitalization rate comparable S-7 and it is a COMPANY-1.

decreased between the two years. The rate for COMPANY-4, for example, had been %%% in 2017 and declined to %%%% in 2018. Other rates had increased. The most dramatic increase had been COMPANY-14, which had the lowest rate in 2017 at %%%, and was even lower than COMPANY-13 in 2017, but had jumped to %%%% in 2018.

23. With his lease rate of \$\$\$\$ per square foot and a %%% capitalization rate, RESPONDENT’s income approach was the following:

Potential Gross Income			
##### X \$\$\$\$\$.00			\$
Less% Vacancy & Collection Loss			0
Effective Gross Income			\$
Less Management	%		0
Less Reserves	%		<u>0</u>
Net Operating Income			\$
NOI/CAP Rate %	=		\$
Rounded			\$ or \$ per square foot

24. RESPONDENT also considered a sales comparison approach to value. RESPONDENT found several comparable sales that were more similar to the subject than the ones that had been considered in the REPRESENTATIVE-2 FOR PETITIONER Appraisal as far as building quality and location. RESPONDENT’s comparables sold for a significantly higher price per square foot than those from the REPRESENTATIVE-2 FOR PETITIONER Appraisal. Comparable 4 was vacant when sold and the only sale that was not sold subject to a lease in place, so sold with fee simple property rights. It was renovated after the sale with new tenant improvements. In the appraisal, RESPONDENT noted that his comparables 1, 2, and 5 were all located in neighborhood or community shopping centers. RESPONDENT’s sales comparisons and his value conclusion for the subject from those sales are as follows:

SUBJECT	ONE	TWO	THREE	FOUR	FIVE
TAXPAYER	COMPANY-7 ²⁰	COMPANY-9	COMPANY-1	COMPANY-10	COMPANY-1
ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS
CITY-1	CITY-6	CITY-6	CITY-12	CITY-13	CITY-1
	0.99	0.63	0.55	0.45	1.04
Year Built 2007	YEAR	YEAR	YEAR	YEAR	YEAR
Efftive Yr 2010	YEAR	YEAR	YEAR	YEAR	YEAR

²⁰ Respondent’s Exhibit 1, Appraisal Addendum indicates that this sale was part of a 1031 exchange.

S.F.	#	#	#	#	#	#
Quality	X	X	X	X	X	X
Condition	X	X	X	X	X	X
Parking	X	X	X	X	X	X
Sale Date		DATE	DATE	DATE	DATE	DATE
Property Rights		X	X	X	X	X
Sale Price		\$	\$	\$	\$	\$
Price/SF		\$	\$	\$	\$	\$
Market Conditions (Time)		%	%	%	%	%
Location		%	%	%	%	%
Size		%	%	%	-%	%
Age/Condition		-%	-%	%	%	-%
Parking		%	%	%	%	%
NET ADJUSTMENTS		-%	%	%	%	-%
GROSS ADJUSTMENTS		%	%	%	%	%
ADJUSTED VALUE/SF		\$	\$	\$	\$	\$

The average adjusted value per square foot from these comparables had been \$\$\$\$\$. Based on these sales, RESPONDENT concluded a value of \$\$\$\$\$ per square foot for the subject property or a total value rounded of \$\$\$\$\$. RESPONDENT indicated in his appraisal that he did place the most weight on comparable 2, stating, “Comparable sale 2 is given the most weight in the final conclusion of value because it has the lowest net and gross adjustments, and is the most similar to the subject in all characteristics.”²¹

REBUTTAL EVIDENCE & APPRAISAL CONCLUSIONS

25. The County provided criticisms, testimony and evidence in regards to the comparables used in the REPRESENTATIVE-2 FOR PETITIONER Appraisal as lease comparables and sales comparables. It was the County’s position that the REPRESENTATIVE-2 FOR PETITIONER Appraisal comparables were inferior to the subject as far as location and quality or grade of the property and the County’s position on this point was warranted. The County’s appraiser, RESPONDENT, testified that the subject property is in the type of location, a regional shopping center, where a national fast food or quick service restaurant would choose to have a business. He testified that national properties want to be located in a retail center and the subject is located in a regional shopping center. He pointed out that a good location does affect market value. He testified it was his appraisal opinion that if TAXPAYER left the subject building, because of the location, another national tenant would locate at the property. The

²¹ Respondent’s Exhibit 1, pg. 25.

fact that location was important and a factor for which TAXPAYER was willing to pay more was also supported by the testimony of REPRESENTATIVE-3 FOR PETITIONER, the company's Tax Manager.

I. Income Approach Conclusion

26. RESPONDENT provided photographs of the properties²² that Mr. REPRESENTATIVE-2 FOR PETITIONER had used for his lease comparables and his sales comparables. In his criticisms of the REPRESENTATIVE-2 FOR PETITIONER Appraisal lease comparables, RESPONDENT testified that REPRESENTATIVE-2 FOR PETITIONER lease comparable 1, although near a BUSINESS-1 recreational facility, was surrounded by offices and multi-family properties and was not in a shopping center. RESPONDENT testified that REPRESENTATIVE-2 FOR PETITIONER lease comparable 2, which was a COMPANY-2, had poor access because the road is divided in that area and can only be accessed driving in one direction. RESPONDENT also noted that it was a second generation lease. He pointed out that the REPRESENTATIVE-2 FOR PETITIONER lease comparable 3, COMPANY-3, was located by a car storage yard and not in or near a shopping center and also that the quality and condition of the building were inferior. Regarding REPRESENTATIVE-2 FOR PETITIONER lease comparable 4, RESPONDENT pointed out that although it is part of a retail center, the anchor tenant building of that center had been demolished and removed and the lot for the anchor tenant building has been sitting vacant. RESPONDENT testified in regards to REPRESENTATIVE-2 FOR PETITIONER lease comparable 5, a COMPANY-5 property, that it was in an inferior location and that improvements were very much inferior. RESPONDENT pointed out that REPRESENTATIVE-2 FOR PETITIONER lease comparables 1, 3 and 5 were leased by second generation tenants and are occupied by local or regional tenants, not national tenants. RESPONDENT pointed out that when these properties became available they were not leased by a national tenant.

27. As far as rebuttal of the County's comparables, REPRESENTATIVE-2 FOR PETITIONER pointed out that the County's lease comparables were all newer buildings, although RESPONDENT pointed out that the subject had been well maintained and was similar to these newer buildings as far as appearance. RESPONDENT had made some age and condition adjustments for this factor.

28. After reviewing the lease comparables and information submitted by the parties regarding the lease comparables, it does appear that the REPRESENTATIVE-2 FOR PETITIONER Appraisal comparables are all inferior as far as location. The information presented by the County supports that location in a regional shopping center with good access significantly affects the value for fast food properties. In addition to inferior locations, the REPRESENTATIVE-2 FOR PETITIONER comparables

²² Respondent's Exhibit 8.

COMPANY-3 and COMPANY-5 were significantly inferior buildings. Some adjustments were made in the REPRESENTATIVE-2 FOR PETITIONER Appraisal but were not sufficient to account for the differences that made these comparables inferior to the subject. The County had offered lease comparables for the subject that were more similar as far as location and construction quality. The County's lease comparables' unadjusted lease rates had ranged from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot, although absent the high lease rate of \$\$\$\$\$ the remaining four comparables' actual unadjusted lease rates had been a tighter range from \$\$\$\$\$ to \$\$\$\$\$ per square foot. There was not an apparent reason why the property with the lease rate of \$\$\$\$\$ was so much higher than the others. This was a COMPANY-10 property that had been constructed in 2015 of only average grade and this lease rate seems outside the range from the other comparables. The adjusted lease rates from the other four comparables ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot and suggested a lease rate of \$\$\$\$\$ for the subject, which is lower than the rate of \$\$\$\$\$ per square foot that the County had concluded from these comparables. Taken as a group, the best comparables presented by both parties support an indicated adjusted rent of between \$\$\$\$\$ and \$\$\$\$\$ per square foot.

29. For the income approach, the next factor that needs to be determined is the appropriate capitalization rate. Although REPRESENTATIVE-2 FOR PETITIONER had used a capitalization rate of %%% and the County one of %%%, these rates are more different than they appear. As REPRESENTATIVE-2 FOR PETITIONER had testified at the hearing and as had been explained in the REPRESENTATIVE-2 FOR PETITIONER Appraisal, when calculating the capitalization rates from their capitalization rate comparables, the REPRESENTATIVE-2 FOR PETITIONER Appraisers had made an adjustment to the reported capitalization rates by subtracting vacancy and expenses from the income stream and then calculating the rate. This actually results in a lower capitalization rate derived from the sales information than the method the County had used. The County did not make this adjustment to its capitalization rate comparables, testifying instead that it was providing the capitalization rates as they were being reported by the industry during this time period for fast food properties.

30. Upon review of the evidence submitted at this hearing, the Commission finds the County was using capitalization rates as they were being reported in the industry. The REPRESENTATIVE-2 FOR PETITIONER Appraisal was not using the rates as they were being reported in the industry, but instead making an adjustment to the reported rates. REPRESENTATIVE-2 FOR PETITIONER did not refute the County's position on how the industry was reporting its rates and he testified at the hearing regarding the adjustment he had made to the reported rates for his capitalization comparables in his appraisal. The fact that the REPRESENTATIVE-2 FOR PETITIONER Appraisal had made the adjustments is evident, as explained below, based on the appraisal calculations. In addition, for further

support, the County had submitted an email from NAME-1, Executive Director-Investment Sales, BUSINESS-2, which supported the County’s position on how the rates were being reported in the industry.²³ Because vacancy and expenses were not subtracted from the income stream in the reported industry capitalization rates, this mathematically results in a higher capitalization rate.

31. At the hearing, RESPONDENT testified regarding this difference by showing what some of the REPRESENTATIVE-2 FOR PETITIONER Appraisal capitalization rates would look like if they were calculated based on the County’s method. This demonstrates the differences between the County’s method and the REPRESENTATIVE-2 FOR PETITIONER Appraisal method from the same capitalization rate comparables. A summary of the testimony RESPONDENT provided at the hearing, with information from REPRESENTATIVE-2 FOR PETITIONER’s appraisal added for comparison, and the mathematical difference between the two is as follows:

REPRESENTATIVE-2 FOR PETITIONER Cap Com	Brand	REPRESENTATIVE-2 FOR PETITIONER's Cap Rate	County's Method	Difference
Comp. S1	COMPANY-7	%	%	%
Comp. S3	COMPANY-1	%	%	%
Comp. S5	COMPANY-7	%	%	%
Comp. S6	COMPANY-1	%	%	%
Comp. S8	COMPANY-1	%	%	%

In addition, both REPRESENTATIVE-2 FOR PETITIONER and RESPONDENT had used the same capitalization rate comparable, which the REPRESENTATIVE-2 FOR PETITIONER appraisal had labeled S7. REPRESENTATIVE-2 FOR PETITIONER calculated this capitalization rate to be %%%. In his appraisal, RESPONDENT shows this comparable, which is the COMPANY-1 property located at ADDRESS, to have sold with a capitalization rate of %%% based on the way the County had calculated the capitalization rate. Given this, it would appear that REPRESENTATIVE-2 FOR PETITIONER’s capitalization rate should have been lower than the County’s. As noted in the REPRESENTATIVE-2 FOR PETITIONER Appraisal the average from the REPRESENTATIVE-2 FOR PETITIONER capitalization rate comparables had been %%%, which was lower than the County’s capitalization rate at %%%. However, REPRESENTATIVE-2 FOR PETITIONER did not actually base his capitalization rate on the average of his comparables as he noted in his appraisal.

32. Based on the evidence and information submitted by both parties it is clear that there is a difference if the capitalization rate is calculated with the adjustment for vacancy and expenses as was done in the REPRESENTATIVE-2 FOR PETITIONER Appraisal, or using the method the County has

²³ Respondent’s Exhibit 3.

used which does not make this adjustment. The REPRESENTATIVE-2 FOR PETITIONER method will mathematically result in a lower capitalization rate than the County's method when applied to an individual sales comparable. However, neither method is inappropriate as long as the capitalization rate and the net operating income used in the income approach are consistent.

33. However, the difference in the ultimate capitalization rate conclusions with REPRESENTATIVE-2 FOR PETITIONER using a rate of %%% and the County using a rate of %%% was not so much due to these different methodologies as it was to other factors. As noted above, REPRESENTATIVE-2 FOR PETITIONER's 11 capitalization rate comparables averaged %%%. However, REPRESENTATIVE-2 FOR PETITIONER made an appraisal judgment to increase his capitalization rate to %%%. The explanation for this, as noted earlier in Findings of Fact #14 & 15, was that the REPRESENTATIVE-2 FOR PETITIONER Appraisal placed the most weight on the three highest capitalization rate comparables plus one other comparable. These also happened to be four sales comparables that he had used in his sales comparison approach. These four comparables averaged a %%% capitalization rate. REPRESENTATIVE-2 FOR PETITIONER provided the opinion that a rate above average would be expected because the consideration should be market rates that do not factor in credit strength or lease term.

34. The Commission does not disagree with REPRESENTATIVE-2 FOR PETITIONER's point that in determining fee simple value, the Commission should be trying to determine market rates that do not factor in credit strength or lease term. Most of the capitalization rate comparables presented in the REPRESENTATIVE-2 FOR PETITIONER Appraisal, however, support a considerably lower rate than %%%. The average of the other seven capitalization rate comparables in the REPRESENTATIVE-2 FOR PETITIONER appraisal was %%%. All eleven comparables together indicated an average of %%%. The %%% capitalization rate REPRESENTATIVE-2 FOR PETITIONER used is significantly above what these capitalization rate comparables suggest. The Taxpayer does have the burden of proof in this matter. Interestingly, the capitalization rate comparables listed in the REPRESENTATIVE-2 FOR PETITIONER Appraisal with the highest capitalization rates were the properties used in the REPRESENTATIVE-2 FOR PETITIONER Appraisal as sales comparables and as noted below were inferior properties to the subject property.

35. To determine the appropriate capitalization rate, the data presented by the parties for specific transactions in COUNTY is most persuasive. The REPRESENTATIVE-2 FOR PETITIONER Appraisal presents capitalization rates for eleven transactions, the three highest of which are also used in REPRESENTATIVE-2 FOR PETITIONER's comparable sales analysis. Comparable 1 is a former COMPANY-6 restaurant that has been remodeled as a COMPANY-1. REPRESENTATIVE-2 FOR

PETITIONER testified that Comparables 2 and 3 are franchised stores. Setting these three properties aside, the average capitalization rate for the remaining eight properties, after removing the adjustment for vacancy, expense and reserves so the rate is comparable to how the County calculated the rate, is %%. The County's capitalization rate was %%. The County presented data for eight capitalization rate comparables, two of which were also used in the county's comparable sales analysis (comparables 1 and 3). Comparables 2 and 4 are for standalone local restaurants rather than national chains. Setting aside those two comparables, the average of the remaining six capitalization rates is %%. Based on this analysis, the capitalization rate evidence presented by the parties suggests a capitalization rate for the year in question of %% using the County's method or %% using the Taxpayer's method. Neither would be improper as long as the net operating income used in an income approach was consistent. The County in its appraisal did conclude a slightly higher rate of %, which may address the concerns that the credit strength and lease term should not be taken into account in the capitalization rate.

36. To be consistent with the net operating income, if the %% capitalization rate determined by the Taxpayer's method were used to determine the value based on the income approach, it would be appropriate to subtract from the potential gross income vacancy, expenses and reserves, as REPRESENTATIVE-2 FOR PETITIONER has done in his appraisal. The lower net operating income that results from this is basically offset by the lower capitalization rate. If the %% capitalization rate is used based on the County's method where vacancy, expenses and reserves are not subtracted in the calculation of the capitalization rate, it is not appropriate to subtract them from the potential gross income in the income approach. The higher net operating income that results is offset by the higher capitalization rate.

37. Using a lease rate of \$\$\$\$ and a %% capitalization rate with %% vacancy /% expenses and reserves indicates a value for the subject of \$\$\$\$\$, which is greater than the assessed value set by the County Board of Equalization, which had been \$\$\$\$.

38. There was an additional adjustment made in the REPRESENTATIVE-2 FOR PETITIONER Appraisal to the capitalization rate as noted above in Finding of Fact #16 in which .%% was added to the %% capitalization rate for the portion of the property taxes that the owner would have to pay for the %% period of time the property was vacant. This small change increased the capitalization rate to an overall rate of %. The REPRESENTATIVE-2 FOR PETITIONER Appraisal cited to a prior Tax Commission decision as support for this adjustment, *Utah State Tax Commission Initial Hearing Order Appeal No. 15-161 (8/28/15)*. Although that prior decision did suggest that adjustment could be considered in that case, it is not an adjustment that had been applied by the Tax Commission in other appeals, so there was no broad application of the adjustment. Furthermore, it is not

an adjustment seen by the Tax Commission generally in the commercial appraisals reviewed in appeals. This is a departure from how the Tax Commission has determined value generally and the Tax Commission declines to make this adjustment in this matter.

II. Sales Comparison Approach Conclusion

Both parties presented a sales comparison approach to value, with REPRESENTATIVE-2 FOR PETITIONER concluding a value per square foot of \$\$\$\$\$ and the County a value per square foot of \$\$\$\$\$. The evidence at this hearing indicated that the REPRESENTATIVE-2 FOR PETITIONER Appraisal comparables were inferior properties to the subject. Overall, the parties presented ten properties in their comparables sales analysis and they were not all equally persuasive in establishing an indicator of market value for the subject. For the REPRESENTATIVE-2 FOR PETITIONER appraisal, sales comparables 4 and 5 were the same properties as the REPRESENTATIVE-2 FOR PETITIONER lease comparables 4 and 5, which were found to be inferior locations compared to the subject. The County testified that the sale reported as REPRESENTATIVE-2 FOR PETITIONER sales comparable 1 was actually the ground lease only. REPRESENTATIVE-2 FOR PETITIONER disputed this claim, but presented no evidence to support his argument. The County argued that the REPRESENTATIVE-2 FOR PETITIONER sales comparables 2 and 3, were in an inferior location. These two properties were not in a neighborhood or community shopping center, although they were located on Redwood Road and across the street from the County's lease comparable 1. At the hearing, the County provided the appraisal opinion that the REPRESENTATIVE-2 FOR PETITIONER sales comparables 2 and 3 are inferior in quality and condition to the subject. For the RESPONDENT appraisal, sales comparable 1 was part of a 1031 exchange²⁴ and seems to have sold for significantly more than any other comparable. It is an outlier selling for an unadjusted price per square foot of \$\$\$\$\$, which is substantially higher than any of the other sales and should be given no weight. The County's Comparable 4 was a fee simple sale as there was no lease in place at the time of the sale. This sale indicated a value for the subject of \$\$\$\$\$ per square foot. The County's comparables 2 and 5 were located in neighborhood or community shopping centers. If no weight is given comparable 1, the average adjusted value from the County's four remaining comparables would be \$\$\$\$\$ per square foot. Furthermore, RESPONDENT's explanation as to why he chose \$\$\$\$\$ per square foot as the value for the subject property was that he placed the most weight on Comparable 2 because it had the least net and gross adjustments. This is only partially correct. Based on RESPONDENT's appraisal grid, although comparable 2 had the least net adjustments, the comparable with the least gross adjustments was actually comparable 5. Comparable 5 was also located in a neighborhood or community shopping center. It was closer in age to the subject, although still a newer

²⁴ Respondent's Exhibit 1, pg. 00055.

building than the subject and indicated a value for the subject of \$\$\$\$ per square foot. The Taxpayer does have the burden of proof in this matter and has not shown that the comparable sales that supported a lower value were actually more comparable to the subject property than the comparables offered by the County's appraiser, which did support at least the value set by the County Board of Equalization. Therefore, based on the sales comparison approach, a value at least as high as that set by the County Board of Equalization is indicated.

39. One item of adjustment that was in dispute in the sales comparison approach of the REPRESENTATIVE-2 FOR PETITIONER Appraisal was a %%% property rights adjustment to each sales comparable that had sold with a lease in place. REPRESENTATIVE-2 FOR PETITIONER had subtracted %%% from his sales comparables 1 through 4 because they had sold with a lease in place. His comparable 5 had been vacant at the time of sale and there was no lease in place so he did not subtract this %%% adjustment. The REPRESENTATIVE-2 FOR PETITIONER Appraisal provided the following explanation for this adjustment:²⁵

This adjustment addresses instances where property rights warrant adjustment when compared to market. For this report, the value estimate sought is the fee simple estate. Only Sale #5 involved conveyance of fee simple rights. The other sales are all leased fee sales and some adjustment for this factor would be expected because of the leases in place, which minimize risk. Downward adjustments are made to Sales #1 through #4 for this factor.

40. At the hearing, the Taxpayer also offered a letter as support for this %%% property rights adjustment dated March 31, 2020, from NAME-2, YEAR President of the Appraisal Institute.²⁶ The letter indicates a difference of opinion between the Appraisal Institute and a recent IAAO publication. The substance of the letter is comments on a white paper published by the IAAO titled "Setting the Record Straight on Fee Simple."²⁷ The letter states that "the Appraisal Institute's leadership has carefully analyzed the IAAO's paper and finds that it is conceptually flawed and factually inaccurate." In the hearing, the Taxpayer drew particular attention to a paragraph in the letter on page 7, which reads:

According to TARE [The Appraisal of Real Estate], p. 406, "If the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate of another property, the comparable sale can only be used if reasonable and supportable market adjustments for the differences in rights can be made." Reasonable and supportable adjustments might include not just those accounting for the market orientation of the comparable's rent, but also for the fact that the comparable is leased at all.

²⁵ Petitioner's Exhibit 1, pg. 00035.

²⁶ Petitioner's Exhibit 2.

²⁷ Respondent's Exhibit 6.

41. The County, on the other hand, argued that when a property is tenant occupied, adjustments are needed in the sales price only if there is evidence that the current lease is either above or below current market rents. While this is consistent with prior Tax Commission decisions²⁸ that have considered this issue, and the IAAO white paper referenced above, it does appear to be contrary to the views expressed in the Appraisal Institute letter.

42. While this is an issue that may require further scrutiny in another appeal, in this matter it is moot due to the fact that with or without a -%% adjustment, the more comparable properties to the subject support a value at least as high as that set by the County Board of Equalization and the Taxpayer has not shown the properties suggesting a lower value for the subject were better comparables.

III. Reconciliation of Value

43. Both appraisers who offered appraisal evidence in this hearing placed significant weight on both their income and sales comparison approaches to value and no or little weight on a cost approach. There was no appraisal evidence to support that the Tax Commission should place any significant weight on the cost approach to value for a property of the age and type as the subject, so the Tax Commission declines to do so.

44. Upon review of the evidence offered and received at this Formal Hearing, the Property Owner has failed to show error in the value set by the County Board of Equalization or support a basis for a value lower than that set by the County Board of Equalization. The Property Owner has the burden of proof in this matter and applying significant or equal weight to both an income and sales comparison approach supports that the value set by the County Board of Equalization is a reasonable value for the subject property. The Taxpayer has failed to establish error in the value set by the County Board of Equalization.

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:

²⁸ See *Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1026* (12/17/2018) and *Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-319*, pg. 10 (June 13, 2016).

“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 %%% 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 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.

DISCUSSION AND ANALYSIS

I. Income Approaches:

The Taxpayer in this appeal is arguing that beginning in 2018 the County had started using a “new and novel approach” to valuing fast food restaurants, by using a %%% vacancy and %%% expense income approach. However, the County's approach is not a new approach. The County is valuing the properties based on an income approach in which the County is applying an income stream that is consistent with the capitalization rate being utilized in the approach. The large difference in value

between the two parties' income approaches is not due to the County's method, it is instead due to the differences in capitalization rates and rent comparables used by the parties.

The parties used two different methods to determine their capitalization rates. The County's rate at %%% and the Taxpayer's at %%% are in reality significantly dissimilar. The Taxpayer argues that the income to be capitalized should be adjusted for stabilized vacancy, expenses and reserves. The County argues that quick serve restaurants similar to the subject property sell at capitalization rates assuming %%% vacancy and %%% for expenses and reserves, so that is how the capitalization rate is reported. The two approaches mathematically yield the same indicator of value if the income stream and the capitalization rate are matched. The following expressions, in which the County's method is Cap Rate 1 and the Taxpayer's method is Cap Rate 2, make this clear.

$$Value = \frac{Gross\ income}{Cap\ Rate\ 1} = \frac{Gross\ income\ (1 - vacancy\ rate)(1 - expense\ \&\ reserve\ rate)}{Cap\ Rate\ 2}$$

Reorganizing and simplifying this expression indicates the mathematical relationship between *Cap Rate 1* and *Cap Rate 2*.

$Cap\ Rate\ 1 = Cap\ Rate\ 2(1 - vacancy\ rate)(1 - expense\ \&\ reserve\ rate)$ The REPRESENTATIVE-2 FOR PETITIONER appraisal concludes a capitalization rate (Cap Rate 2) of %%% with %%% for vacancy and %%% for expenses and reserves. Using the second relationship above, the REPRESENTATIVE-2 FOR PETITIONER analysis is the mathematical equivalent of using a %%% capitalization rate (Cap Rate 1) with %%% vacancy and %%% for expenses and reserves. The County concludes a capitalization rate of %%% (Cap Rate 1), which equates to a capitalization rate of %%% (Cap Rate 2) if REPRESENTATIVE-2 FOR PETITIONER's assumptions regarding vacancy, expenses and reserves are used. There is a significant difference in the two capitalization rates used, but it is not due to the assumptions about vacancy and expense ratios.

Both parties presented capitalization rate comparables developed using their respective approaches. It is worth noting that comparable S-1 in the REPRESENTATIVE-2 FOR PETITIONER appraisal is the same as the third capitalization rate comparable in the County appraisal. This overlap illustrates the mathematical relationship just discussed. In the REPRESENTATIVE-2 FOR PETITIONER report, the capitalization rate for comparable S-1 is reported to be 4.83%, whereas the County appraisal lists the capitalization rate for this sale as %%%. If the County reported value is adjusted assuming %%% vacancy and %%% expenses and reserves, as REPRESENTATIVE-2 FOR PETITIONER assumes, the result is the %%% REPRESENTATIVE-2 FOR PETITIONER reports. Ultimately as noted in the Findings of Fact above, based on the capitalization rate comparables the Commission concludes the

appropriate capitalization rate to be %%% using the County's method of vacancy/expenses and reserves.

Another factor that significantly contributed to the value differences in the income approaches was the parties' different lease rates. The REPRESENTATIVE-2 FOR PETITIONER Appraisal had concluded a lease rate of \$\$\$\$ per square foot, while the County's appraisal concluded a rate of \$\$\$\$ per square foot. Both appraisals determined their respective lease rates on lease comparables and both parties had various criticisms of the other's lease comparables. In combination, the parties presented data for nine lease comparables.²⁹ The tenants in eight of the properties are part of larger chains, however the size of the chains differs sharply. The appraisals included two national chains comparable in size to TAXPAYER, which were COMPANY-1 and COMPANY-4. One of the County's five lease comparables was a COMPANY-1, the other four were from somewhat smaller chains, COMPANY-10, COMPANY-9, and COMPANY-11. The REPRESENTATIVE-2 FOR PETITIONER Appraisal had considered the same COMPANY-1 property as a lease comparable, and an COMPANY-4 property as a comparable. The other three appear to be much smaller chains: COMPANY-2, COMPANY-5, and a standalone store, COMPANY-3. The highest actual lease rate from the REPRESENTATIVE-2 FOR PETITIONER lease comparables was for the COMPANY-3 property, not one of the Utah or national chains. The County's actual lease rate for the COMPANY-11 was higher than the actual lease rate for the COMPANY-1. While the parties disputed whether national and regional tenants would present different risk profiles and, therefore, pay different rents and differ in their required capitalization rates, the evidence presented does not appear to support meaningful distinctions in lease payments.

The two appraisers differed in their treatment of the COMPANY-1 lease comparable that was common to both appraisals. REPRESENTATIVE-2 FOR PETITIONER reported a slightly lower lease rate for this property of \$\$\$\$\$, while the County reported a lease rate of \$\$\$\$\$ for this same property. Both appraisers also differed in the net adjustments for this comparable, with REPRESENTATIVE-2 FOR PETITIONER concluding an adjusted rent of \$\$\$\$\$ and RESPONDENT an adjusted rent of \$\$\$\$\$. One difference was that RESPONDENT had made a %%% location adjustment, noting that this COMPANY-1 was not located in a community shopping area while REPRESENTATIVE-2 FOR PETITIONER had made no location adjustment. RESPONDENT had also made a parking adjustment indicating that the COMPANY-1 property had only fair parking. REPRESENTATIVE-2 FOR PETITIONER did not adjust for parking. All of the comparables presented by the County were seven to eleven years newer than the

²⁹ Comparable #1 in the REPRESENTATIVE-2 FOR PETITIONER appraisal is the same property as comparable #2 in the County appraisal.

subject. The County did make downward adjustments in rents of %%% to %%% based on age. Whether this adjustment was sufficient was disputed by REPRESENTATIVE-2 FOR PETITIONER.

As noted in the Findings, one of the comparables presented by the County (Comparable #1) appears to be an outlier with adjusted rents \$\$\$\$ higher than any other property presented by either party. There is good cause to give this comparable no weight. It is also clear that the locations of REPRESENTATIVE-2 FOR PETITIONER's comparables 3, 4 and 5 are arguably inferior to the subject, not being closely tied to a significant retail center. The same is true for the County's comparable 3. Taken as a group, the best comparables presented by both parties support an indicated adjusted rent of between \$\$\$\$ and \$\$\$\$ per square foot. At the indicated capitalization rate of %%% with %%% vacancy and %%% expenses and reserves, this range of rents results in an income indicator of value between \$\$\$\$ and \$\$\$\$, which supports the current assessed value.

II. Sales Comparison Approach.

As noted in the Findings of Fact above the comparable sales offered in this matter support a value higher than that set by the County Board of Equalization. One issue that the Taxpayer had argued in this appeal was that to determine a fee simple value for the subject, a %%% adjustment should have been made to each sales comparable that had sold with a lease in place. This argument ultimately became moot as noted in the findings, but some further discussion is warranted. REPRESENTATIVE-2 FOR PETITIONER noted that his assignment was to value the fee simple ownership interest in the subject. He argued that doing so required adjustments in the comparable properties' sales prices for the four of five comparables he used which were encumbered by an existing lease.

As noted previously, the Taxpayer presented a letter dated March 31, 2020, from NAME-2, 2020 President of the Appraisal Institute,³⁰ which noted disagreement with comments published by the IAAO in an article titled "Setting the Record Straight on Fee Simple."³¹ The Taxpayer argued that the -%% adjustment for property rights made in the REPRESENTATIVE-2 FOR PETITIONER appraisal is supported by this guidance from the Appraisal Institute. The County argued that when a property is tenant occupied, adjustments are needed in the sales price only if there is evidence that the current lease is either above or below current market rents. While, as noted previously, the County's position is consistent with prior Tax Commission decisions and the IAAO white paper, it appears to be contrary to the views expressed in the Appraisal Institute letter. To quote further from the letter:

TARE, at p. 390 (for one example) advises "The basic elements of comparison that should be considered in sales comparison analysis are as follows: real property rights conveyed: fee simple estate, leased fee interest, leasehold interest..." An adjustment for

³⁰ Petitioner's Exhibit 2.

³¹ Respondent's Exhibit 6.

property rights conveyed is included in nearly all, if not all adjustment grids and discussion of adjustments in presentations of sales comparison approaches to value.

The Commission acknowledges that best appraisal practice involves the identification of the property rights being valued. However, the Utah Constitution and Utah Code Ann. §59-2-103 provide that non-exempt tangible property in the state is to be taxed based on its “fair market value.” Utah Code Ann. §59-2-102(13) defines fair market value as the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion and both having reasonable knowledge of the relevant facts. Thus, fair market value under Utah law is a value in exchange concept. The fair market value of the economic property interest may or may not be divided between a leased fee interest and a leasehold interest, but both are subject to property tax. If the sale of a property involves the transfer of a leased fee interest, some adjustment in observed sales price may be required to arrive at the fair market value of the interest being transferred. *The Appraisal of Real Estate* states:

The lessor’s interest in a property is considered a leased fee interest regardless of the duration of the lease, the specified rent, the parties to the lease, or any of the terms in the lease contract. A leased property, even one with rent that is consistent with market rent, is appraised as a leased fee interest, not as a fee simple interest. Even if the rent or the lease terms are not consistent with market terms, the leased fee interest must be given special consideration and is appraised as a leased fee interest.³²

After noting that income capitalization is the preferred approach in valuing a leased fee interest,

The Appraisal of Real Estate continues:

The sales comparison approach can be used to value leased fee interests, but this analysis is only really meaningful when the sales being used as comparables are similar leased fee interests. If not, adjustments for real property rights conveyed must be considered.³³

Income-producing real estate is often subject to an existing lease or leases that encumber the title. By definition, a property that is subject to one or more leases is no longer a fee simple estate. Thus, if the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate of another property, the sale can only be used if reasonable and supportable market adjustments for the difference in rights can be made.³⁴

Above or below market contract rents are one adjustment that may be called for. While contract rents in relation to market rents may indicate either a positive or negative value for the leasehold interest, “[t]he negative or positive leasehold interests will cease if contract rents and/or terms equal market rent and/or terms any time during the lease or when the lease expires.”³⁵ As noted in NAME-2 letter and in the sources just reviewed, using sales comparables with in-place leases to value a fee simple interest requires adjustments for the presence of those leases.

³² *The Appraisal of Real Estate, 12th ed.*, page 81.

³³ *The Appraisal of Real Estate, 12th ed.*, page 82.

³⁴ *The Appraisal of Real Estate, 12th ed.*, page 431.

³⁵ *The Appraisal of Real Estate, 12th ed.*, page 82.

Both appraisers in this case are valuing the fee simple interest in the subject property. The REPRESENTATIVE-2 FOR PETITIONER Appraisal makes a -%% adjustment in each of the four comparable sales with existing leases, without analysis of whether the leases were below or above market leases. The County's appraiser considers only whether the rents in the comparable sales properties are above or below market, and makes no other adjustment for a leased fee interest. In his rebuttal, RESPONDENT argued that the mere existence of a leasehold interest is not sufficient grounds to warrant a quantitative adjustment for differences in property rights unless it can be shown that the rents and/or terms of the lease differ from current market rents and/or terms. This conclusion is inconsistent with the guidance provided by the Appraisal Institute through their official publication and communication. The REPRESENTATIVE-2 FOR PETITIONER appraisal's % adjustment for property rights is consistent with Appraisal Institute guidance. The County challenged the need for the adjustment but did not challenge the magnitude. However, had the Commission made the % adjustment for property rights in this case for the sales comparables that the Commission concluded best indicated a value for the subject and were sold with leases in place, it would still not support a value lower than the value set for the subject property by the County Board of Equalization.

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. There was no valuation reduction in the three years prior to the tax years at issue in this appeal, so the provisions of Utah Code §59-2-301.4 are not applicable in this appeal. This was not a qualified real property pursuant to Utah Code §59-2-109 because the value of the subject property was not reduced on appeal for 2018. In this proceeding, the Taxpayer was requesting a reduction in value while the County was asking that the value set by the County Board of Equalization be upheld. As noted above, for the Taxpayer to prevail in this case, the Taxpayer needed to demonstrate that the value set by the County Board of Equalization contained error and provide the Commission with a sound evidentiary basis

for reducing the value to the amount proposed by the party. As noted in the Findings of Fact, the Taxpayer has failed to meet this burden and has not established error in the value set by the County Board of Equalization.

4. The REPRESENTATIVE-2 FOR PETITIONER Appraisal had subtracted a %%% adjustment from each of its sales comparables that had sold with a lease in place, without any analysis as to whether the lease was an above market lease, a below market lease or one at market rates. The Tax Commission has previously addressed arguments regarding sales comparables that were sold with a lease in place and has concluded that some analysis is needed as to whether the leases were sold above market before an adjustment should be made or the sale not given any weight. In *Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1026 (12/17/2018)*³⁶ the Commission held, “. . . it is not sufficient to show that a property had sold with a lease in place, it must also be shown that the lease was long term and above market. The Property Owner in this appeal has shown that most of the County’s sales comparables had sold with leases in place, but not that they were above market leases.” From the information offered at this hearing an adjustment may be warranted for the property rights sold, regardless of whether the lease was below or above market. For certain property types, like fast food restaurants, it is difficult to find comparable properties that sold without a lease in place, so leased fee sales may need to be considered as sales comparables. When this occurs an appraisal adjustment for the property rights conveyed should be considered and applied.

5. There was an argument made by the Taxpayer at this hearing that the County had started valuing fast food properties in 2018 based on a “new and novel” valuation approach, which was based on an income approach that used %%% for vacancy and %%% expenses and reserves. The Taxpayer also argued there was a significant value increase for the subject property because of this approach. The County had countered that the fast food properties had been undervalued for several years and beginning in 2018 the County had tried to get them back to fair market value. After reviewing the information

³⁶ See also *Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-319*, pg. 10 (June 13, 2016) in which the Commission held:

It was argued by the Property Owner, and not refuted by the County, that comparable 4 had sold with a long term above market lease in place. Therefore, the lessee’s interest is diminished; the lessor’s or owner’s interest is increased. The result may be a purchase price above the fee simple value as argued by the Property Owner. If a party shows that the fee simple value is lower than a leased fee sale, the Commission should take that into consideration on how much weight to give the comparable sale. In this case it was not refuted this was an above market sale and the Commission gives comparable 4 little weight. However, a high lease rate is not necessarily suggestive of an above market lease because a good quality, long term tenant may pay a higher rate if they are leasing a better quality building in a prime location and this type of tenant would have leverage to negotiate favorable terms.

submitted in this matter, the Tax Commission does not find the approach used by the County to be inappropriate. Capitalizing income in an income approach without deducting for vacancy or expenses is appropriate where the capitalization rate had been developed in a consistent manner. As noted in the Findings of Fact, for fast food properties the industry is reporting the capitalization rates based on% vacancy and% expenses and reserves. This does, mathematically, result in a higher capitalization rate, all other factors being equal. Therefore, it would be inappropriate to subtract vacancy and expenses in an income approach if the capitalization rate was developed without making the same adjustment. It would not have been inappropriate for the County to continue to subtract vacancy and expenses in its income approach, but the County would then have had to adjust its capitalization rate so that it would be consistent. The REPRESENTATIVE-2 FOR PETITIONER Appraisal had made this adjustment to its capitalization rate. The key factor is that when valuing a property in a premium location for fast food, like the location of the subject property, and of a good grade like the subject property, lease and sales comparables need to be other properties with as premium a location and similar grade. These properties are leasing and selling in COUNTY and are supporting the value set by the County Board of Equalization.

The Taxpayer has not shown error in the current value set by the County for the subject property and on that basis, the Tax Commission should sustain the value as set by the County Board of Equalization for the tax year at issue.



Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of January 1, 2019, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2021.

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.