

APPEAL # 22-1153, 22-1154, 22-1155, 22-778, & 22-779

TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED

TAX YEAR: 2021

DATE SIGNED: 08/29/2023

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal Nos. 22-1153, 22-1154, 22-1155, 22-778, & 22-779</p> <p>Parcel No: #####, #####, #####, #####, #####, #####, #####, & #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2021</p> <p>Judge: Halverson</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner
Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Property Owner's Representative
For Respondent: RESPONDENT'S REP-1, Commercial Appraiser, COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 14, 2023, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Tax Commission at the Formal Hearing is the fair market value of Parcel Nos. #####, #####, #####, #####, #####, #####, #####, and ##### for the 2021 tax year, with a lien date of January 1, 2021. The subject parcels are owned by PROPERTY OWNER. (“Petitioner” or “Property Owner”).

2. The subject parcels’ original assessed values, Board of Equalization values, Property Owner’s requested values, and County’s requested values for the 2021 tax year are as follows: REDACTED TABLE

3. The LOCATION-1 store, Parcel No. #####, is a ##### acre parcel improved with a discount warehouse building that is operated as a FRANCHISE-1 store located at ADDRESS-1. The discount warehouse building was constructed in DATE and has ##### rentable square feet. The County classifies the store’s effective age as DATE and rental class as A. The store’s zoning designation is SD. This store also has a garden center that the County valued separately. This store is the subject of Appeal No. 22-1153.¹

4. The LOCATION-2 store, Parcel No. #####, is an ##### acre parcel improved with a discount warehouse building that is operated as a FRANCHISE-1 store located at ADDRESS-2. The discount warehouse building was constructed in DATE and has ##### rentable square feet. The County classifies the subject property’s effective age as DATE and rental class as A. The store’s zoning designation is CBD. This store also has a garden center that the County valued separately. This store is the subject of Appeal No. 22-1154.²

5. The LOCATION-3 store, Parcel No. #####, is a parcel improved with a discount warehouse building that is operated as a FRANCHISE-1 store located at ADDRESS-3. The discount warehouse building was constructed in DATE and has ##### rentable square feet. The County classifies the subject property’s effective age as DATE and rental class as B. Parcel Nos. ##### and ##### are associated parcels that are part of an economic unit with Parcel No. #####.

¹ Respondent’s Exhibit R-1, pgs. 1,3.

² Respondent’s Exhibit R-2, pgs. 1,3.

The acreage of the economic unit totals ##### acres. The store's zoning designation is C-2. This store is the subject of Appeal No. 22-1155.³

6. The LOCATION-4 store, Parcel No. #####, is a parcel improved with a discount warehouse building that is operated as a FRANCHISE-1 store located at ADDRESS-4. The discount warehouse building was constructed in DATE and has ##### rentable square feet. The County classifies the subject property's effective age as DATE and rental class as A. Parcel No. ##### is an associated parcel that is part of an economic unit with Parcel No. #####. The acreage of the economic unit totals ##### acres. The store's zoning designation is SC-2. This store also has a garden center that the County valued separately. This store is the subject of Appeal No. 22-778.⁴

7. The LOCATION-5 store, Parcel No. #####, is a ##### acre parcel improved with a discount warehouse that is operated as a FRANCHISE-1 store located at ADDRESS-5. The discount warehouse building was constructed in DATE and has ##### rentable square feet. The County classifies the subject property's effective age as ##### and rental class as A. The subject property's zoning designation is C-R. The subject property has excess land associated with the parcel that the County valued separately. The subject property also has a garden center that the County valued separately. This store is the subject of Appeal No. 22-779.⁵

8. The assessed values of all eight of the subject parcels at issue in this appeal were not reduced on appeal for the 2018, 2019, or 2020 tax year⁶.

9. The Property Owner's representative submitted an income approach to value analysis to support the Property Owner's requested value of \$\$\$\$ for the LOCATION-1 store. The Property Owner's pro forma income approach was calculated as follows⁷:

REDACTED TABLE

10. The Property Owner's representative submitted an income approach to value analysis to support the Property Owner's requested value of \$\$\$\$ for the LOCATION-2 store. The Property Owner's pro forma income approach was calculated as follows⁸:

REDACTED TABLE

³ Respondent's Exhibit R-3, pgs. 1, 3.

⁴ Respondent's Exhibit R-4, pgs. 1,3.

⁵ Respondent's Exhibit R-5, pgs. 1-3.

⁶ Respondent's Exhibit R-1, pg. 1, Exhibit R-2, pg. 1, Exhibit R-3, pg. 1, Exhibit R-4, pg. 1, and Exhibit R-5, pg. 1.

⁷ Petitioner's Exhibit P-1, pg. 2.

⁸ Petitioner's Exhibit P-2, pg. 2.

11. The Property Owner’s representative submitted an income approach to value analysis to support the Property Owner’s combined requested value of \$\$\$\$\$ for the LOCATION-3 store. The Property Owner’s income approach was calculated as follows⁹:

REDACTED TABLE

12. The Property Owner’s representative submitted an income approach to value analysis to support the Property Owner’s combined requested value of \$\$\$\$\$ for the LOCATION-4 store. The Property Owner’s pro forma income approach was calculated as follows¹⁰:

REDACTED TABLE

13. The Property Owner’s representative submitted an income approach to value analysis to support the Property Owner’s requested value of \$\$\$\$\$ for the LOCATION-5 store. The Property Owner’s pro forma income approach was calculated as follows¹¹:

REDACTED TABLE

14. The Property Owner’s representative concluded a market lease rate of \$\$\$\$\$ for all five of the FRANCHISE-1 stores at issue in this appeal and submitted the following 31 national lease comparables to support that concluded market lease rate¹²:

REDACTED TABLE

15. The Property Owner’s representative submitted national lease comparables with rents that ranged from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot and that had an average starting rent of \$\$\$\$\$ per square foot and a median starting rent of \$\$\$\$\$ per square foot¹³. The Property Owner’s submitted information highlighted lease comparable number 8, which is the only submitted national lease comparable that is located in Utah, and noted that the starting rent for that comparable was \$\$\$\$\$ per square foot¹⁴. The Property Owner’s representative submitted the Costar Lease Comps Details report for that lease comparable and also submitted an article titled “REDACTED ARTICLE” published by ABC4 Utah, which provided details regarding the new tenant for lease comparable number 8¹⁵.

⁹ Petitioner’s Exhibit P-3, pg. 2.

¹⁰ Petitioner’s Exhibit P-4, pg. 2.

¹¹ Petitioner’s Exhibit P-5, pg. 2.

¹² Petitioner’s Exhibits P-1, pgs. 16-26, Exhibit P-2, pgs. 16-26, Exhibit P-3, pgs. 19-29, Exhibit P-4, pgs. 17-27, and Exhibit P-5, pgs. 16-26.

¹³ Petitioner’s Exhibit P-1, pgs. 11-26, Exhibit P-2, pgs. 11-26, Exhibit P-3, pgs. 14-29, Exhibit P-4, pg. 12-27, and Exhibit P-5, pg. 11-26.

¹⁴ Petitioner’s Exhibit P-1, pg. 18, Exhibit P-2, pg. 18, Exhibit P-3, pg. 21, Exhibit P-4, pg. 19, and Exhibit P-5, pg. 18.

¹⁵ Petitioner’s Exhibit P-1, pgs. 15, 27-29, Exhibit P-2, pgs. 15, 27-29, Exhibit P-3, pgs. 18, 30-32, Exhibit P-4, pgs. 28-30, and Exhibit P-5, pgs. 15, 27-29.

16. The Property Owner’s representative also submitted an Ernst & Young Property Map & List Report that included the following five comparable leases for properties located in Utah¹⁶:

REDACTED TABLE

17. The Property Owner’s Property Map & List Report indicated that the average size of the five lease comparables was ##### square feet, the average vacancy rate was %%%%, and the average asking lease rate was \$\$\$\$\$ per square foot. The lease rates of the lease comparables in the report ranged from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot. The Property Owner’s submitted information also noted that lease comparable two was listed for sale and the asking price was \$\$\$\$\$ per square foot and lease comparable three was listed for sale and the asking price was \$\$\$\$\$ per square foot.¹⁷

18. The Property Owner’s representative used a %%%% vacancy rate in the Property Owner’s submitted income approach to value analyses. The Property Owner’s representative submitted the Utah Big Box Retail Vacancy Rate Forecast Report published by Ernst & Young to support that vacancy rate, which reported quarterly vacancy rates from the fourth quarter of 2016 through the third quarter of 2023 and reported a Utah big box retail vacancy rate of %%%% for the fourth quarter of 2020¹⁸.

19. The Property Owner’s representative used an amount calculated as %%%% of effective gross income for management fees and an amount calculated as %%%% of effective gross income for reserves in the Property Owner’s submitted income approach to value analyses for all five stores at issue in this appeal. The Property Owner’s representative submitted a RealRates.com Investor Survey for the 4th Quarter of 2020 to support its determined reserve amount, which reported the typical reserve amount for retail reserve requirements as \$\$\$\$\$ per square foot¹⁹.

20. The Property Owner’s representative used a capitalization rate of %%%% in the Property Owner’s submitted income approach to value analyses for all five stores at issue in this appeal. The Property Owner’s representative submitted a RealRates.com Investor Survey for

¹⁶ Petitioner’s Exhibit P-1, pgs. 30-43, Exhibit P-2, pgs. 30-43, Exhibit P-3, pgs. 33-46, Exhibit P-4, pgs. 31-44, and Exhibit P-5, pgs. 30-43.

¹⁷ Petitioner’s Exhibit P-1, pgs. 30-31, Exhibit P-2, pgs. 30-31, Exhibit P-3, pgs. 33-34, Exhibit P-4, pgs. 31-32, and Exhibit P-5, pgs. 30-31.

¹⁸ Petitioner’s Exhibit P-1, pgs. 44-47, Exhibit P-2, pgs. 44-47, Exhibit P-3, pgs. 47-50, Exhibit P-4, pgs. 45-48, and Exhibit P-5, pgs. 44-47.

¹⁹ Petitioner’s Exhibit P-1, pgs. 48-49, Exhibit P-2, pgs. 48-49, Exhibit P-3, pgs. 51-52, Exhibit P-4, pgs. 49-50, and Exhibit P-5, pgs. 48-49.

the 4th Quarter of 2020 which reported the band of investment rate at %%%%²⁰. The Property Owner’s representative also submitted the 2Q 2020 Real Estate Report of Regional Investment Criteria for Second-Tier Investment Properties published by RERC to further support the capitalization rate, which reported an average going-in capitalization rate of %%%% with a range of %%%% to %%%% for the West²¹.

21. The Property Owner’s representative submitted the following four big box retail sales comparables to further support the Property Owner’s requested value of \$\$\$\$ per square foot for each of the stores at issue in this appeal²²:

REDACTED TABLE

22. The sales prices per square foot of the Property Owner’s submitted comparable sales ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot with an average sales price per square foot of \$\$\$\$²³.

23. The Property Owner’s representative also submitted the 2021 Midyear Retail Utah Market Report published by Newmark, which reported the achieved average owner-user sales price per square foot for properties over ##### square feet as \$\$\$\$ per square foot in 2020, to further support his requested value of \$\$\$\$ per square foot²⁴.

24. The Property Owner’s representative stated at the Formal Hearing that the subject properties are owner-user sites that should be viewed objectively based on the physical characteristics of the properties, which includes the land and the improvements, and the legal rights associated with owning that property, including the right to use the property and any leases that are associated with or attached to the property. He argued that this is the way a future owner or potential owner would view the subject properties in terms of valuing each property, either for their own use or for investment purposes.

25. The Property Owner’s representative stated that one of the main concerns that he has with the County’s assessment of the subject properties is that the County does not distinguish between owner-user sites and investment sites. He argued that the County takes the position that every property is investment grade and that is how the properties are valued, irrespective of any

²⁰ Petitioner’s Exhibit P-1, pg. 50, Exhibit P-2, pg. 50, Exhibit P-3, pg. 53, Exhibit P-4, pg. 51, and Exhibit P-5, pg. 50.

²¹ The Commission notes that the report indicated that “[s]econd-tier investment properties are defined as aging, former first-tier properties, in good to average locations.” See Petitioner’s Exhibit P-1, pgs. 51-52, Exhibit P-2, pg. 51-52, Exhibit P-3, pgs. 54-55, Exhibit P-4, pgs. 52-53, and Exhibit P-5, pgs. 51-52.

²² Petitioner’s Exhibit P-1, pgs. 53-63, Exhibit P-2, pg. 53-63, Exhibit P-3, pgs. 56-66, Exhibit P-4, pgs. 54-64, and Exhibit P-5, pg. 53-63.

²³ Petitioner’s Exhibit P-1, pg. 53, Exhibit P-2, pg. 53, Exhibit P-3, pg. 56, Exhibit P-4, pg. 54, and Exhibit P-5, pg. 53.

²⁴ Petitioner’s Exhibit P-1, pgs. 8-10, Exhibit P-2, pgs. 8-10, Exhibit P-3, pgs. 11-13, Exhibit P-4, pgs. 9-11, and Exhibit P-5, pgs. 8-10.

potential costs that would be associated with converting the owner-user sites to investment grade sites. He argued that from the perspective of various real estate professionals, whether it is a lender, an investor, or an appraiser, they are going to look at the costs of leasing the site. He acknowledged that the County has to make assumptions to value the properties within the County but argued that attempts should be made to consider and incorporate those factors in the valuation of properties. The Property Owner's representative argued that the County should factor in the lease up costs of converting an owner-user site to an investment property, including broker commissions, legal fees, tenant improvements, and free rent. He argued that none of those costs are factored in when valuing the owner-user sites.

26. The Property Owner's representative also argued that another main difference in the valuation of owner-user sites as compared to investment sites is that the risks associated with taking an owner-user site and converting it to an investment grade site are not factored into the valuation of the property. He argued that the capitalization rates used by the County in valuing the owner-user sites are the same as those used to value the investment sites. He argued that the County's valuations do not factor in the risks associated with converting an owner-user site to an investment site. He argued that, if an investor potentially wanted to purchase the site and lease it back to the existing occupant or find another tenant for the space, the risk associated with that transaction should be factored into the capitalization rate and asserted that risk is not currently factored in the County's valuation of a property. He noted that there is no difference between the submissions provided by the Assessor for the investment sites and the owner-user sites.

27. The Property Owner's representative stated that another concern he has is that, in valuing the properties using all the different valuation approaches including an income approach to value analysis, a sales comparison approach to value analysis, and a cost approach to value analysis, the cost approach to value analysis would more accurately represent the actual value to an owner-user. He argued that an owner-user would not pay an investment grade price that is higher than the cost to build a comparable site. He argued that this is the perspective that should be used when valuing the subject properties. He argued that an owner-user site should be valued based on what an alternative owner-user would be willing to pay.

28. The Property Owner's representative argued that the County's valuation of the subject properties do not consider owner-users, costs, or reproduction. He argued that the County has taken the most aggressive position that the subject properties would be investment grade properties, even though there are no leases that are signed on these owner-user sites. He argued that if the County's position is that the subject property should be valued as an investment grade property, then he argued the risks and costs associated with converting the subject into an

investment grade property should be factored into the valuation of the subject property. He argued that it is clear based on the County's submissions that the County has not made any distinction between owner-user sites and the ground lease sites. He argued that the potential conversion cost risks should be born in a higher capitalization rate, which should be 150 to 200 basis points higher than the capitalization rate used for an investment grade site. He argued that the lease up costs to actually lease up the space should also be included in the valuation of owner-user sites, which he indicated would include legal fees, tenant improvement costs, brokerage commissions that are typically %%% to %%% of the leased rents, and free rents where warranted.

29. The Property Owner's representative noted that his submitted income approach to value analysis used a lease rate of \$\$\$\$ per square foot, a market vacancy rate of %%%, %%% of effective gross income for operating expenses, and an overall capitalization rate of %%%.

30. The Property Owner's representative submitted an article titled "As Retail Struggles, What Happens to Empty Big-Box Spaces in Malls?" written by Jyoti Yadav and published by Trepp Talk on October 28, 2020 that discussed the challenges that the retail commercial property sector of the economy is experiencing²⁵.

31. The Property Owner's representative submitted the 2021 Midyear Retail Utah Market Report published by Newmark²⁶. He noted that, in that report, the achieved average owner-user sales price per square foot for properties over ##### square feet was reported as \$\$\$\$ per square foot in 2020²⁷. He stated that the subject properties are owner-user sites and are much larger and indicated that with economies of scale, typically a larger site has a lower price per square foot. He stated that Newmark reports a price per square foot of \$\$\$\$ for owner-user sales and noted that the County has valued the subject properties between \$\$\$\$ and \$\$\$\$ per square foot, while the Property Owner is requesting a value of \$\$\$\$ per square foot for each store. He argued that this information demonstrates that there is a distinction between owner-user sites and investment grade properties.

32. The Property Owner's representative argued that the distinction between owner-user sites and investment grade sites is an important distinction because, with investment grade sites, a tenant has made a legally binding agreement to make lease payments regardless of whether they use the property or whether they make a profit. He argued that this important

²⁵ Petitioner's Exhibit P-1, pgs. 5-7, Exhibit P-2, pgs. 5-7, Exhibit P-3, pgs. 8-10, Exhibit P-4, pgs. 6-8, and Exhibit P-5, pgs. 5-7.

²⁶ Petitioner's Exhibit P-1, pgs. 8-10, Exhibit P-2, pgs. 8-10, Exhibit P-3, pgs. 11-13, Exhibit P-4, pgs. 9-11, and Exhibit P-5, pgs. 8-10.

²⁷ *Id.*

distinction is ignored in the valuation of the subject properties. He argued that other jurisdictions make a distinction between owned sites and leased sites. He argued that it is clear that the costs and risks associated with converting owner-user sites to investment grade sites have not been factored in the valuations of the subject properties. He argued that, specifically in the retail market in the Salt Lake region, there is a major difference in the price between the owner-user sites and investment grade sites. He argued that this is a point that the County has not addressed.

33. The Property Owner's representative acknowledged that his income approach to value analyses for each of the stores at issue in this appeal did not include specific line items for the lease up expenses, but he asserted that those costs and risk factors are indirectly factored in the rental rate that was used in the income approaches and also the capitalization rate used in the income approach to value analyses. He argued that the County should directly address those costs and risk factors when they are considering how they value properties.

34. The Property Owner's representative stated that his submitted comparable sales also indicate a significantly lower value. He acknowledged that some of the comparable sales were vacant spaces where the value is much lower. He stated that the Property Owner is not asking for the prices included in the Property Owner's submitted comparable sales with sales prices in the range of \$\$\$\$\$ to \$\$\$\$\$ per square foot. He noted that the prices per square foot of the Property Owner's submitted comparable sales range from \$\$\$\$\$ to \$\$\$\$\$ per square foot and noted that the comparable sales are all larger retail spaces. He argued that the comparable sales are all in line with the Property Owner's requested values.

35. The Property Owner's representative stated that the comparable sales are included to demonstrate that there is a distinction between owner-user sites and investment grade properties. He noted that there is a broad range of the sale prices per square foot of the comparable sales. He indicated that the comparable sales on the lower end of the range are vacant sites with no leases associated with them and on the high end of the range include properties that have long term leases, high rents, and low capitalization rates. He argued that the County values the subject properties assuming long term leases, high rents, and a low capitalization rate and asserted that the County's perspective is not in line with the facts. He argued that there is no lease in place for the properties at issue in this appeal.

36. The Property Owner's representative argued that retail properties are unique in the distinction between owner-user sites and investment grade sites because there is a ready market for other types of properties, such as apartments or industrial properties. He argued that, for other types of properties, most investors do not care who the tenants are because there is a ready market of potential users, as long as the vacancy rate is not too high.

37. The Property Owner's representative asserted that the subject properties are specialized sites because FRANCHISE-1 is occupying the properties. He argued that the subject properties were built specifically for FRANCHISE-1's use and are not traditional retail properties. He stated they are discount warehouse spaces and argued that even the most comparable potential user for the sites, which would be a FRANCHISE-2, has a different model than FRANCHISE-1. He argued that FRANCHISE-2 stores are much larger, they are typically located on a much larger site, and are farther out from the main shopping areas. He also noted that they are not as numerous as FRANCHISE-1 stores. He argued that FRANCHISE-1 stores have a different model with smaller stores that are located on smaller sites. He indicated that they are also generally closer to other FRANCHISE-1 stores, with another FRANCHISE-1 store being located only three to five miles away. He argued that the only user for the potential sites is FRANCHISE-1 and it would require a tear down for an alternative user.

38. The Property Owner's representative noted that a capitalization rate of %%% was used in their submitted income approach to value analyses although he asserted that the Realty Rates publication supports a capitalization rate that is closer to %%%.

39. The County's representative stated at the Formal Hearing that FRANCHISE-1 stores are typically on a land lease where they lease the land and build the improvements on the leased land. He indicated that the subject stores were built as FRANCHISE-1 stores and are currently being used as FRANCHISE-1 stores.

40. The County's representative submitted an income approach to value analysis for the LOCATION-1 store to support the store's original assessed/Board of Equalization value of \$\$\$\$\$. The County's income approach was calculated as follows²⁸:

REDACTED TABLE

41. The County's representative noted that one of the differences between the Property Owner's income approach and the County's income approach for this store is the valuation of the garden center. He argued that there is some value in the garden center. He stated that the garden center is an outdoor fenced area where plants and other gardening supplies are sold. He indicated that the County has assigned an extra value to that portion of the store. He noted that the owner of a former FRANCHISE-2 on ADDRESS-6 converted the outdoor area of that store into a pickleball club recently to demonstrate that the outdoor garden center area has use and value.

²⁸ Respondent's Exhibit R-1, pg. 3.

42. The County's representative submitted an income approach to value analysis for the LOCATION-2 store to support that store's original assessed/Board of Equalization value of \$\$\$\$\$. The County's income approach was calculated as follows²⁹:

REDACTED TABLE

43. The County's representative noted that the land for the LOCATION-2 store sold in DATE for \$\$\$\$\$. He noted that the Property Owner is requesting a value that is lower than the amount that they purchased the land for in DATE. He argued that it does not make sense to assert that the entire FRANCHISE-1 store is worth less now than it was in DATE after the market has appreciated for the last 20 years and with it now having a building on it. He argued that all of the factors combined demonstrate that the Property Owner is not requesting a value that is the fair market value of the subject property. However, the Property Owner's representative stated that the sale of the subject property's land was over 20 years ago and whatever price was paid for the purchase of that property was for the Property Owner's particular use and was purchased for business reasons and not based on market dynamics. The Property Owner's representative argued that the value in use is different from the market value for the Property Owner.

44. The County's representative submitted an income approach to value analysis for the LOCATION-3 store to support that store's original assessed/Board of Equalization value of \$\$\$\$\$. The County's income approach was calculated as follows³⁰:

REDACTED TABLE

45. The County's representative noted that the LOCATION-3 store has associated parcels and the value of those associated parcels is subtracted from the total value determined in the income approach to value analysis for the LOCATION-3 store. He noted that all three parcels are treated as one economic unit and the value of the two associated land parcels are subtracted from the value of the main parcel.

46. The County's representative submitted an income approach to value analysis for the LOCATION-4 store to support that store's original assessed/Board of Equalization value of \$\$\$\$\$. The County's income approach was calculated as follows³¹:

REDACTED TABLE

47. The County's representative submitted an income approach to value analysis for the LOCATION-5 store to support that store's original assessed/Board of Equalization value of \$\$\$\$\$. The County's income approach was calculated as follows³²:

²⁹ Respondent's Exhibit R-2, pg. 3.

³⁰ Respondent's Exhibit R-3, pg. 3.

³¹ Respondent's Exhibit R-4, pg. 3.

³² Respondent's Exhibit R-5, pg. 3.

REDACTED TABLE

48. The County used a market lease rate of \$\$\$\$ per square foot in their submitted income approach to value analyses for the LOCATION-1, LOCATION-2, and LOCATION-4 stores, a market lease rate of \$\$\$\$ per square foot in their submitted income approach to value analysis for the LOCATION-3 Store, and a market lease rate of \$\$\$\$ per square foot in their submitted income approach to value analysis for the LOCATION-5 store. The County submitted the following eight comparable leases to support their determined market lease rates for the five FRANCHISE-1 stores at issue in this appeal³³:

REDACTED TABLE

49. The County's representative noted that many of the County's submitted comparable leases are second generation users and noted that even though many of the lease comparables are second generation users, the average lease rate is \$\$\$\$ per square foot and the median is \$\$\$\$ per square foot. He indicated that a lease rate of between \$\$\$\$ and \$\$\$\$ per square foot was used to value all of the FRANCHISE-1 and FRANCHISE-2 stores assessed by the County. He indicated that the applicable market lease rates were determined considering factors such as when the store was built and where the store is located.

50. The County's representative noted that the Property Owner's representative used a \$\$\$\$ per square foot lease rate in the Property Owner's submitted income approach to value analyses. The County's representative noted that the FRANCHISE-1 that is located in the ADDRESS-7 is on a land lease and indicated that the land lease is for \$\$\$\$ per square foot. The County's submitted information indicated that land leases typically represent half of the market lease rate including land and improvements.

51. The County's representative argued that the Property Owner is valuing the stores at issue in this appeal as second generation stores. He argued that the Property Owner's representative is viewing the stores' fair market values based on a future user of the stores that assumes changes would need to be made to the stores. However, the County's representative argued that the stores were built as FRANCHISE-1 stores, were being used as FRANCHISE-1 stores as of the January 1, 2021 lien date, and will probably be used as FRANCHISE-1 stores well into the future.

52. The County's representative argued that the County is not appraising the stores with FRANCHISE-1 as the tenant but indicated that the County is determining the value of the stores based on a tenant such as FRANCHISE-1 with a credit rating and history similar to

³³ Respondent's Exhibit R-1, pg. 3, Exhibit R-2, pg. 3, Exhibit R-3, pg. 3, Exhibit R-4, pg. 3, and Exhibit R-5, pg. 3.

FRANCHISE-1 occupying the properties at issue in this appeal. He indicated that the County is determining the market lease rate for the stores considering what a tenant similar to FRANCHISE-1 would be paying for the properties based on their locations.

53. The County's representative noted that the Property Owner's comparable lease number 12 is a second generation lease for a FRANCHISE-1 and noted that lease rate supports the County's determined market lease rate for the subject property. He noted that the Property Owner's comparable leases 19 and 27 similarly support the County's determined market lease rates for the subject properties. He argued that those lease comparables demonstrate that the Property Owner's concluded lease rate for the subject properties is too low. He also noted no adjustments were made for the COVID-19 pandemic and argued that FRANCHISE-1 stores did very well during the COVID-19 pandemic.

54. The County's representative stated that the County used a stabilized vacancy rate of %%% in their submitted income approach to value analyses for all five stores at issue in this appeal. The County's representative provided the following information from market reports to support his determined vacancy rate for the stores: Newmark Knight Frank suggests an overall vacancy of %%%; Colliers International suggests overall retail vacancy of %%%; CBRE gives a Southwest COUNTY-1 retail vacancy of %%%; Cushman Wakefield lists COUNTY-1 retail at %%% vacancy; and Nexus CITY-2 lists an overall retail vacancy of %%%³⁴. The County's submitted information asserted that the subject properties would be expected to have a lower vacancy rate than the overall general retail market³⁵. He noted that the subject properties have been FRANCHISE-1 stores since they were built and have had no vacancy since they were built. He argued that the %%% vacancy rate used in the Property Owner's submitted income approach to value analyses is way too high.

55. The County's representative stated that the subject properties would be considered typical retail stores that are leased on a triple net (NNN) basis. He indicated that typical management fees are %%% of effective gross income and typical reserves are %%% of effective gross income and are the amounts used in the County's income approach to value analyses for all of the stores at issue in this appeal.³⁶

56. The County's submitted information indicated that a market capitalization rate of %%% was used in the submitted income approach to value analyses for the LOCATION-1

³⁴ Respondent's Exhibit R-1, pg. 4, Exhibit R-2, pg. 4, Exhibit R-3, pg. 4, Exhibit R-4, pg. 4, and Exhibit R-5, pg. 4.

³⁵ *Id.*

³⁶ Respondent's Exhibit R-1, pg. 4, Exhibit R-2, pg. 4, Exhibit R-3, pg. 4, Exhibit R-4, pg. 4, and Exhibit R-5, pg. 4.

and LOCATION-5 stores, a market capitalization rate of %%% was used in the submitted income approach to value analyses for the LOCATION-2 and LOCATION-3 stores, and a market capitalization rate of %%% was used in the submitted income approach to value analysis for the LOCATION-4 store. The County's submitted market data indicated that retail capitalization rates for retail stores "are around %%% to %%%." The County's submitted information indicated that a similar capitalization rate was used for all FRANCHISE-2 and FRANCHISE-1 type stores assessed by the County. The County's submitted information included the Utah Retail Investment Price-Weighted Average Cap Rates and Achieved Sale Prices PSF published by Newmark Knight Frank, which reported a single tenant price-weighted average capitalization rate of %%% for 2020.³⁷

57. The County's representative also submitted a Net Lease FRANCHISE-1 Property Profile And Cap Rates published by the Boulder Group. The published profile indicated that the price range for these types of properties is \$\$\$\$ to \$\$\$\$\$, a typical capitalization rate for these types of properties is %%%, a typical net income is \$\$\$\$\$, a typical sales price per square foot for this type of property is \$\$\$\$ per square foot, a typical building size is ##### square feet, and a typical lot size is ##### acres.³⁸

58. The County's representative stated that the Boulder Group is the main firm that deals with the leasing and selling of retail properties and has a lot of information on the sales of various retail properties. He noted that the FRANCHISE-1 Profile indicates that the typical lease type is a ground lease and the typical credit rating is A. He stated that the County is not appraising the tenant but is accounting for the fact that there is a very good, creditworthy tenant leasing the building. He indicated that the County has the responsibility to determine what the subject properties would lease for or sell for as of the January 1, 2021 lien date having a similar tenant that is comparable to FRANCHISE-1. He stated that the County is not determining what the subject properties could be used for and leased for if FRANCHISE-1 left.³⁹

59. The County's representative also submitted The Net Lease Big Box Report for Q4 2020 published by the Boulder Group to further support the County's determined capitalization rate for the subject property. The County's representative indicated that the County is not aware of the length of the Taxpayer's ground lease term but indicated that they expect the Taxpayer to be at the current location for quite some time and noted that they have been there for

³⁷ Respondent's Exhibit R-1, pgs. 4-5, Exhibit R-2, pgs. 4-5, Exhibit R-3, pgs. 4-5, Exhibit R-4, pgs. 4-5, and Exhibit R-5, pgs. 4-5.

³⁸ Respondent's Exhibit R-1, pg. 6, Exhibit R-2, pg. 6, Exhibit R-3, pg. 6, Exhibit R-4, pg. 6, and Exhibit R-5, pg. 6.

³⁹ Respondent's Exhibit R-1, pg. 6, Exhibit R-2, pg. 6, Exhibit R-3, pg. 6, Exhibit R-4, pg. 6, and Exhibit R-5, pg. 6.

quite some time. He noted that the The Net Lease Big Box Report reported a capitalization rate of %%% for the mountain region. He argued that based on these reports, the County's %%%-% capitalization rates used in its income approach to value analyses are reasonable and fair. He also noted that the Taxpayer submitted some second generation properties from inferior areas, including Logan and Vernal, and argued that those areas are not comparable markets.⁴⁰

60. The County's representative submitted the following nine comparable sales to support the subject property's original assessed/Board of Equalization value⁴¹:

REDACTED TABLE

61. The County's submitted comparable sales are for former warehouse discount stores, large discount stores, or larger retail stores. The County noted that the subject property's assessed value of \$\$\$\$ falls in the range of the County's submitted comparable sales and asserted that the assessed value appears reasonable.

62. The County's representative noted the County's second comparable is a FRANCHISE-3 that sold in CITY-3 for \$\$\$\$ per square foot. He noted that the FRANCHISE-3 comparable sale was built as a FRANCHISE-3 and was being used as a FRANCHISE-3, and asserted that it was expected that it would sell for a premium. He acknowledged that a FRANCHISE-1 is not comparable to a FRANCHISE-3 and noted that FRANCHISE-3 is nicer, has more amenities, and would be considered a superior property. However, he argued that comparable sale demonstrates that properties that are not second generation properties and are not having to be renovated or subdivided command a premium. He argued that those properties function for what they were built for and have no loss in functional utility.

63. The County's representative noted that the County's comparable sale located at ADDRESS-8 was a BUSINESS-1 for a while, then was converted to a FRANCHISE-4, and is now being operated as an FRANCHISE-5. He noted that this comparable sale has been through three different tenants. He indicated that even this comparable sale, which has some unique features and was built in DATE, sold for \$\$\$\$ per square foot. He asserted that this sale demonstrates the bottom of the range that would be expected and asserted that the subject property would obviously be worth more than that comparable sale. He acknowledged that a size adjustment would need to be made to that comparable sale but argued that overall, that comparable sale is an inferior building.

⁴⁰ Respondent's Exhibit R-1, pg. 7, Exhibit R-2, pg. 7, Exhibit R-3, pg. 7, Exhibit R-4, pg. 7, and Exhibit R-5, pg. 7.

⁴¹ Respondent's Exhibit R-1, pg. 8, Exhibit R-2, pg. 8, Exhibit R-3, pg. 8, Exhibit R-4, pg. 8, and Exhibit R-5, pg. 8.

64. The County's representative also noted that most of the County's submitted comparable sales are for second-generation space. He indicated that the subject properties are newer than many of the County's submitted comparable sales.

65. The County's representative submitted The Net Lease Big Box Report for Q4 2019 and Q4 2020 published by the Boulder Group, which reported selected single tenant big box closed transactions. He noted that a FRANCHISE-1 in CITY-3, STATE-1 sold in DATE for \$\$\$\$ or \$\$\$\$ per square foot, with a capitalization rate of %%% and a lease term of 10 years remaining and a FRANCHISE-2 in CITY-4, STATE-2 sold in DATE for \$\$\$\$ or \$\$\$\$ per square foot, with a capitalization rate of %%% and a lease term of 10 years remaining. He also noted that the ground lease for a FRANCHISE-1 located in CITY-4, STATE-3 sold in DATE for \$\$\$\$\$, with a capitalization rate of %%% and a lease term of 8 years remaining. He asserted that CITY-4, STATE-3 is an inferior market and noted that the ground lease sold for a value similar to the subject properties' entire assessed values. He argued that these sales demonstrate that if the subject properties are valued based on their current use as FRANCHISE-1 stores, the subject properties' assessed values are supported.⁴²

66. The County's representative also submitted an article titled "Newmark brokers \$34M FRANCHISE-1 sale" published by REW on November 23, 2020, which reported the off-market sale of a retail property, occupied by FRANCHISE-1, for \$\$\$\$\$. The article indicated that the property was a single-tenant, ##### square foot ground leased building located at ADDRESS-9 that was situated on approximately ##### acres.⁴³

67. The County's representative submitted a Net Lease Investment Offering marketing for sale a FRANCHISE-1 ground lease located in CITY-5, STATE-4 as further support for the stores' original assessed/Board of Equalization values. The offering stated that the listing price was \$\$\$\$ with over 16 years remaining on the primary ground lease term and a capitalization rate of %%%%.⁴⁴

68. The County's representative submitted a Net Lease Investment Offering marketing for sale a single tenant net leased FRANCHISE-1 property located in CITY-6, STATE-5 as further support for the stores' original assessed/Board of Equalization values. The offering stated that the listing price of the CITY-6, STATE-5 store was \$\$\$\$ with a capitalization

⁴² Respondent's Exhibit R-1, pg. 9, Exhibit R-2, pg. 9, Exhibit R-3, pg. 9, Exhibit R-4, pg. 9, and Exhibit R-5, pg. 9.

⁴³ Respondent's Exhibit R-1, pg. 10, Exhibit R-2, pg. 10, Exhibit R-3, pg. 10, Exhibit R-4, pg. 10, and Exhibit R-5, pg. 10.

⁴⁴ Respondent's Exhibit R-6.

rate of %%% and a net operating income of \$\$\$\$\$. The property was built in DATE, is ##### square feet and has a ##### square foot garden center, and is on an ##### acre lot.⁴⁵

69. The County's representative noted that the Property Owner's representative asserted that the subject properties should be valued using a cost approach. He acknowledged that a cost approach can be an appropriate method to value the subject properties but asserted that the subject properties would sell based on their valuations determined using an income approach to value analysis. He argued that the subject properties are investment grade properties. He argued that if the properties were sold on the lien date they would likely be sold to an investment company that would keep the existing tenants in place with the fair market value being determined based on an income approach to value analysis. He argued that the subject properties are investment grade properties and are not small owner-user properties that have a limited market.

70. The County's representative also noted that the Property Owner's representative asserted that all three valuation approaches, the cost approach, income approach, and sales comparison approach, should come to a reconciled value. He acknowledged that was true but stated that the valuation needs to account for the fact that the subject properties are in prime retail locations and indicated it is difficult to purchase another piece of land similar to the subject properties' land. He noted that these stores are situated on ##### acre parcels that would command a premium in the market.

71. The County's representative stated that the Commission has previously considered first and second generation arguments. He argued that this issue has been decided in multiple cases and asserted that the Commission has held that second generation properties are not comparable to first generation user properties.

72. The Property Owner's representative stated that the County's assertion that the majority of FRANCHISE-1 stores are on ground leases is inaccurate and indicated that approximately one third of the FRANCHISE-1 stores have ground leases. He argued that, when possible, FRANCHISE-1 purchases the land associated with their stores, mainly to avoid the potential double taxation issue where the value of the business enterprise is also being taxed through the real estate. He noted that, of the appeals filed with the state, two of the properties have a ground lease and five of the properties are owner-user properties.

73. The Property Owner's representative argued that the FRANCHISE-1 sites are glorified discount warehouses and are universally valued throughout the country as discount warehouses. He argued that the improvement values are typically on the lower end of the range

⁴⁵ Respondent's Exhibit R-7.

because they are not higher end stores. He argued that the stores are very basic and the improvements are valued in the \$\$\$\$\$ to \$\$\$\$\$ per square foot range according to Marshall & Swift Valuation Services. He stated that the properties are lower grade and almost always class C or D discount warehouses. He argued that this needs to be factored in when making adjustments to the County's comparable leases. He also noted that the FRANCHISE-1 stores are located on larger sites.

74. The Property Owner's representative noted that the County's FRANCHISE-6 lease comparable is %%% smaller than the subject property and is newer than the subject property. He argued that factoring the \$\$\$\$\$ lease rate for that comparable lease into the mean and the average of the County's submitted comparable leases distorts the mean and the average of the lease comparables that the County is using to support its determined market lease rates for the stores at issue in this appeal. He also asserted that the County's FRANCHISE-7 lease comparable with a lease rate of \$\$\$\$\$ is not comparable. He argued that if those two leases were removed, the average of the County's submitted comparable leases would be approximately \$\$\$\$\$ per square foot, which he asserted is a much more reasonable market lease rate for the stores at issue in this appeal.

75. The Property Owner's representative argued that his position that the risk associated with converting the subject properties from owner-user properties to investment grade properties should be factored into the capitalization rate and costs associated with the conversion should be factored into the income approaches is different than the arguments relating to whether the properties should be valued as vacant, distressed properties. He argued that if the properties are valued as investment grade properties, then there will be costs and risks associated with the conversion from owner-user properties to investment grade properties. He argued that adjustments need to be made to value the risks and actual costs associated with finding a new tenant and creating a new lease. He stated that the Property Owner is asking for valuations that are reasonable and address those risks and costs.

76. The Property Owner's representative argued that the County's submitted information that includes the Utah Retail Investment Price-Weighted Average Cap Rates and Achieved Sale Prices PSF published by Newmark Knight Frank is going to factor in much smaller retail stores. He argued that the market report is not reliable because it is not specific enough. He argued that the information from the Boulder Group may not be reliable because they are brokers in the business of selling retail properties. He argued that if they published higher capitalization rates that would not attract potential clients. He noted that The Net Lease Big Box Report for Q4 2020 published by the Boulder Group listed the median asking capitalization rate

by lease term remaining and listed the capitalization rates for investment grade properties. He noted that the capitalization rates increase when the years remaining on the lease term decrease. He argued that for owner occupied properties there are 0 years remaining on the lease term. He noted that the trend is that the more years remaining on the lease term the lower the capitalization rate. He argued that trend demonstrates the risk that exists when there is not a lease in place or when the lease is shorter or the lease term is 0. He asserted that risk is not being factored in by the County. He stated that he is not asking the County to value the property as if it is completely vacant but is asking the County to factor in the risks associated with an owner occupied property. He asserted that other jurisdictions commonly factor in this risk and stated that they often do this specifically with bank branches and consider whether there is a lease in place for the property being valued. He stated that he is asking the Commission to recognize and factor in the distinction between the owned sites and the actual leased sites.

77. The Property Owner's representative stated that with second generation properties the situation exists where an improvement is custom built for a particular use and is customized for the particular tenant. However, he argued that the subject properties are FRANCHISE-1 stores and are warehouses. He stated that the subject properties do not have high end finishes and are very basic. He argued that the distinction between first and second generation properties is greatly diminished because the finishes are basic and not highly customized like a restaurant or other retail use where the tenant improvement expenses related to the site would be minimal.

78. The Property Owner's representative argued that the County's assertion that if the subject properties were sold they would be sold as investment grade properties is inaccurate. He argued that if FRANCHISE-1 determines that a property has outlived its useful life, they are not looking to convert the property into leases. He asserted that if they lease a location, it is because they have to. He argued that they only lease a property if they are trying to break into a particular market and will pay what is required to enter into the market area. He stated that they prefer to own and only lease when it is required. He stated that if they do sell a property, they sell that property as vacant to any end user, with the exception of FRANCHISE-2.

79. The Property Owner's representative stated that the County's submitted information is for properties that are in tighter markets where they had to lease to break into those markets. He asserted the County's submitted comparable sales of FRANCHISE-1s in other locations in the country are located in better markets with higher barriers to entry and should not be comparable sales that are factored into the valuation of the subject property. He stated that

CITY-2 is not an area where FRANCHISE-1 has historically needed to have ground leases and noted that less than one third of the properties on appeal to the Commission have ground leases.

80. The Property Owner's representative noted that, according to Marshall & Swift Valuation Services, the life of a discount warehouse is approximately 30 years. He indicated that most of the stores at issue in this appeal are toward the end of the range of their useful life. He acknowledged that the stores may be used for a longer period of time but stated that the expenses increase exponentially for older buildings. He stated that most of these sites are nearing their economic useful life according to a cost approach.

81. The Property Owner's representative argued that FRANCHISE-1 is being double taxed. He argued that FRANCHISE-1 pays income taxes to the state and collects sales and use taxes on behalf of the state. He stated that they are a successful company and, as a result, the business value or enterprise value is being imputed onto the real estate value. He argued that there is a big distinction between a property where the lease is attached to the land and becomes part of the bundle of rights associated with the property and a property where there is no lease associated with the property. He argued that the distinction is not about a first or second generation user but is about the value of the rights associated with the property and the assumptions regarding the property that should be made in valuing those rights. He argued this is a different issue than the first or second generation arguments or the dark store theory arguments that have been made before. He argued that the property should be valued as an income producing property but the risks should be factored into the analysis.

82. The County's representative stated that the County does not distinguish between owner occupied properties as compared to properties that are not owner occupied. He stated that the County bases their valuations on what the market would do and who the most likely purchasers of the property would be.

83. The Property Owner's representative concluded by arguing that the fact that the stores at issue in this appeal are owner occupied properties should be factored into the valuation when computing an income approach to value analysis. He asserted that FRANCHISE-1 does not sell owner-occupied properties as investment properties. He stated that this has been their historical trend and behavior. He stated that if they sell, they sell vacant properties and will typically hold on to a property long term if it is an owner occupied site. He indicated that there is a big drop in the sales price of a property when there is not a tenant associated with the property. He argued that if there is no lease that is signed and associated with the land, then that fact should be reflected in the income approach to value analysis. He stated that the Property Owner is not asking the Commission to adopt a value based on the distressed sale price of vacant properties but

stated that the income approach to value analysis should factor in the fact that there is no lease in place and that there are costs and risks associated with not having a lease in place for the property. He argued that this is demonstrated by lenders who require a guarantee from FRANCHISE-1 that they will pay the lender back if FRANCHISE-1 defaults on the loan because there is no lease in place.

84. The Property Owner's representative stated that the Property Owner's comparable sales that are owner-user sales are in the \$\$\$\$\$ to \$\$\$\$\$ per square foot range. He stated that they are not in the \$\$\$\$\$ price per square foot range of the comparable sales submitted by the County.

85. The County's representative concluded by stating that, as of the January 1, 2021 lien date, the stores at issue in this appeal were being used as FRANCHISE-1 stores. He noted that the County is tasked with using market rates, market information, market sales, market expenses, and market capitalization rates to value properties. He indicated that he has used the applicable market information to value the stores at issue in this appeal and all other big discount warehouse properties. He stated that the County understands that the stores do not have high end finishes and stated that the County has not valued the stores using restaurants or other types of properties as comparables. He stated that the County understands that the stores are large areas where home improvement items are stored for sale.

86. The County's representative stated that if a FRANCHISE-1 located in CITY-6, STATE-5 would sell for over \$\$\$\$\$ at a %%% capitalization rate, then the County has accounted for any associated risk factors by valuing the stores at around approximately \$\$\$\$\$. He stated that he believes the County has factored in any risks associated with these properties and asserted that the County's submissions of the reports and the sales from the Boulder Group demonstrate that the County's valuations are very conservative based on that market information. He also expressed concern that, because the properties are owner-occupied, there is no lease information available to determine the applicable market lease rate, expenses, and capitalization rates to properly value the stores. He stated that the County is valuing the stores based on what the stores would likely sell for being operating as a FRANCHISE-1 as of the January 1, 2021 lien date. He argued that the County has provided good comparable leases and comparable sales to determine the appropriate market values for the stores. He stated that the stores are not second generation properties and are not experiencing high vacancies. He argued that the valuation is based on what someone would pay for the right to own the building that is being used by FRANCHISE-1. He stated that the County uses an income approach with a market lease rate to value the stores.

Commission Factual Analysis

I. Income Approach Conclusion

87. The parties each provided an income approach to value analysis for each of the five FRANCHISE-1 stores at issue in this appeal.

88. The income approaches submitted by the Property Owner's representative used a market lease rate of \$\$\$\$ for each of the stores. The Property Owner's representative submitted 31 national comparable leases, one of which was located in Utah, and five more comparable leases located in Utah to support that market lease rate. The income approaches used a %%% vacancy rate, an amount calculated as %%% of effective gross income for management fees, an amount calculated as %%% of effective gross income for reserves, and a %%% capitalization rate.

89. The County's income approaches for the stores at issue in this appeal used a market lease rate of \$\$\$\$ per square foot for the LOCATION-1, LOCATION-2, and LOCATION-4 stores, a market lease rate of \$\$\$\$ per square foot for the LOCATION-3 Store, and a market lease rate of \$\$\$\$ per square foot for the LOCATION-5 store. The County submitted five adjusted comparable leases to support their determined market lease rates for all of the stores at issue in this appeal. The County's income approaches used a %%% vacancy rate, a rate of %%% of effective gross income for management, and a rate of %%% of effective gross income for reserves. The County's income approaches used a market capitalization rate of %%% for the LOCATION-1 and LOCATION-5 stores, a market capitalization rate of %%% for the LOCATION-2 and LOCATION-3 stores, and a market capitalization rate of %%% for the LOCATION-4 store.

90. The Commission finds that the Property Owner's submissions do not show substantial error in the County's determined market lease rates for the stores at issue in this appeal. The lease rates of the Property Owner's national lease comparables ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot, and the comparable leases for the properties located in Utah ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot. However, many of the Property Owner's comparable leases are from inferior areas or are for second generation properties that are not comparable to the stores at issue in this appeal. In addition, three of the six lease comparables submitted by the Property Owner that are located in Utah have lease rates at or above the County's determined market lease rates. Furthermore, although the lease rate of the Property Owner's national lease comparable eight, located in CITY-1, Utah, has a starting lease rate of \$\$\$\$ per square foot, it has an effective lease rate of \$\$\$\$ per square foot. The Commission notes that if the six comparable lease rates submitted by the Property Owner that are located in

Utah are combined with the eight comparable leases submitted by the County and the Property Owner's lowest lease comparable at \$\$\$\$ per square foot and the County's highest lease comparable at \$\$\$\$ per square foot are removed as outliers, the average of the remaining twelve comparable leases is \$\$\$\$ per square foot. The County's determined market lease rates are within that range and close to the average of both parties' submitted comparables. Thus, the Commission finds that the Property Owner's submissions are not sufficient to show substantial error in the County's determined market lease rates for each of the stores at issue in this appeal.

91. The Commission finds that the Property Owner's submissions are not sufficient to show substantial error in the County's determined vacancy rate of %%% in calculating the income approaches for each of the stores at issue in this appeal. The Property Owner used a %%% vacancy rate and submitted The Utah Big Box Retail Vacancy Rate Forecast Report published by Ernst & Young to support that vacancy rate, which reported quarterly vacancy rates from the fourth quarter of 2016 through the third quarter of 2023 and reported a Utah big box retail vacancy rate of %%% for the fourth quarter of 2020. However, the County's representative asserted that the stores will likely remain as FRANCHISE-1 stores into the foreseeable future and that the stores would be expected to have a lower vacancy rate than the overall general retail market. The County's representative also cited five market publications that reported retail vacancy rates that ranged from %%% to %%%. The Commission notes that the Property Owner's asserted vacancy is higher than any of the reported rates in the market publications and the County's asserted vacancy rate is within the range of the vacancy rates reported in the publications cited by the County. Additionally, the reliability and consistency of the stores being operated as FRANCHISE-1 stores for the foreseeable future further supports the County's lower asserted vacancy rate. Thus, the Commission finds that the Property Owner's submissions are not sufficient to demonstrate substantial error in the County's determined vacancy rate.

92. The Property Owner's representative used an amount calculated as %%% of effective gross income for management fees and an amount calculated as %%% of effective gross income for reserves in the Property Owner's submitted income approach to value analyses for all five stores at issue in this appeal. The Property Owner's representative submitted a RealRates.com Investor Survey for the 4th Quarter of 2020 to support its determined reserve amount, which reported the typical reserve amount for retail reserve requirements as \$\$\$\$ per square foot. The County's income approaches used an amount calculated as %%% of effective gross income for management fees and %%% of effective gross income for reserves. The County's representative indicated that the stores at issue in this appeal would be

considered typical retail stores that are leased on a triple net (NNN) basis and the amounts used by the County are the typical management fees and reserve amounts used for retail stores that are leased on a triple net basis. The Commission finds that the Property Owner's submissions are not sufficient to demonstrate substantial error in the County's determined amounts for management fees and reserves.

93. The Property Owner's representative used an overall capitalization rate of %%% in his submitted income approaches for each of the stores at issue in this appeal. The Property Owner's representative submitted a RealRates.com Investor Survey for the 4th Quarter of 2020, which reported the band of investment rate at %%%, and the 2Q 2020 Real Estate Report of Regional Investment Criteria for Second-Tier Investment Properties published by RERC, which reported an average going-in capitalization rate of %%% with a range of %%% to %%% for the West, to further support the Property Owner's capitalization rate. He also argued that the County's valuations do not factor in the risks associated with converting an owner-user site to an investment site and asserted that the risks associated with converting an owner user site to an investment site should be factored into the capitalization rate. He asserted that the capitalization rate for an owner-user site should be ##### to ##### basis points higher than the capitalization rate used for an investment grade site to account for the potential conversion costs and risks. However, the Property Owner's representative did not submit any market data to substantiate his assertion that capitalization rates for the sale of owner-user sites should be ##### to ##### basis points higher than investment grade sites.

94. The County's income approaches used a market capitalization rate of %%% for the LOCATION-1 and LOCATION-5 stores, a market capitalization rate of %%% for the LOCATION-2 and LOCATION-3 stores, and a market capitalization rate of %%% for the LOCATION-4 store. The County's submitted information showed that market data indicates that capitalization rates for retail stores are around %%% to %%% and that a similar capitalization rate was used for the County's valuations of all FRANCHISE-2 and FRANCHISE-1 type stores. The County's submitted information included the Utah Retail Investment Price-Weighted Average Cap Rates and Achieved Sale Prices PSF published by Newmark Knight Frank, which reported a single tenant price-weighted average capitalization rate of %%% for 2020. The County's representative also submitted a Net Lease FRANCHISE-1 Property Profile And Cap Rates published by the Boulder Group. The published profile indicated that the price range for these types of properties is \$\$\$\$ to \$\$\$\$ and a typical capitalization rate for these types of properties is %%%. The County's representative also submitted The Net Lease Big Box Report for Q4 2020 published by the Boulder Group to further support the

County's determined capitalization rates for the stores at issue in this appeal. The County's representative indicated that the County is not aware of the length of the Taxpayer's ground lease term but indicated that they expect the Taxpayer to be at the current location for quite some time and noted that they have been there for quite some time. He noted that the The Net Lease Big Box Report reported a capitalization rate of %%% for the mountain region.

95. The Commission finds that the County's submissions supporting the County's determined capitalization rates for the stores at issue in this appeal are more persuasive and demonstrate that the County's capitalization rates ranging from %%% to %%% are supported. The Commission notes that the County's submissions support a rate that is below the capitalization rates used in the Property Owner's income approaches. Furthermore, the Commission notes that the 2Q 2020 Real Estate Report of Regional Investment Criteria for Second-Tier Investment Properties published by RERC that was submitted by the Property Owner's representative to support their higher asserted capitalization rate is reporting on capitalization rates for second-tier investment properties. The Commission notes that the report indicated that "[s]econd-tier investment properties are defined as aging, former first-tier properties, in good to average locations." Furthermore, the County's capitalization rates fall within the reported going-in capitalization rate range of %%% to %%% for the West. The Commission finds that the Property Owner's submissions are not sufficient to show error in the capitalization rates used by the County in its submitted income approaches.

II. Sales Comparison Approach Conclusion

96. The Property Owner's representative submitted four unadjusted big box retail sales comparables and the 2021 Midyear Retail Utah Market Report published by Newmark to further support the Property Owner's requested value of \$\$\$\$ per square foot. The achieved average owner-user sales price per square foot for properties over ##### square feet was reported as \$\$\$\$ per square foot in 2020 in the Newmark report. The Property Owner's comparable sales occurred between August of 2019 and March of 2021. The size of the comparable sales ranged from approximately ##### square feet to ##### square feet. The sale prices ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot, with an average sales price of \$\$\$\$ per square foot. Two of the comparable sales were freestanding retail properties and two were retail department stores. Two of the sales were located in CITY-7, one was located in CITY-2, and one was located in CITY-8.

97. The County's representative submitted nine comparable sales to support each store's assessed value. The County's comparable sales occurred between DATE and DATE. The size of the comparable sales ranged from approximately ##### square feet to ##### square feet.

The sale prices ranged from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot, with an average sales price of \$\$\$\$\$ per square foot and a median of \$\$\$\$\$. All sales were of former warehouse discount stores, large discount stores, or larger retail stores. The County also submitted information that the land for the LOCATION-2 store sold for \$\$\$\$\$ in 2000 and noted that the Property Owner's requested value for the land and the improvement for the LOCATION-2 store is below that purchase price. The County also submitted The Net Lease FRANCHISE-1 Property Profile and Cap Rates published by the Boulder Group, which reported a price range of \$\$\$\$\$ to \$\$\$\$\$ for FRANCHISE-1 stores. The County's submitted information also included the Net Lease Big Box Report that reported that a FRANCHISE-1 in CITY-3, STATE-1 sold for \$\$\$\$\$ (\$\$\$\$\$ per square foot) in date, a FRANCHISE-2 in CITY-4, STATE-2 sold for \$\$\$\$\$ (\$\$\$\$\$ per square foot) in November of 2019, and the ground lease for a FRANCHISE-1 in CITY-5, STATE-3 sold for \$\$\$\$\$ in date. The County also submitted information that a FRANCHISE-1 in CITY-6, STATE-4 sold for \$\$\$\$\$. The County submitted two FRANCHISE-1 listings: one for a ground lease in CITY-7, STATE-5, with an asking price of \$\$\$\$\$, and another for a FRANCHISE-1 in CITY-8, STATE-6 with an asking price of \$\$\$\$\$. The assessed values per square foot of the stores at issue in this appeal were \$\$\$\$\$ for the LOCATION-1 store, \$\$\$\$\$ for the LOCATION-2 store, \$\$\$\$\$ for the LOCATION-3 store, \$\$\$\$\$ for the LOCATION-4 store, and \$\$\$\$\$ for the LOCATION-5 store.

98. The Commission finds that the Property Owner's submitted unadjusted comparable sales are not sufficient to demonstrate substantial error in the original assessed/Board of Equalization values for the stores at issue in this appeal. The Property Owner's comparables are not sufficiently comparable to the FRANCHISE-1 stores based on the property type and location of the comparables and the comparables being second generation properties. The County has submitted substantial sales information to demonstrate that the assessed values of the FRANCHISE-1 stores at issue in this appeal are supported. The comparables submitted by the County include both local and national sales and include sales that are all former warehouse discount stores, large discount stores, or larger retail stores. The assessed values per square foot of the stores at issue in this appeal fall within the range of the sales prices per square foot of the County's submitted comparable sales. Thus, the Commission finds that the County's submitted information demonstrates that the original assessed/Board of Equalization values of the FRANCHISE-1 stores at issue in this appeal are supported.

APPLICABLE LAW

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

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:

- (a) "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.
- (b) 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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
 - (a) 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 or entity with designated decision-making authority described in Section 59-2-1101; and
 - (b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.

...
- (3) In reviewing a decision described in Subsection (1), the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization or entity with decision-making authority.
- (4) In reviewing evidence submitted to the commission to decide an appeal under this section, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented;
 - (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 a decision described in Subsection (1), 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.

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, including a value based on a stipulation of the parties;
 - (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 the parties have entered a stipulation; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; 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 same as that term is defined in Section 59-2-1004.
 - (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) the appeal described in Subsection (1)(c)(ii)(A) resulted in 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, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not had a qualifying change.

- (d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:
 - (i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of the fair market value of the real property or \$20,000;
 - (ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or
 - (iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.
- (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.

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.

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-1*, 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); *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019); and *Patience LLC v. COUNTY-1 Board of Equalization*, 2021 UT App 4. 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 substantial 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 Ann. §59-2-103. “Fair market value” is defined in Utah Code Ann. §59-2-102 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.”

3. Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, including if the subject parcels are “qualified real property.” The values of the subject parcels were not reduced based on an appeal for the 2020 tax year, therefore the subject parcels are not considered “qualified real property” under Utah Code Ann. §59-2-109 for the 2021 tax year.

4. In accordance with Utah Code Ann. §59-2-301.4, the County is required to consider a valuation reduction that occurred in the three prior tax years when making a determination of the property's fair market value for the current tax year. The "valuation reduction" provisions described in Utah Code Ann. §59-2-301.4 do not apply in this matter because the values of the subject parcels at issue in this appeal were not reduced on appeal for the 2018, 2019, or 2020 tax year.

5. In this appeal, the Property Owner's representative was requesting a reduction based on the fair market values of the stores at issue in this appeal, and the County was requesting that the Tax Commission sustain the values set by the County Board of Equalization. To prevail in this case, the Property Owner must: 1) demonstrate that the values set by the County Board of Equalization contain substantial error; and 2) provide the Commission with a sound evidentiary basis for reducing the values to the amounts proposed by the party. After reviewing the evidence submitted by the Property Owner and the evidence submitted by the County, the weight of the evidence indicates that the Property Owner's representative has not shown substantial error in the original assessed/Board of Equalization values for the stores at issue in this appeal and has not provided a sound evidentiary basis to support the Property Owner's lower requested values for the subject stores. The Property Owner's representative submitted an income approach to value analysis for each of the stores at issue in this appeal that asserted a lower lease rate than each of the market lease rates determined by the County and used a higher vacancy rate, a higher reserve amount, and a higher capitalization than asserted by the County. The County submitted an income approach to value analysis for each of the stores and used higher lease rates, a lower vacancy rate, a lower reserve rate, and lower capitalization rates for each of the stores. Additionally, the Property Owner's representative asserted that a lease up discount that included a holding cost and risk adjustment should be included in valuing the stores that are owner occupied but did not provide any market evidence to support that adjustment or explain how it would be calculated. The Commission finds that the Property Owner's submissions and arguments are not sufficient to demonstrate that its lower requested values are supported. Furthermore, the Commission finds that the Property Owner's representative has not demonstrated that an adjustment for the holding costs and risk associated with the owner occupied stores is warranted in this appeal. The Commission also finds that the County's submitted comparable sales are generally more similar to the stores at issue in this appeal than the Property Owner's submitted comparable sales and show that the Board of Equalization values of the stores at issue in this appeal are supported. Thus, the Commission finds that for the reasons stated above and in the Commission's Findings of Fact, the Property Owner's representative has not shown substantial error in the subject

properties' Board of Equalization values, has not provided a sound evidentiary basis to support its requested values, and the evidence, taken as a whole, does not support a change in values from the Board of Equalization values. Thus, the original assessed/Board of Equalization values of the eight parcels at issue in this appeal should be sustained for the 2021 tax year.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the values of the subject parcels were as follows as of the January 1, 2021 lien date:

REDACTED TABLE

The Commission sustains the original assessed/COUNTY-1 Board of Equalization's values of the subject parcels. It is so ordered.

DATED this ____ day of ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.