

APPEAL #: 23-462
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 6/27/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER,

Petitioner,

v.

BOARD OF EQUALIZATION OF
COUNTY-1, STATE
OF UTAH,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL DECISION**

Appeal No. 23-462

Parcel No: #####

Tax Type: Property Tax

Tax Year: 2022

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, CITY-1, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney at Law
PETITIONER'S REP-2, Certified General Appraiser
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 March 12, 2024, 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

I. General Information

1. The issue before the Tax Commission at the Formal Hearing is Petitioner's ("Property Owner's") appeal of the decision issued by the County Board of Equalization in regards to the assessed value of parcel no. ##### for property tax assessment purposes.

2. The lien date at issue in this appeal is January 1, 2022.

3. The County Assessor's original assessed value was upheld by the County Board of Equalization ("County") for the lien date at issue, and was the value the County was requesting be sustained at this Formal Hearing. The County's value and the value the Property Owner's representative was requesting were as follows:

County's Value Request	Property Owner's Value Request
\$\$\$\$\$	\$\$\$\$\$\$

4. The value of the subject property was not appealed to the County Board of Equalization in any of the three tax years preceding tax year 2022.

5. The subject property is located at ADDRESS-1. The property is ##### acres of land and is improved with a fast food restaurant. The fast food restaurant was constructed in YEAR and has ##### rentable square feet. The County has classified this building as construction Class D and Rental Class A. The building has been operating as a FRANCHISE-1 since the time of construction. The subject property is located on the corner of two main traffic arteries, STREET-1 and STREET-2. This is in a well established commercial area and the subject property is located in the parking lot for a FRANCHISE-2 store and is across the street from a FRANCHISE-3. The location is also one block away from a freeway exit and entrance.¹

II. Property Owner's Evidence

¹ Respondent's Exhibit 1, pages 1-3.

6. The Property Owner's representatives submitted an appraisal prepared by PETITIONER'S REP-2, Certified General Appraiser. The effective date of the appraisal was April 12, 2021, and the appraiser's conclusion was that the "as is" and "fee simple" value of the subject property as of that date was \$\$\$\$\$.² PETITIONER'S REP-2 attended the hearing and testified about his appraisal. The Property Owner's appraiser considered in the appraisal an income capitalization approach, sales comparison approach and a cost approach to valuing the subject property. He indicated in the appraisal that he placed the most weight on the income and sales comparison approaches and less on the cost approach to value.³ His conclusions from each of his three approaches were as follows:

REDACTED TABLE

7. In his cost approach, PETITIONER'S REP-2 considered four land sales, which had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. After making appraisal adjustments he concluded the land value for the subject property as of the appraisal date was \$\$\$\$\$ per square foot, or \$\$\$\$\$ (rounded) for the land. He used Marshall Valuation Service to determine the cost new, added a 10% entrepreneurial incentive and then applied an age based depreciation to derive a \$\$\$\$\$ cost value as of the appraisal date.

8. For his sales comparison approach, PETITIONER'S REP-2 considered five sales of other fast food, or quick serve, restaurants. Of the five sales, only one was located near the subject property and one was located in a different county. PETITIONER'S REP-2 indicated in the appraisal that all of the properties were wood frame construction and all of the properties had a drive thru. The comparable sales and his adjustment grid were as follows:⁴

REDACTED TABLE

9. In his appraisal, the Property Owner's appraiser concluded a value of \$\$\$\$\$ per square foot for the subject property from these comparable sales, which is a rounded value of \$\$\$\$\$.

² Petitioner's Exhibit 4. The appraisal had been prepared for financing purposes.

³ Petitioner's Exhibit 4, pgs. 100-102.

⁴ Petitioner's Exhibit 4, pgs. 74-81.

10. For his income capitalization approach, the Property Owner's appraiser stated he determined his market rental income for the subject property from five comparable leases. He stated in the appraisal that, "[t]he subject is owner-occupancy" and stated, therefore, that he did not analyze an existing lease in place.⁵ None of these properties were located in CITY-1, where the subject property is located, and three of the five were from different counties. He stated in the appraisal that all of the rental comparables have a drive thru and all leases were triple net leases. His lease comparable adjustment grid in relevant part is as follows:⁶

REDACTED TABLE

11. The Property Owner's appraiser concluded from the rent comparables a market rent rate for the subject property of \$\$\$\$ per square foot. Using \$\$\$\$ per square foot for the lease rate, his income capitalization approach was the following:

REDACTED TABLE

12. The Property Owner's appraiser then made some subtractions to the \$\$\$\$ conclusion of value based on the assumption that the subject property would be vacant and empty at the time of the sale. These additional subtractions were as follows:

REDACTED TABLE

13. The Property Owner's appraiser testified that in his income approach he had used a capitalization rate of %%%%, because he allowed for vacancy and management expenses in his income approach. He stated that if the subject property is sold with an absolute lease, where the owner has no responsibilities for expenses or reserves, the rate would be a little higher.

14. The Property Owner's appraisal had an effective date in April 2021. The Property Owner's appraiser testified at the hearing that he agreed that the market increased between April 2021 and January 1, 2022. It was his opinion that a time adjustment of %%%% from DATE to the lien date at issue in this

⁵ Petitioner's Exhibit 4, pg. 91. This statement appears contradictory to Petitioner's Rebuttal Exhibit 1, which was the current listing for the subject property that indicated the subject property was subject to a lease entered into in DATE, with a ##### year term.

⁶ Petitioner's Exhibit 4, pgs. 83-90.

appeal was warranted. He also provided the opinion that prices continued to rise into 2022, but then leveled off due to borrowing cost increases.

15. In addition to the Appraisal, the representatives for the Property Owner provided the County Assessor's CAMA data for the subject property and another fast food restaurant, also owned by the Property Owner, but located at ADDRESS-2.⁷ He stated that the buildings were very similar, but the ADDRESS-2 property was assessed at a substantially lower value than the subject property. The CAMA data for the ADDRESS-2 property indicated a total value for tax year 2022 of \$\$\$\$\$. Of that value, \$\$\$\$\$ was listed as the land value and \$\$\$\$\$ was listed as the building value. The report indicated that this was a fast food building constructed in 2015, with ##### rentable square feet. The subject building is located in CITY-1 on a good corner in a commercial area and was valued at \$\$\$\$\$. The report indicated that of that amount only \$\$\$\$\$, was attributed to the land value and \$\$\$\$\$, was attributed to the building value. The representative for the Property Owner acknowledged a location difference, but argued that the differences in location should be reflected in the land value and not the building value.

16. The Property Owner also provided an advertisement flyer showing that the subject property was currently listed for sale for \$\$\$\$\$.⁸ The listing noted the property was being sold with an 11 plus year lease in place and the lease was an absolute triple net lease with "zero landlord responsibilities." Regarding the lease, the flyer stated the lease had commenced on DATE, would expire DATE, and the lease rate was \$\$\$\$\$ per square foot. The listing indicated the listing price was at a capitalization rate of %%%%. The flyer did not appear to indicate any rental escalations during the remainder of the ##### year lease period, although there were escalations indicated in the renewal option period after the end of the ##### year lease term.⁹

III. County's Evidence

⁷ Petitioner's Exhibits 2 and 3.

⁸ Petitioner's Rebuttal Exhibit 1.

⁹ Petitioner's Rebuttal Exhibit 1, pg. 8 states, "Renewal Options: %%%% Every ##### Years" and "Rent Increases: 4 x 5 Year Options," but did not clearly indicate increases during the remaining period.

17. At the hearing, the County's appraiser presented two income approaches and a sales comparison approach, which supported at least the County's current value. The County's appraiser pointed out that the County is required to value properties on a fee simple basis and not a leased fee basis. She cited Standard 6 of the Tax Commission's Real Property Valuation Standards of Practice. The major differences between the County's income approaches and the Property Owner representative's income approach was the lease rate, and this was compounded by the fact that the County was using absolute net lease rates with no vacancy or expenses, while the Property Owner's representative was using triple net rates and then subtracting vacancy and expenses. There was also a difference in capitalization rates, with the County's rates being higher than the Property Owner representative's, which would have offset to some extent the fact that it was being applied to absolute leases. Finally, there was the deduction of value based on the Property Owner appraiser's assumption that the property would be vacant.

18. The County's Appraiser first provided the income approach on which the current assessment had been based, which was the following:¹⁰

REDACTED TABLE

19. The County's appraiser explained at the hearing that after reviewing market information and lease rates, she had concluded that the %%% capitalization rate used in the County's assessment was too high and she presented her own income approach, which indicated a somewhat higher value. Although this value was higher, the County's appraiser was not offering it to recommend an increase in value, but instead to support the County's current value for the subject property. The County appraiser's revised income approach was the following:¹¹

REDACTED TABLE

20. The County's appraiser submitted five lease comparables of fast food restaurants to support the lease rate of \$\$\$\$ per square foot absolute net, compared to the Property Owner's appraiser's lease rate of \$\$\$\$ per square foot triple net. Unlike the Property Owner's appraiser's lease comparables, the

¹⁰ Respondent's Exhibit 1, pg. 4.

¹¹ Respondent's Exhibit 1, pg. 8.

County's lease comparables were all located in COUNTY-1, and they were all of a similar age to the subject property. One was, in fact, located on the same street as the subject property. The County's lease comparables were the following:¹²

REDACTED TABLE

21. The County's appraiser indicated that the County had considered market information and concluded that lease rates for fast food properties had increased at a rate of %%% per year in 2020 and 2021.

22. The County's appraiser disagreed with the location adjustments made by the Property Owner's appraiser to account for location differences between a prime corner location in CITY-1, versus the rent comparables the Property Owner's appraiser had used from CITY-3 and CITY-4, which are located in different counties, different markets and miles from the subject property. The County's appraiser stated that there were plenty of lease comparables available from COUNTY-1 and questioned why an appraiser would use comparables so far in location from the subject property.

23. In the County's exhibit, the appraiser explained the reason for valuing the subject property using an absolute net basis approach. The exhibit stated, "The typical fast food and restaurant tenant is long term with an overwhelming majority of the leases structured on an absolute net basis which means the tenant pays ALL expenses. When these properties are bought and sold, this long term tenancy and absolute net expense structure, more often than not, result in a valuation predicated on a net operating income that is identical to the potential gross income. . . With that said, vacancy and expense allowances are scaled to account for the possibility that older, lower investment grade properties may have some frictional vacancy, and an expenses structure which shifts a portion of the expense obligations back to the owner. However, as previously stated, the vast majority of the data COUNTY-1 has come across indicates that market participants value these properties based on a %%% vacancy and %%% expenses structure."¹³

¹² Respondent's Exhibit 1, pg. 5.

¹³ Respondent's Exhibit 1, pg. 6.

24. The County had used a % capitalization rate in the original assessment and a % capitalization rate in the County's appraiser's revised income approach. These rates were higher than the Property Owner's appraiser's capitalization rate of %. As the Property Owner's appraiser had explained, the rates would be higher for an absolute net lease structure as opposed to the triple net lease structure the Property Owner's appraiser had used. The County's appraiser provided four capitalization rate comparables in her income approach to support the rate of %. However, it was not clear if the capitalization rates had been derived from triple net leases or absolute net leases. The County's capitalization rate comparables were as follows:¹⁴

REDACTED TABLE

25. The County's appraiser also submitted a sales comparison approach to value and concluded a value of \$ per square foot from this approach, or a total rounded value of \$. All five of the County's comparables were sold with a lease in place. All five comparables were properties located in COUNTY-1, were similar in age to the subject property and were Rental Class A properties like the subject property. All five comparables were superior compared to the subject property on a number of factors and after making appraisal adjustments, the County's concluded value per square foot of \$ was lower than the actual unadjusted sale price of any of these comparables. The County's sales comparison approach was the following:¹⁵

REDACTED TABLE

26. The County's appraiser stated that her time adjustment had come from the County's database. She indicated the County's studies showed a % increase per year before 2021 and an % increase per year from January 1, 2021 to January 1, 2022.¹⁶

27. The County pointed out that the Property Owner's comparable three had been purchased for the land and was demolished after the sale to make room for apartment buildings. She also stated that the County's comparable 2 did not have a drive thru.

¹⁴ Respondent's Exhibit 1, pg. 7.

¹⁵ Respondent's Exhibit 1, pg. 9.

¹⁶ Reposndnet's Exhibit 1, pgs. 9-10.

IV. Value Conclusion

28. As it is only the Property Owner that is requesting a value different from the original assessed value/BOE value and the subject property is not qualified real property, it is the Property Owner that has the burden of proof in this matter. As noted in the Conclusions of Law below, the Property Owner must show substantial error in the original assessed value/BOE value and provide a sound evidentiary basis to support the value the Property Owner is requesting. The Property Owner's representative submitted an appraisal as evidence for the Formal Hearing. The Property Owner's appraiser acknowledged the market had increased about %%% between the DATE appraisal date, and the January 1, 2022 lien date at issue in this appeal. As Utah statute establishes a January 1 lien date for each tax year, the appraisal would require a time adjustment. However, as discussed below, there are several other issues with the Property Owner's representative's appraisal conclusion.

29. With regard to the income approach, the main difference between the parties' conclusions was due to the lease rate. There were also differences in the lease rate structure, with the County's appraiser using an absolute net structure and a higher capitalization rate and the Property Owner's representative using a triple net structure and a lower capitalization rate. However, the County's use of a higher capitalization rate mathematically would have offset to some extent the difference in the value that resulted from the use of these different lease structures.¹⁷ The County's comparable properties were very similar to the subject in its current condition. The subject property is not dark or vacant and is currently being used as a fast food restaurant. The Property Owner representative's comparable leases in the appraisal were not persuasive because they were substantially dissimilar to the subject property. They were leases of older buildings, located in other counties with different markets. Additionally, the lease dates were all years prior to the January 1, 2022 lien date

¹⁷ The Tax Commission has previously considered these different approaches in *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 20-641 (3/30/2021)* and concluded either approach was valid as long as the approach was internally consistent. These and other prior Tax Commission Decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

at issue in this appeal. Leases entered into in 2014 and 2017 have little relevance to a market lease rate as of January 1, 2022, and the Property Owner's time adjustments to bring the lease rates up to the April 12, 2021 effective date of the appraisal appear insufficient. For rental comparables, properties that are closer in proximity and in a more similar market are more persuasive. Properties located near vacant retail buildings and that have traffic counts of ##### or ##### are not comparable to the subject property. Properties that are comparable as to age, effective age, and quality are more persuasive, as are leases that were entered into near the lien date. The County's lease comparables were more similar to the subject property in all of these regards.

30. In addition to the fact that the lease comparables were not persuasive, the Property Owner's appraiser's income approach also assumed that the subject property would be sold dark and vacant, so he made adjustments to his capitalized income value. The Property Owner's appraiser had concluded a capitalized value of \$\$\$\$\$, and then subtracted \$\$\$\$\$ for rent loss, lease commissions, holding costs and entrepreneurial incentives. This dark store assumption is a position that has been rejected by the Tax Commission and by courts as noted below.

31. The Tax Commission has similar concerns with the Property Owner's comparable sales in its sales comparison approach to value. The Property Owner's representative used comparables that were located in different cities and most were located on streets with lower traffic counts. The dates of these sales were in 2019 or 2020. Based on the County's information, the time adjustments the Property Owner's representative had made for these sales were inadequate. The sales do not reflect the value of the subject property as of the January 1, 2022 lien date. The County's comparable sales were more comparable to the subject property on a number of factors and occurred nearer to the lien date.

32. In its evidence packet, the County generally provided comparable sales and comparable leases that are more similar to the subject property. They are more similar in age and all were located in the same county. Additionally, the comparable lease dates or sales dates generally occurred nearer the lien date at issue. The sales and lease comparables used by the Property Owner's appraiser

are less persuasive in this matter than those provided by the County to support the original assessed value/BOE value.

33. The Property Owner's representative pointed out that the subject property was currently listed for sale with a lease in place for \$\$\$\$\$. The appraiser for the Property Owner testified that the market had increased somewhat after the lien date in early 2022, but then softened after that as interest rates rose. However, based on the evidence submitted, this listing was subject to a long term lease and appears to be a below market lease. The Tax Commission is tasked with determining fee simple fair market value and this post lien date offering is not sufficient to show substantial error in the County's 2022 assessed value, taking into account that the price might be reflective of a long term-below market lease.

34. The Property Owner's representative offered the information that a very similar building to the subject building, but located in CITY-2, had a significantly lower assessed value than the subject property. However, the fact that one property had a lower value is not sufficient to establish that the subject property was valued too high. It appears the Property Owner's representative was trying to make an equalization argument with this exhibit, but has failed to meet the statutory requirements to support a reduction on that basis.

35. Taking these findings into consideration, the Property Owner's representative has failed to show substantial error in the County's current value for the subject property as of the lien date at issue in this appeal.

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 a 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 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. Therefore, to determine the fair market value of the subject property as of the lien date at issue in the appeal, the Tax Commission must consider what the subject property would have sold for on that date. For a fast food restaurant property, fair market value may be established using a sales comparison approach or an income approach. Although a cost approach may also be considered, the Commission generally gives little weight to this approach if there is income and sales information available for the other approaches.

3. The subject property is not a "qualified real property" for tax year 2022 pursuant to Utah Code §59-2-109(1)(c) because the value of the subject property was not reduced based on an appeal for tax year 2021.

4. Utah Code Ann. §59-2-301.4 is also not applicable in this matter because the subject property had not been the subject of a “valuation reduction” in one of the three tax years preceding 2022.

5. In this proceeding before the Tax Commission it is only the Property Owner who is requesting a value different from the County Board of Equalization value and it is the Property Owner that has the burden of proof. 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. For the Property Owner to prevail in this case, Utah Code. Ann. §59-2-109(2) provides that the Property Owner must: 1) demonstrate that the subject property’s current value contains substantial error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property’s current value to the amount the Property Owner proposes. As concluded in the findings of fact above, the Property Owner has not met this burden as the Property Owner has not established substantial error in the County’s value.

6. In this hearing, there was a difference in the income approaches offered by the Property Owner’s representative and the County. The Property Owner’s representative presented an income approach based on triple net leases and subtracted vacancy and expenses. The County used absolute net lease information, allowed no vacancy rates or expenses, but used a higher capitalization rate, which the County has argued is how fast food restaurants are bought and sold. The County’s approach in this appeal is the same approach the County had taken in a previous appeal involving a fast food restaurant, which was upheld by the Tax Commission. In *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 20-641 (3/30/2021)*, the Tax Commission stated:

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 . .

After reviewing the information 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 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-1 and are supporting the value set by the County Board of Equalization.

7. As in *Appeal No. 20-641*, the key factor in valuing the subject property, which is a newer building located in a good location for fast food, is to find comparables from a similar location, with a similar age, grade and condition. Also, as the value must be determined as of the lien date, comparable sales and comparable leases need to have commenced near the lien date. As concluded in the Findings above, the Property Owner's appraiser's comparables had a number of dissimilarities, while the County was relying on more comparable properties and the more comparable properties supported the County's value.

8. The difference in choice of comparables seems to be based on the Property Owner's appraiser's assumption that the most likely buy/sale transaction would be based on the building being vacant at the time of sale. The Property Owner's appraiser made adjustments to his income approach based on this "dark store" premise for rent loss, lease commissions, holding costs and entrepreneurial incentives. The Tax Commission has previously considered an appeal where the Property Owner's representative had argued for these same types of adjustments and the Tax Commission rejected that position.¹⁸ Additionally, this dark store

¹⁸ See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 22-1155*. (08/29/2023).

theory is an issue that was addressed on appeal of a Tax Commission decision in district court. The court in *Wal-Mart v Tax Comm'n*, Utah Second District Court No. 200700770 (issued June 13, 2022)¹⁹ concluded that to value the Wal-Mart properties at issue “as if their only possible use is to be converted to ‘big box retail’ by second-generation users would result in a significant undervaluing of the properties.” The court in *Wal-Mart* rejected the taxpayer’s valuation “[b]ecause of its heavy reliance on sales of vacant properties to second-generation users, inordinately high estimates of functional obsolescence, and unwillingness to consider that the highest and best use of these properties might actually be” as they are currently used. Similarly, in this case, it appears the Property Owner’s appraisal was considering older and vacant properties upon the premise of second generation sales and leases and consequently undervalued the subject property. The Property Owner’s appraiser’s conclusion was further reduced by subtracting for rent loss, lease commissions, holding costs and entrepreneurial incentives, which is contrary to the current use as a fully occupied building with a long term lease in place.

9. The Property Owner’s representative had offered an additional argument at the hearing, pointing out that the subject property, which was located on a good retail corner in CITY-1, was valued much higher than another FRANCHISE-1 property located in South Jordan. He argued that if there was a value difference in the location it would be reflected in the land value. However, the fact that there is one lower valued property, in a different location, that is similar to the subject building, is not by itself a basis for an adjustment. Pursuant to Utah Code Sec. 59-2-1006, a property owner may appeal an assessment based on either fair market value or equalization. Utah Code Subsection 59-2-1006(5) provides that the Commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if the issue of equalization is raised and “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.” As the Court of Appeals recently explained in

¹⁹ The Commission notes that this case is under further appeal, and has not been resolved as of the issuance of the Commission’s decision in this matter.

Patience LLC v. COUNTY-1 Board of Equalization, 2021 UT App 4, ¶28, “The Utah Constitution states that ‘all tangible property in the State . . . shall be taxed at a uniform and equal rate’ in proportion to its fair market value.” Utah Const. art. XIII, §2, cl. 1. Consistent with this constitutional mandate, a property owner may seek adjustment of a property valuation if the assessment “stands apart from a group of undervalued comparable properties.” *Citing Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶15, 100 P.3d 1206. The court in *Patience* pointed out that “[a] taxpayer seeking equalization bears the burden of identifying comparable properties that deviate more than 5% from the valuation of the property.” *Id.* ¶29. Based on the court’s decision in *Patience*, a property owner must show a “group of undervalued comparables”²⁰ were assessed at values that deviated at least 5% from the subject property. The Property Owner’s representative did not meet this requirement because he only showed one property that was valued less. Furthermore, there is no support for the position that a value difference based on location should be allocated to the land value. The Property Owner’s representative has failed to show that a group of comparable properties were valued at least 5% less than the subject property. Therefore, the Property Owner’s representative has not established a basis for a reduction in value based on equalization.

10. The Property Owner’s representative had also submitted at this hearing the current listing for the subject property, which showed a current listing price that was lower than the County’s assessed value for tax year 2022. However, the listing is subject to a long term lease. Based on the lease comparables submitted by the County, the

²⁰ See also *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶16, in which the Court explained:

“Intentional and systematic undervaluations of property may violate the equal protection and due process rights of property owners not granted preferential treatment. See *Allegheny Pittsburgh Coal Co. v. County Comm’n*, 488 U.S. 336, 343 (1989) (holding that the Equal Protection Clause allows states to divide property into classes and assign a tax burden to the property as long as the divisions and burdens are neither arbitrary nor capricious) . . . The presence of multiple unfairly advantaged properties necessarily raises the suspicion of a potential inequality meriting a remedy. It is the nature of this inequality that section 59-2-1006(4) was enacted to address. Its protection may be fairly described as a statutory mechanism to implement the constitutional guarantee of uniform taxation.”

lease appeared to be below market, at least as of the January 1, 2022 lien date. As previously concluded by the Tax Commission for property tax assessment purposes, which is a “fair market value” standard, the valuation must be based on an assumption of fee simple ownership.²¹ The reason for this was explained by the Tax Commission in *Utah State Tax Commission Initial Hearing Order Appeal No. 12-2733* (2013), as follows:

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the real issue before us. The evidence indicates that the lease is essentially a “below-market” lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor’s interest is diminished, but the value of the lessee’s interest is increased. See *The Appraisal of Real Estate* (10 th Ed. 1992), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor’s and the lessee’s interest.

Therefore, the Tax Commission does not use the actual rent rates from below market leases in an income approach. If the Property Owner is leasing the subject property at a below market lease rate, the Property Owner is reducing its interest in the subject property, but increasing the tenant’s interest. The value of the subject property for property tax assessment purposes is the combination of both interests.

Based on these Findings of Fact and Conclusions of Law, the value for the subject parcel should remain as set by the County Board of Equalization as of the lien date at issue in this appeal.

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, 2022, is \$\$\$\$\$. It is so ordered.

²¹ See *Utah State Tax Commission, Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 15-319* (06/13/2016).

DATED this _____ day of _____, 2024.

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.