

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA**

F&L FIDUCIARY SERVICES, LLC, a
Florida limited liability company, as
Trustee and as Successor Trustee to Robert
E. Stanley and Mary Jane Fredrickson.

Plaintiff,

Consolidated

Case Nos.: 2021-CA-001802

2021-CA-003606

v.

Division: L

AYESHA SOLOMON, as Property Appraiser,
JOHN POWER, as Tax Collector, and
JIM ZINGALE as Executive Director of the
Florida Department of Revenue

Defendants.

SWAMP LAND ACQUISITIONS, LLC,
a foreign limited liability company, and
ESPLANADE AT BUTLER PLAZA LLC,
a foreign limited liability company,

Plaintiffs,

Case No.: 2021-CA-003575

v.

Division: K

AYESHA SOLOMON, as Property Appraiser,
JOHN POWER, as Tax Collector, and
JIM ZINGALE as Executive Director of the
Florida Department of Revenue

Defendants.

FINAL JUDGMENT

THIS matter is before the Court on a non-jury trial held on January 9 - 12, 2024, and March 21 - 22, 2024, on the Plaintiffs' action challenging the validity of the Alachua County Property Appraiser's real property tax assessment. The lawsuit involves individual parcels that collectively comprise one large shopping center, and each parcel is assessed individually as marketable units. The commercial retail area is comprised of the Esplanade at Butler Plaza, Butler Plaza Central, Butler Plaza North, Butler Plaza West, and Butler Town Center, which the Court will generally refer to as "Butler Plaza." Plaintiffs challenge the assessment of twenty-five parcels owned by them in the Butler Plaza shopping area for 2020, and twenty-seven parcels for 2021.

Plaintiffs alleges that the Defendant Property Appraiser assessed the subject properties in a manner that exceeded the just value. The Property Appraiser argues that they have met the initial burden entitling the assessment to the statutory presumption of correctness, and that the Plaintiffs have failed to produce competent and substantial evidence to overcome the presumption. To overcome the presumption of correctness, the Plaintiffs must prove by a preponderance of the evidence either that Appraiser's assessment does not represent just value, or the valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the Property Appraiser to comparable property within the same county. Failure to overcome the presumption of correctness results in the assessment standing.

An appraiser's valuation must be "based on careful scrutiny of all the data available." CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9, 16 (2007). Under the Uniform Standards of Professional Appraisal Practice ("USPAP") appraisers must identify the characteristics of the property that are relevant to the intended use of the appraisal. "Relevant characteristics" is a core appraisal term defined as: "features that may affect a property's value or marketability such as legal, economic, or physical characteristics." See The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, Definitions, p. 5, (2020-2021 Edition).

Under professionally accepted appraisal practices, the three categories of appraisal data that must be applied in the appraisal process are: legal, physical, and economic. See Id., Standard 5, Mass Appraisal Development, p. 33; see also Fla. Stat. § 193.1142(1)(c)2. The legal, physical, and economic characteristics of the subject property must be reflected in the appraisal data applied for the eight factors in section 193.011 and must be applied in all just valuation approaches. "Failure to consider one or more of the factors set forth in section 193.011 is sufficient to invalidate an appraisal done by a tax assessor . . ." Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982). All property is assessed according to its just value on the first day of January. Fla. Stat. §192.042(1). The only interest to be appraised in just valuations is the fee simple estate. See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).

The eight just valuation factors in section 193.011 are: 1) present cash value; 2) highest and

best use in the immediate future and present use; 3) location; 4) quantity or size; 5) cost and present replacement value; 6) condition; 7) income; and 8) net proceeds of sale as received by the seller. The eight just valuation factors must be applied together with the other just valuation standards in sections 194.301 and 194.3015, and other applicable law, so that each standard is given professionally accepted and lawful meaning. Section 194.301(2)(a)3 provides that a just valuation cannot be “arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.”

For the Court to accept the Property Appraiser’s valuation of the properties in this case, a preponderance of the relevant and credible evidence must establish that the valuation was developed and reported in compliance with professionally accepted appraisal practices, complied with each just valuation factor in section 193.011, avoided arbitrarily different appraisal practices, did not apply superseded case law, complied with all other applicable law, and correctly applied the appropriate appraisal methodology.

Just valuation evidence, including evidence intended to show a property appraiser’s compliance with each of the section 193.011 factors, “must be real, material, pertinent, and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical, or hypothetical, and it must have definite probative value.” Singh v. Walt Disney Parks, 325 So.3d 124, 132 (Fla. 5th DCA 2020). Conclusory statements made by an appraiser reporting an appraisal process are not sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071, 1077 (Fla. 5th DCA 1995).

The Court must not only determine whether the valuation is correct, but also whether the methodology chosen by the appraiser is appropriate. “The value of property must be determined by an appraisal methodology that complies with the criteria of s. 193.011 and professionally accepted appraisal practices.” Fla. Stat. § 194.301(1). The Florida Constitution, and the cases interpreting it, preclude just valuation methods by local government entities that include intangible value. See Art. VII, §§ 1(a), 2, 9(a), Fla. Const., Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and Singh v. Walt Disney Parks, 325 So.3d 124 (Fla. 5th DCA 2020). An appropriate appraisal methodology is one that: 1) identifies and is appropriately based on the legal, physical, and economic characteristics of the subject property, 2) complies with statutory standards, and 3) is correctly applied.

The 2009 legislation requires the Court to determine whether the appraiser used an appropriate methodology in making the assessment. To allow the Court to make this determination, the property appraiser must present sufficient evidence that describes the appraisal methodology and explains how and why it was applied in valuing the Subject Property. Under section 194.301(1), the appraiser has the burden of going forward and presenting testimonial and documentary evidence explaining how the appraiser satisfied each of the just valuation criteria.

Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

The three approaches to just valuation are: 1) the cost less depreciation approach, 2) the sales comparison approach, and 3) the income capitalization approach. “[T]he value of property must be determined by an appraisal methodology that met the criteria of section 193.011 and professionally accepted appraisal practices.” Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019); See also CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9, 15 (2007)(“We do not see how a court can go about determining market value if it may not look behind the State’s choice of valuation methods.”) The valuation method and the weight given to each section 193.011 factor are governed solely by the legal, physical, and economic characteristics of the subject property and by the appropriate application of all just valuation standards in sections 194.301 and 194.3015 and all other applicable law. Properties may be valued individually, or through a mass appraisal process in which a group of properties sharing similar characteristics are valued together. When properly applied in compliance with all requirements of law, both mass appraisal and single-property appraisal are professionally accepted appraisal practices.

A property appraiser’s valuation is presumed correct if they properly considered all eight factors enumerated in section 193.011, and used professionally accepted appraisal practices, including mass appraisal standards, pursuant to section 194.301, to arrive at just value. In this case, the Property Appraiser relied in part on a Computer Assisted Mass Appraisal (“CAMA”) program, which compiles data involving thousands of property sales to generate a market value assessment for a particular kind of property. Florida Statute Section 194.301 states:

In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser’s assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with Section 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

A property appraiser must establish by a preponderance of the evidence that the appraisal methodology is appropriate to be entitled to the presumption of correctness. If the presumption of correctness applies, then the taxpayer must prove by a preponderance of the evidence that that the assessed value:

1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;
2. Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or
3. Is arbitrarily based on appraisal practices that are different from the appraisal practices

generally applied by the property appraiser to comparable property within the same county.

Fla. Stat. § 194.301(2)(a)1-3. If the taxpayer satisfies any of those requirements, then the presumption of correctness is overcome, and the assessment is invalid. If the assessment is invalid, then the Court must determine if there is competent, substantial evidence to establish a revised just value for each property.

The Subject Properties

Butler Plaza is bordered by 34th Street to the east, SW 40th Blvd. / SW 42nd St. and I-75 on the west, and Archer Road on the south. There are seven anchor tenants and over 100 retail stores. The total gross leasable area (“GLA”) is approximately 1,950,000 square feet. Plaintiff F&L has title to 26 of the 28 properties in suit. Plaintiffs Swamp Land and Esplanade each own one property apiece. The parcels include: three fast food restaurants fronting Archer Road (Taco Bell, Panda Express and Chick-fil-A), two sit-down restaurants fronting Archer Road (Texas Roadhouse and the former Ale House site), a fast food restaurant on Clark Butler Blvd. (Culver’s), five other sit-down restaurants off of Clark Butler Blvd. (Bahama Breeze, Outback Steakhouse, TGI Fridays, Newk’s and Chuy’s), and a Regal Cinema theatre. There are two Publix anchored shopping centers (Butler West and Esplanade). The balance of the properties consist of multi-tenant retail (Zoey’s building, Sprint building, Starbucks Shoppes), a restaurant/gas station (Exxon/Arby’s), and several pods in Butler North containing “big box” retail tenants (Dick’s Sporting Goods, Ashley Furniture, Total Wine & More, Marshalls, Aldi, and Lowe’s). Finally, there is a vacant land parcel (Pod D land).

At trial, the Plaintiffs called Dr. Henry Fishkind, Butler’s President Deborah Butler, Butler’s Vice President of Lease Administration Nancy Baker, business valuation appraiser Mary O’Conner, appraiser Todd Jones, and economist Kiernan “KC” Conway. The Property Appraiser called as witnesses Chief Deputy Tobias Foster, Assistant Property Appraiser Lance Briner, appraisal reviewer Peter Korpacz, Director of Valuation Christian Cao, and market analyst Dr. Steven Laposa. The Court has reviewed and considered all the evidence and testimony presented. In order to determine if the Property Appraiser has met its burden to establish the presumption of correctness, the Court will consider the validity of the assessed value, and the appropriateness of the methodologies used.

Aerial Views of Butler Plaza



Income Approach

The Property Appraiser used both the cost and income approach to assess different parcels at Butler Plaza. Assessing value using the income approach estimates a property's fair value through the income it generates. The market value is equal to the net operating income (NOI) divided by a capitalization rate. The NOI is calculated by determining the Effective Gross Income (EGI) and deducting an allowable expense ratio. The capitalization rate is derived by dividing the net operating income by the current market value of the asset, and corresponds to the expected profitability of a real estate investment, such as a commercial rental property. The capitalization rate is a numerical measure of risk, with the higher a capitalization rate, the higher the level of risk of not recouping an investment. A lower capitalization rate indicates a lower risk of return on a property investment, but also that it will take a longer time to recoup an investment. Present factors such as the location and condition of the property, vacancy rates, or external events such as COVID can all affect the capitalization rate of a property. An ideal capitalization rate represents returns on and of an investment above the standard return available from Treasury bonds.

To establish the value of the subject properties assessed using the income approach, the Property Appraiser called Lance Briner, who currently serves as an Assistant Property Appraiser. Mr. Briner is a Certified Assessment Evaluator as well as an Instructor with the International Association of Assessing Officers. Lance Briner assessed nine of the retail properties using the income approach. One parcel is no longer being contested by the Plaintiffs after their expert arrived at a higher just valuation than Mr. Briner. The Plaintiffs agree that the income approach was the appropriate valuation method given the legal, physical, and economic characteristics of the subject properties. Courts have found the income approach to be "particularly applicable to ... shopping centers." Palm Corporation v. Homer, 26 So. 2d 822, 823 (Fla. 1972).

Mr. Briner assessed North Pod N, North Pod E, the Zoey's building, the Sprint building, the Starbucks building, Butler Town Center, North Pod A, and Butler Central. Mr. Briner testified that he properly considered all eight factors in Section 193.011. As previously stated, the eight just valuation factors are: 1) present cash value; 2) highest and best use in the immediate future and present use; 3) location; 4) quantity or size; 5) cost and present replacement value; 6) condition; 7) income; and 8) net proceeds of sale as received by the seller. As to the first criterion, Mr. Briner testified that he considered the three approaches to value and professionally accepted appraisal practices and concluded that the income approach was appropriate. The Plaintiffs concede that the income approach is appropriate in this case considering the subject properties were developed to be leased as commercial real estate, and in fact were occupied by tenants at the time of assessment.

The second factor is the highest and best use of the property. Mr. Briner testified that he considered this factor by staying abreast of any zoning changes and trends in the market. He testified that the highest and best use of the subject property was its current use. For the 2020 and 2021 tax years, there were no zoning changes or any changes in the market to suggest that the highest and best use had changed from retail or restaurant.

The third criterion is the value of the location of the subject parcels. Mr. Briner considered this factor by choosing comparable properties along Archer Road and across from Butler Plaza for sales analysis and income analysis. Mr. Briner testified that the parcels within Butler Plaza have a superior location. Butler Plaza is bordered by some of the most-trafficked streets and highways in Alachua County—34th Street to the East, Archer Road to the South, and I-75 to the West. Many of the tenants are directly off Archer Road, visible and accessible to traffic along the road. Approximately 50,000 cars travel along Archer Road each day, with 1.5 million people visiting Butler Plaza each month.

The fourth criterion is the size of the subject parcels. Mr. Briner testified he considered this factor by reviewing the square footage of each parcel. The property record cards show the recorded sizes within the CAMA system. Additionally, he considered the size by making sure the comparable properties were similar in size. Mr. Briner testified that Butler Plaza has ten times the retail square footage than the closest comparable shopping area, Celebration Pointe.

The fifth criterion is the cost of the properties. Mr. Briner testified he considered this factor by researching the market based on property type and using market land rates and market costs for the improvements, and then applied depreciation using market derived depreciation tables and effective ages.

The sixth criterion is the condition of the property. Mr. Briner testified that he considered this factor through the Property Appraiser field team that observes and assesses the effective age of the buildings at a minimum once every five years, but which in practice occurs more frequently. When the Alachua County Department of Growth Management issues a building permit, this requires an inspection of the property. Because of the amount of construction at Butler Plaza, the Property Appraiser inspected the property much more frequently than every five years.

Mr. Briner was unable to consider the seventh criteria—actual income of the subject properties—as the Plaintiffs did not report their actual income to the Property Appraiser. Because the Plaintiffs report their income in the aggregate, Mr. Briner was unable to separate the income into individual parcels. Instead, Mr. Briner relied on sales/use tax (“SUT”) data of comparable properties obtained from the Department of Revenue to calculate an EGI, and then determined market rent for the subject properties. The Court finds that the Property Appraiser considered and relied on income data from comparable properties located directly across the street on Archer Road, whereas Plaintiff’s expert Mr. Jones failed to use comparable rental rates from comparable properties.

The eighth criterion is net proceeds of sales, which Mr. Briner considered by analyzing sales for each year and conducting sales ratio studies. Mr. Briner was responsible for verifying most of the commercial sales. Although Mr. Briner did not use the sales approach for valuation, he relied on it to check the reasonableness of his appraisal of properties like Publix.

Mr. Briner determined the EGI of the subject parcels, and then applied a 25% expense ratio based on the age of the properties and operating expenses to calculate the NOI. Plaintiffs' expert Todd Jones used a similar expense ratio in his appraisal. Mr. Briner then relied on three published sources, such as CBRE and PwC, to determine the capitalization rate. For property anchored by premium stores, Mr. Briner had a capitalization rate of 6%. Mr. Briner determined a capitalization rate of 7% for standard shopping properties, and 8.5% for "big box" stores such as Best Buy. Dividing the NOI by the capitalization rate, Mr. Briner was able to assess the value of the properties through the income approach.

Mr. Briner testified that Starbucks, the Sprint building, and Zoe's Kitchen were assessed using an EGI of \$40 per square foot. These parcels were the smaller parcels that front Archer Road. To determine the \$40 per square foot, he used data from four shopping centers located on the other side of Archer Road from the subject parcels. CoStar, a provider of information, analytics, and verified commercial real estate data, reported that similar commercial properties across from Butler Plaza on Archer Road were valued at \$42 per square foot.

Mr. Briner assessed the parcel at North Pod E at \$25 per square foot, which he determined through market data and SUT data of properties of similar size, but inferior locations, located on Newberry Road. North Pod E does not front Archer Road, and therefore must be valued less than the superior location assessment of \$40 per square foot. Mr. Briner testified that the location is still superior to the inferior property on Newberry Road, and should accordingly be assessed higher. He then double-checked with CoStar to support his \$25 EGI per square foot for that parcel.

Mr. Briner testified that he assessed Butler Central, which consists of multiple big box stores including Best Buy, using an EGI of \$17 per square foot. He relied on SUT data for a comparable shopping plaza with similar big box stores near the Newberry Road I-75 exit, which demonstrated an actual EGI in excess of \$20 per square foot.

Mr. Briner assessed the two Publix anchored shopping center parcels and one Aldi anchored shopping center at an EGI of \$16 per square foot. He categorized these as premium grocery anchored shopping centers. In determining the EGI, Mr. Briner considered the reported income from other premium anchored grocery shopping centers in Alachua County that were assessed at a range of \$9 to \$21 EGI per square foot. He determined the median of these was \$15 EGI. Mr. Briner adjusted the EGI up by one dollar per square foot because the subject parcels maintained a superior location on Archer Road.

Plaintiffs challenge Mr. Briner's assessment by arguing that there are Publix groceries stores around the county, and the two at Butler Plaza were assessed in the median range of local stores when the valuation should have been much lower. Plaintiffs rely on Placer AI foot traffic data presented by Deborah Butler to argue that the Butler Plaza Publix stores assessed by Mr. Briner ranked dead last of all the Publix stores in the county. The Court does not find this testimony persuasive given the limitations of Placer AI data, and the stacking of inferences necessary to make

the data relevant. Placer AI is a location data service that tracks cellular phones on which tracking applications are installed to determine how many people visit a certain geographic area over time. It necessarily relies on people carrying cell phones while they enter a store, with those cell phones also containing applications that allow tracking the user.

While Placer AI might be useful in assessing foot traffic, it does not necessarily correlate with sales at a given store. It is entirely possible that the Butler stores, although having lower foot traffic, could have higher revenues based on a shopper either purchasing more total items or more expensive items. What the Placer AI data did reveal is that approximately 1.5 million people visit Butler Plaza each month. Plaintiffs presented no sales data to indicate that their Publix grocery stores were generating less revenue than other similar stores throughout Alachua County. Moreover, Plaintiffs' expert Todd Jones testified to the advantages of Publix competing with itself through the agglomeration of two of its stores in one shopping center. Although each individual Publix may make less profit than a single store, the two stores operating together generate more total profit than if a rival grocery store were to occupy the vacant space. Even if the individual Publix store in Butler Plaza had fewer Placer AI visits, this is as a result of a business decision by Publix to divide its customer base, not because of any inferior location.

Additionally, Plaintiffs relied on vehicular traffic counts by the Florida Department of Transportation to show that the Newberry Road corridor has an equivalent number of people traveling on it as does Archer Road. The Court finds this to be an inapposite comparison. Although that area of Newberry Road contains the Oaks Mall, as Plaintiffs' expert Todd Jones testified, the enclosed shopping mall is "a format that has lost its cachet in the market" and that the Oaks Mall in particular is an "old and tired mall." Most of the retail anchor stores have abandoned the Oaks Mall, and that area of Newberry Road is dominated by HCA North Florida, a large hospital, with few retail shopping areas. The comparable traffic count belies the reality that westbound Newberry Road is the primary route to the newer and expanding residential areas in the county, whereas traveling the same direction on Archer Road leads to less densely populated areas, with smaller towns such as Archer, Bronson, and Otter Creek. Although certainly people use Archer Road to commute, the higher traffic count is more indicative of people shopping along the Archer corridor than on Newberry Road.

The Court finds that the Property Appraiser has established by a preponderance of the evidence that she considered and complied with each of the eight just valuation factors in section 193.011, that the valuation of the properties using the income approach was developed and reported in compliance with professionally accepted appraisal practices, avoided arbitrarily different appraisal practices, did not apply superseded case law, complied with all other applicable law, and correctly applied the appropriate appraisal methodology.

Cost Approach

The Property Appraiser presented the testimony of Christian Cao, who assessed eighteen of the

subject parcels, one of which is no longer being challenged. Because he lacked reliable sales or income data, Mr. Cao testified that he used the cost approach. Assessing value using the cost approach requires evaluating the land as if it were vacant and including the improvements to the land less depreciation. “The ‘cost approach’ considers the cost that a prudent purchaser would pay to acquire an equally desirable substitute on the open market. The cost approach simply values the original, reproduction or replacement cost of the property, less an allowance for depreciation.” Havill v. Scripps Howard Cable Co., 742 So. 2d 210, 213 (Fla. 1998). Plaintiffs presented the testimony of Todd Jones that the income approach should have been used instead, and sufficient data exists for such assessment.

Christian Cao is the Director of Valuation for the Alachua County Property Appraiser. He assessed the remaining eighteen parcels using the cost approach. Mr. Cao testified that he considered the sales and income approaches but chose the cost approach as the most reliable for these parcels because he lacked reliable sales or income data. These properties are comprised of the Butler Town Center, the Regal Cinema movie theater, and largely single-tenant fast-food or stand-alone restaurants. Mr. Cao testified the number of sales of similar properties in Alachua County was too low to allow for sufficient comparisons. Additionally, Mr. Cao testified he did not have the Plaintiffs’ actual income data, and most of the properties are owner-occupied and do not have rent to report to the Department of Revenue. The data the Plaintiffs do report to the Department of Revenue is in aggregate, so Mr. Cao was unable to impart specific income to specific parcels. Additionally, Mr. Cao testified that he had insufficient data from other comparable single-tenant restaurants within Alachua County to allow him to use the income approach. Mr. Cao testified that even if the Property Appraiser had the actual income or reported SUT data from the Plaintiffs, they still would not have relied on the income approach because of the lack of comparable data for the other single-tenant restaurants within the County.

Mr. Cao testified that he considered all eight factors. Mr. Cao considered both the sales approach and income approach, however he ultimately relied on the cost approach to assess the subject parcels. He testified that the cost approach was the most reliable for these parcels as he lacked reliable sales or income data. As to the first and eighth factors, present cash value and sales proceeds, Mr. Cao reviewed all available sales data and concluded that there were too few sales of comparable properties to use the sales approach reliably. Of the 10,000 parcels sold each year, only 80 to 100 sales qualified, the majority of which were not comparable to the subject properties.

Considering the second factor—the highest and best use in the immediate future and the present use—Mr. Cao testified he determined that the highest and best use was the current use by considering the present use of the property and the use the property can be put to in the immediate future. He testified that the Property Appraiser reviews zoning regulations, parking requirements, and setbacks to determine what can actually fit on the parcel. Further, Mr. Cao testified that he is aware the Plaintiffs continue to develop the property as retail and restaurants to this day. Despite the argument from Plaintiffs that COVID impacted the highest and best use of the property, the Court

finds persuasive that Plaintiffs failed to introduce any evidence demonstrating that its NOI dropped from the 2019 to the 2020 tax year. To the contrary, the report from Plaintiffs' expert Todd Jones demonstrates an overall increase in the actual income from 2019 to 2020. Mr. Briner also testified that COVID did not have a significant impact on the EGI reflected in SUT data from 2020 and 2021, and that the income data showed 40.2% of shopping centers in Gainesville actually had a higher NOI in 2021 than 2020, which indicates the short-term impact of COVID on the retail sector. Nancy Baker testified that COVID had a temporary effect on Plaintiffs' rental income, and by June 2020 business was back to normal. This is consistent with the efforts by the State of Florida to limit the impacts of COVID on businesses. On September 25, 2020, Governor DeSantis signed Executive Order Number 20-244, which eliminated all prior COVID restrictions, lifted restaurant restrictions, and preempted any local ordinance which prevented individuals from working or operating a business.

Plaintiffs argue that Mr. Cao's analysis does not comply with professionally accepted appraisal practices, where the highest and best use is determined through a four-step analysis— physically possible, legally permissible, financially feasible, and maximally productive. There is no statutory requirement for a county property appraiser to conduct a feasibility study to determine what property use is maximally productive. "In arriving at just valuation . . . the property appraiser shall take into consideration the . . . highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property." Fla. Stat. § 193.011(2). The Court has found no cases interpreting Florida law as requiring a feasibility study to support a determination of a property's highest and best use.

Here, Mr. Cao determined that Butler Plaza is presently, and has for decades, offered retail shopping and dining. The highest and best use for the property and its improvements in the immediate future is commercial retail. "The uses under the statute must be immediate, not speculative, and not predicated on conversion to higher or better uses. Present use and immediate future use are strongly influenced by zoning and zoning must, therefore, be considered by the assessor in his determination of just valuation." Straughn v. Tuck, 354 So. 2d 368, 371–72 (Fla. 1977)(citing Lanier v. Overstreet, 175 So.2d 521 (Fla.1965)). Plaintiffs argue because of the COVID pandemic, the highest and best use of some of the subject properties as of January 2021 was to demolish existing buildings and leave the property vacant. In a highest and best use analysis, the principle of conformity states that maximum value is realized when a reasonable degree of architectural homogeneity exists and land uses are compatible. Having vacant lots in the middle of town center shopping district would not be maximally productive because it would violate the economic principle of conformity. Additionally, the principle of balance requires that a proper combination of land and building is critical for maximum value to be attained. Again, large vacant parcels in the middle of an otherwise thriving retail district disrupts the balance with the surrounding properties, and therefore is not maximally productive. Although the Property Appraiser did not conduct a feasibility study, the Court finds the Plaintiffs evidence of highest and best use

unpersuasive.

Mr. Cao testified that he considered the third factor, the location, when assessing the subject properties. He testified that the Archer Road corridor is one of the most superior locations in the County. Additionally, Butler Plaza is adjacent to Gainesville's most trafficked interstate exit and main highway—I-75 and Archer Road.

Mr. Cao testified that he considered the fourth factor, size, by reviewing CAMA data maintained by the Property Appraiser on the size of each individual parcel, parking lot, and building. Prior to its expansion, Butler Plaza had approximately 1 million square feet of retail space. The new construction added an additional 1.5 million square feet of new commercial space. Mr. Cao developed building rates by multiplying base rates by the square footage of the improvements. Since Mr. Cao ultimately relied on the cost approach, he considered the size criterion by finding comparable sales of land throughout the county. As previously discussed, the Court finds that the Property Appraiser properly considered this factor.

Mr. Cao testified that he considered the sixth factor, condition, by physically inspecting the property at least every five years. He stated that an inspection is triggered every time a permit is pulled and work is done on a property. Butler North first opened in 2016 and Butler Town Center in 2018, with construction for incoming tenants continuing for several years. This resulted in the Property Appraiser inspecting the condition of the property near in time to the valuation.

The fifth factor, cost and replacement value, was considered using the cost approach. The income approach, the seventh factor, was considered but not relied upon because of the lack of reliable data. Mr. Cao attempted to gather as much expense and income information as he could from the market to formulate an income approach but was unable to since Butler aggregates its rent rolls, making the Sales Use Tax data unreliable.

Applying the cost approach, Mr. Cao assessed the Butler Town Center. He relied on the cost approach as it was a brand-new center and mostly vacant as of January 1, 2020, and January 1, 2021. Mr. Cao testified that Butler Town Center is currently assessed under the income approach since it is fully built out, except for single-tenant restaurants which are owner-occupied and therefore do not have rent to report to the Department of Revenue. The fast-food restaurants, casual restaurants, and the Regal Cinema were all assessed by Mr. Cao using the cost approach methodology. In order to provide uniform assessment within the County pursuant to Section 195.0012, Mr. Cao testified the Property Appraiser relies on the cost approach to assess all of these property types. The Property Appraiser does not mix approaches within the same property use. This is a County wide policy. The Property Appraiser is prohibited from arbitrarily using appraisal practices that are different from the appraisal practices generally applied by the Property Appraiser to comparable property within the same county. Fla. Stat. § 194.301(2)(a)(3).

Mr. Cao testified that his first step was to verify sales. The Property Appraiser's staff pulls a

query of all of the sales that occurred the previous year and they verify the sales. The Property Appraiser attempted to contact any parties involved in the sale, such as the buyer, seller, listing broker, buyer's broker, or attorneys, to verify the sale. The Property Appraiser notated in the sales verification forms relevant information obtained from the parties. Once the Property Appraiser verified the sales, the sales are grouped by property use code, location, and size to analyze the data. The Property Appraiser then runs a sales ratio analysis to evaluate and update models and values.

To determine building base rates, Mr. Cao testified that he extracts building values from the sales. Once the final base rate is determined, he multiplies that base rate by the square footage of the building, and it gives a building value. The Property Appraiser develops their own building base rates by using Marshall & Swift, an independent and widely used source, to confirm and support values. Marshall & Swift is a building cost calculator that breaks down every component of a building cost, from the foundation to the interior finishes.

Mr. Cao testified his next step was to determine land rates. There were no recorded sales within Butler Plaza, so he presented comparable sales that were available and considered in developing land rates for the subject parcels. Most of the sales were vacant land sales. Two improved sales were considered on the smaller lots and one improved sale was considered on the larger lots. For improved sales, Mr. Cao deducted the value of the improvement from the sale price to come up with a land residual.

A nearby restaurant on the corner of 34th Street and Archer Road, Carrabba's Italian Grill, had recently sold for \$4.2 million, with an assessed land rate of \$58 per square foot. Mr. Cao determined that smaller parcels under two acres with direct frontage on Archer Road received a land rate of \$35 per square foot. As a comparison, Mr. Cao relied on an inferior land sale from October 18, 2018, east of 34th Street fronting Archer Road with a land value of \$34.49 per square foot.

Mr. Cao assessed parcels on a secondary road, such as Clark Butler Boulevard, which are two acres and below, at a rate of \$30 per square foot. Parcels on tertiary roads, such as Chuy's, had a rate of \$25 per square foot. Chuy's was lower as it sits farther off from the main road and does not have the same visibility as the parcels directly on Archer Road. Parcels greater than five acres were assessed at a land rate of \$6.50 per square foot. This rate was the median rate of the sales of the larger parcels. The vacant lot in between two and five acres, was given a land rate of \$10 per square foot. Mr. Cao testified these rates were applied equally to all parcels in the market area, on both sides of Archer Road.

The Plaintiffs relied principally on Todd Jones, MAI, CRE, and FRICS of RealAdvice, Tampa, to establish that the challenged assessments exceeded just value. Mr. Jones utilized an income approach based upon market rents to appraise the taxable real property. According to Mr. Jones, relying on market rent, rather than contract rent, captures only the value of the unencumbered fee simple interest in each of the properties.

Mr. Jones initially surveyed the Gainesville/Alachua County market for comparable rent data. He also interviewed local commercial real estate brokers from Colliers International and Bosshardt and consulted the commercial data services CoStar and Realty Rates. As a confidence check on his income approach values, Mr. Jones also developed cost approach valuations for each of the properties. Mr. Jones collected every commercial vacant land sale in Alachua County during the 12 months preceding each of the value dates. Because of relatively poor quality of data available, Mr. Jones did not to give any weight to his cost approach conclusions.

Mr. Jones also considered the sales comparison approach using improved sales transactions. He could not develop a value indication from the available data because the properties sold were all leased at the time of sale, and the rent and expense data necessary to properly analyze the transactions was not available to him. Mr. Jones testified that he used the income approach on the properties assessed by Mr. Cao by relying on comparable rental data from CoStar and other data sources.

Peter Korpacz performed an appraisal review on Mr. Jones's report. Mr. Korpacz found that Mr. Jones's appraisal offered no summary, explanation, or analysis as to how he determined comparable market rent. Mr. Korpacz determined that Mr. Jones's appraisal was misleading because there was no narrative analysis for a reader to determine how the numbers were generated since it contained only ranges and averages, but no justification for how the numbers were derived. In reviewing Mr. Jones's work file, Mr. Korpacz found mathematical errors in the highest and best use analysis, missing information, and no analysis as to how the ultimate opinion was reached. Mr. Jones incorrectly used the actual age in his cost approach appraisal, which does not take into account maintenance or improvements, and results in a lower value. This ignored the condition of the subject parcels, one of the eight factors enumerated in Section 193.011. Finally, Mr. Korpacz found inconsistencies in how Mr. Jones used the income and cost approach. Mr. Jones ignored the rental rates of the subject properties, relied on lower value comparables, failed to use comparable rental rates from comparable properties, and failed to consider evidence of recent leases to derive market rent. Ultimately, Mr. Korpacz concluded that Mr. Jones's appraisal does not comply with USPAP as the appraisal is filled with conclusory statements. Had the appraisal considered appropriate comparables and the subject rentals, the value reached by Mr. Jones would have been different.

The Court finds Mr. Korpacz's review of Mr. Jones's appraisal persuasive. Although the Property Appraiser did not have access to the rental data of the subject parcels at Butler Plaza, Mr. Jones did. There are thirty leases on the subject properties, and Mr. Jones instead relied on lower-value comparables to arrive at the conclusion that the assessment does not represent just valuation. As Mr. Korpacz acknowledges, Butler Plaza is *sui generis* in Alachua County because of its size and location. Finding appropriate comparables is essential to just valuation, and properties closer to Butler Plaza are more likely to provide more accurate comparisons. The market rents developed by Mr. Jones used rents from all over Alachua County and the City of Gainesville, rather than

comparable properties with comparable locations like the Archer Road corridor. In his appraisal, Mr. Jones often used below average market rents in assessing the subject parcels. By using a county-wide market, Mr. Jones ignored the location of the subject parcels, one of the eight factors enumerated in Section 193.011. This resulted in Mr. Jones calculating \$12.00 per square foot EGI for the Taco Bell at Butler Plaza, when the actual EGI is \$64.50 per square foot. Similarly, Mr. Jones used an EGI of \$20.25 for Starbucks, \$21.81 for Sprint, and \$18.75 for Zoe's Kitchen. All of these are below Mr. Jones's average market rent. Moreover, their actual EGIs per square foot for 2020 and 2021 are significantly higher. Starbucks' actual EGI was \$46.86 for both years, Sprint's actual EGI was \$35.79 for 2020 and \$36.95 for 2021, and Zoe's actual EGI was \$47.61 for 2020 and \$42.28 for 2021. By contrast, the Property Appraiser considered and relied on SUT data from comparable properties located directly across the street on Archer Road, confirmed by CoStar, that demonstrated an EGI of \$42.00 and an EGI of \$35.00 per square foot.

The Court finds that the Property Appraiser has established by a preponderance of the evidence that she considered and complied with each of the eight just valuation factors in section 193.011, that the valuation of the properties using the cost approach was developed and reported in compliance with professionally accepted appraisal practices, avoided arbitrarily different appraisal practices, did not apply superseded case law, complied with all other applicable law, and correctly applied the appropriate appraisal methodology.

Intangible Property

Plaintiffs argue the Property Appraiser inappropriately taxed intangible personal property in its valuation. Intangible personal property is defined as “money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.” Fla. Stat. § 192.001(11)(b). The Plaintiffs argue that the existence of the “Butler Brand” is “undeniable” and adds value to the assessed property. Plaintiffs also argue that the Property Appraiser unconstitutionally captured the intangible value of Butler's brand, good will, tenant mix, skilled management, and assembled workforce in the ad valorem taxation. In Florida, good will, skilled management, and an assembled workforce have consistently been treated as intangibles in the context of ad valorem taxation. Havill v. Scripps Howard Cable Co., 742 So. 2d 210, 213 (Fla. 1998); GTE Florida, Inc. v. Tadora, 854 So. 2d 731, 733 (Fla. 2nd DCA 2003); and Singh v. Walt Disney Parks and Resorts U.S., Inc., 325 So. 3d 124, 130-31 (Fla. 5th DCA 2020). Plaintiffs' expert Todd Jones testified that all businesses, regardless of size and scope, have some amount of intangible value. The issue for the Court is whether the challenged valuation captures any of the intangible value of the Butler properties.

Plaintiffs presented the testimony of Mary O'Connor, a business appraiser who quantified the brand value, skilled management, and assembled workforce of Butler Enterprises. These intangible assets all contribute to the overall revenue of Butler Enterprises. What is not clear is how these intangible assets increase the value of the land being assessed. The cases relied on by the Plaintiffs

all involve large, service-based companies—Walt Disney hotels, cable television providers, and telephone service providers. The value of the assembled workforce of these companies is in the quality of the service provided, which necessitates a large and skilled workforce in place, with an equally skilled management to direct the workforce.

The evidence presented at trial is that Plaintiffs have approximately twenty employees and provide minimal training. These employees are involved in marketing, construction, and maintenance. According to Deborah Butler, “Butler’s assembled workforce is vital to tenant satisfaction,” but the Plaintiffs did not provide credible evidence as to how their workforce aids tenants. Butler Enterprises leases land and structures to businesses that operate independently of any management by the Plaintiffs. The retail stores at Butler Plaza do not rely on the Plaintiffs’ assembled workforce to conduct their business operations. Large anchor stores such as Target, Publix, Best Buy, and Walmart have hundreds of local employees who provide site security and loss prevention, maintain the stores, stock shelves, retrieve shopping carts from parking lots, and generally allow the businesses to operate. By contrast, the Plaintiffs have twenty employees, and it is unclear how many are involved in marketing as opposed to maintenance or other service roles. The Court finds that the cases cited by the Plaintiffs for the intangible value of its assembled workforce are inapposite as they relate to businesses with hundreds of employees in service-focused industries. “‘Assembled workforce’ signifies the intangible benefits Olympic gets from the *more than 800 trained people* employed at the hotel.” Olympic & Georgia Partners, LLC v. Cnty. of Los Angeles, 90 Cal. App. 5th 100, 104, (Cal. App. 2023)(emphasis added). The value of Butler Plaza is the land, the improvements, the size, and the location, and an assembled workforce does not add intangible value to any of these items. By contrast, hotels must have valets to park cars, custodial staff to service rooms, kitchen staff, concierges, bell hops, and good will that attracts customers and keeps them returning. “The valuation of hotels presents issues that do not arise with office or other buildings that generate income only from the real property. Hotel income is derived from the real property and a business, and involves income from many sources, including intangibles like a good trade name and an experienced workforce.” Id. at 855 (Grimes, J., dissenting).

Although witnesses testified as to the value of the “Butler Brand,” no witness testified that this brand enhanced the value of any of the subject properties. The Court received no evidence that Butler marketed its brand, advertised its brand locally or nationally, or in anyway linked its brand to the individual parcels assessed by the Property Appraiser. To the contrary, the Court finds persuasive the testimony of Dr. Steven Laposa that the primary value of Butler Plaza is the superior size and location, and the individual brands of each tenant. Stores at Butler Plaza like Best Buy, Publix, Walmart, Outback, Taco Bell, Starbucks, Lowes, Old Navy, Olive Garden, and Chik-Fil-A are nationally known brands with persistent advertising campaigns designed to create good will, recognition, identity, and resulting sales. No retailer testified that they chose to lease at Butler Plaza because of the brand related to the shopping center. The essence of branding is to differentiate otherwise indistinguishable products or property, and thereby create representational value by offering consumers a reason to choose one product over another. For example, there is no product

as fungible as water, and yet there are approximately 2,735 bottled water companies in the United States—all selling essentially the same product with a different brand attached. See U.S. Bottled Water Industry Database, 2024 Edition - Published March 2024. When a consumer chooses to buy a bottle of Fiji water instead of Evian or Voss, they are making a purchasing decision based not on the product inside, but instead on the brand on the outside of the bottle. That is “value . . . based upon that which the property *represents* rather than its own intrinsic value.” Fla. Stat. § 192.001(11)(b)(emphasis added). The Court does not find credible the Plaintiffs’ argument that the Property Appraiser is capturing the representational value of the Butler Brand instead of the intrinsic value of size and location.

The Court has heard no evidence that the arrangement of national chain stores at Butler Plaza is any different from the thousands of similar shopping centers around the country. Consumers choose to shop at these locations because of the stores, services, and products offered. The Court again finds persuasive the testimony of Dr. Steven Laposa that the core concept of a shopping center like Butler Plaza is to create retail gravity, whereby brands agglomerate and pull in consumers through the sheer amount of retail options. Courts have recognized this type of shopping center for over half a century. “The individual leases complement one another in order to foster the goal of multipurpose or ‘one-stop’ shopping. The shopping center was designed and operated as an economic whole[.]” Homer v. Dadeland Shopping Ctr., Inc., 229 So. 2d 834, 836 (Fla. 1969). “Tenant mix” is nothing but businesses choosing to rent space at Butler Plaza to capture additional sales by virtue of their proximity to other surrounding businesses. This is not intangible property; this is the definition of a shopping center.

Dr. Laposa evaluated six other retail centers in Gainesville and found that none were comparable to Butler Plaza. Stretching from I-75 to 34th street, Butler Plaza extends nearly a mile along one of the busiest areas in Alachua County—Archer Road. Butler Plaza is located on a 267-acre parcel of land with over two million square feet of retail space. This size allows for a greater number of stores and a greater diversity of retail brands than any other location in Alachua County. Plaintiffs argues that this “tenant mix” is an intangible asset being valued. The Court finds that the Plaintiffs have not provided any evidence that the “tenant mix” of Butler Plaza is somehow any different from any other retail gravity center. The St. Johns Town Center in Jacksonville, Disney Springs in Orlando, or any number of other shopping areas around the state have the same or similar national chain stores as tenants. The Court recognizes that attracting quality tenants is reflective of good management practices, but this does not necessarily create intangible value.

Furthermore, certain stores and restaurants are exclusive to Butler Plaza. If a consumer watches a television advertisement for a Bloomin’ Onion and wants to eat at Outback Steakhouse, the only location to do so in the six counties of the Eighth Judicial Circuit is in Butler Plaza. If a consumer wants to buy sports equipment from Dick’s Sporting Goods, again the only location to do so in the six counties of the Eighth Judicial Circuit is in Butler Plaza. The same thing is true for Sam’s Club, Culver’s, Old Navy, and many other stores that are only found within the region at Butler Plaza. Customers come to Butler Plaza because they are attracted by the national brands

present at Butler Plaza.

Would rebranding Butler Plaza to some other name change the inherent characteristics of the size and location of the land? After all, “What’s in a name? That which we call a rose / By any other word would smell as sweet.” WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc. 2, ll. 46-47. The Plaintiffs have not provided any persuasive evidence that it is the “Butler Brand” attracting their tenants instead of physical characteristics such as size and location. The Court finds that the evidence establishes that it is the physical size of Butler Plaza that is attracting customers, and thereby tenants. Under the economic theory of Reilly’s law of retail gravitation, the larger the retail center, the farther consumers are willing to travel to shop at that location. Butler Plaza’s size, coupled with an exit directly off I-75, makes the location superior to any other location in the county. Consumers from neighboring counties are more likely to travel to Butler Plaza because of its size and location than any other shopping district in Alachua County. This is why the Plaintiffs can charge higher rents to tenants, and why tenants are willing to pay those rents to have access to the market Butler Plaza offers.

Plaintiffs concede that the cost approach used by Mr. Cao excludes any intangible value of the assessed property, so only the properties assessed using the income approach could be affected. But even if the “Butler Brand” contributed to an intangible value in the subject rents charged, Mr. Briner testified he did not rely on any of the subject rents in developing market rents, but instead used comparable real property market rents in his income model. Any intangible value claimed by the Plaintiffs would not be included in the market rents and therefore would not have been part of the assessed value. Since Mr. Briner did not use Butler rents to derive the value of the Butler properties, he could not have included any intangible value in his assessment. Ultimately, the Court is not persuaded that the Property Appraiser included any intangible value in its assessment of the Plaintiffs’ properties.

Conclusion of Law

The Court finds that the Property Appraiser established a presumption of correctness as to the assessments. The Court finds that the Property Appraiser proved by a preponderance of the evidence that she properly considered all eight factors enumerated in Section 193.011, Florida Statutes, and used professionally accepted appraisal practices, including mass appraisal standards, pursuant to Section 194.301, Florida Statutes, to arrive at just value for the subject properties.

To overcome the presumption of correctness, the Plaintiffs must prove by a preponderance of the evidence either that appraiser’s just valuation does not represent just value, or just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. Failure to overcome the presumption of correctness results in the assessment standing. The Court finds that the Plaintiffs did not meet their burden of proof in this case as prescribed by Sections 194.301 and 194.3015, Florida Statutes. Plaintiffs failed to show by a preponderance of the evidence that the

assessment did not represent the just value of the subject property. Fla. Stat. § 194.301(2). Additionally, the Court finds that the Plaintiffs did not establish that the Property Appraiser included the value of intangible personal property in its assessments.

Therefore, it is **ORDERED AND ADJUDGED** that Final Judgment is entered in favor of the Defendants, who shall go hence without day.

DONE AND ORDERED on Wednesday, October 16, 2024.

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A handwritten signature in black ink, appearing to read "George M. Wright", written over a horizontal line.

George M. Wright, Circuit Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Wednesday, October 16, 2024, to the following:

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