

vacancy rate and continues to lose tenants to the (X).

On appeal before the Board, the County's appraiser present an income analysis based on actual 2003 income and expenses. Applying a 3% reserve, a %%% cap rate¹ and a 1.5% effective tax rate, the appraiser estimated an overall value for the property of \$\$\$\$\$. After backing out the value attributed to the related parcels that are not under appeal, the appraiser calculated the capitalized value of the subject property to be \$\$\$\$\$, supporting the initial assessed value. The appraiser had access to 2004 budget projections for the property and stated that the economic value of the project was expected to increase over 2004.

In its hearing notes, the Board expressed the opinion that there is some validity to Petitioner's argument that (X) may support a higher cap rate, but noted that PETITIONER is a unique type of retail property that does not fit squarely with typical (X). Even so, the hearing officer, applying a %%% overall rate to the 2003 actual income of \$\$\$\$\$ yielded a value higher than the assessed value. Given that the County's appraiser offered evidence in support of the assessment and Petitioner failed to support a reduction in value, the Board affirmed the initial assessment.

Petitioner appealed to the Tax Commission, and this matter came before the Commission in an Initial Hearing on January 30, 2006. On appeal to the Commission, both parties seek an adjustment to the initial value.

APPLICABLE LAW

With regard to an appeal of the assessed value, any party requesting an adjustment from the value set by the Board of Equalization has the burden to establish that the

¹ With regard to the County's cap rate, the appraiser referred to the Commerce CRG Year End 2004 Market Review, p. 9. That review indicated that the average cap rate for retail properties was %%% for year end 2003 and %%% for year end 2004. Based on this survey or study information, the appraiser determined that a 10% vacancy was appropriate for this property.

market value of the subject property is other than that as determined by the Board. Utah Admin. R. R861-1A-7(G). To prevail in a real property tax dispute, the party seeking adjustment must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing or increasing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject parcel, along with adjacent and nearby parcels, comprise PETITIONER, which is an economic unit. As a whole, the 2004 assessed value for the PETITIONER property increased \$\$\$\$ over the 2003 assessment. Petitioner's representative believes that the value of this property should have decreased for tax year 2004.

The biggest point of contention here is the appropriate cap rate to apply in valuing this property. We begin by noting that the Petitioner's income approach contained calculation errors and included a deduction for the (X), a tenant that turned over in mid-2004. Also, there is disagreement between the parties as to actual income and expenses for this property for 2003. Therefore, for purposes of this analysis, we rely on the 2003 budgeted income and expenses as the best available information, which can be found on page 15 of the County's appraisal report. On that basis, the NOI is presumed to be \$\$\$\$ and the combined value of the other parcels that make up the economic unit is \$\$\$\$\$. The effective tax rate is presumed to be 1.52%.

Cap Rate

Based on her review of a nationwide cap rate study and comparables from around the country, PETITIONER REP determined that the average cap rate for (X) or (X) is %%%%, with a median cap rate of %%%%. Noting that the comparables were much newer than the subject property, she concluded that %%%% cap rate is reasonable for this property. Adding an effective tax rate of 1.5%, Petitioner used an overall cap rate of %%%% in her income approach. Petitioner's representative did not present documentation of the nationwide study or comparables that she relied on, nor did she clearly explain how the nationwide cap rate studies relate to the Salt

Lake market in general or the subject property in particular. In short, she offered no direct evidence to support her opinion that a %%% cap rate, which is very aggressive in comparison to the averages she cites. She was allowed an additional 10 days to supplement the record with supporting documentation, but failed to do so. Nevertheless, even if the very aggressive rate of %%% (%% cap rate, plus 1.52% tax rate) is applied to the NOI of \$\$\$\$\$, the resulting value would be \$\$\$\$\$. This value is higher than the value the Petitioner seeks and it is within 5% of the initial assessed value.

The Respondent's income approach² used a %%% cap rate and a 1.52% effective tax rate. The appraiser testified that he found a cap rate study that indicated an average cap rate for retail properties was %%% for year-end 2003 and %%% for year-end 2004. The appraiser used a slightly higher than average retail cap rate to account for the high vacancy level of this property and the age of the improvements. The Respondent has calculated a capitalized value of \$\$\$\$\$ ((\$\$\$\$/%%) - \$\$\$\$\$). We note that the appraiser used a more conservative cap rate in his appraisal than the %%% that he suggested to the Board of Equalization while relying on the same data. This illustrates how dependent a recommended cap rate can be on the appraiser's professional opinion. It would certainly be preferable to see more specific cap rate data to corroborate that opinion. Nevertheless, even if a %%% cap rate were used here, the resulting value would be about \$\$\$\$\$, also suggesting that an increase in value may be appropriate.

Considered together, the caps suggested by the witnesses establish a range of values from \$\$\$\$\$ to a \$\$\$\$\$ difference based solely on cap rate. The correct determination of the cap rate, then, is a significant issue here. The Petitioner's representative has not substantiated her %%% cap with any direct evidence, so we do not give much weight to her opinion on that matter. The Respondent's cap rate evidence is also rather weak, as there is no way to tie the general retail averages he relies on to this type of property and to the market in which it operates. Unfortunately, there is no information as to indicate how the County arrived at its initial assessment and the cap rate it used to get there.

² The Respondent's appraisal report also includes a cost approach analysis, but the appraiser states that the cost approach is not reliable due to the difficulty of depreciating the (X) on the subject parcel.

There is no question that the subject is a unique property and that the risk parameters are hard to gauge. It is a (X), located outside of the (X). Yet the retail establishments in this complex tend to be (X). (PORTION REMOVED). It is certainly difficult to accurately pinpoint the correct cap rate because neither party presented evidence derived from similar properties and housing similar retail tenants in a similar market. However, the Commission is charged with the responsibility of determining whether either party made a case for adjustment, or if the initial value that was affirmed by the Board should be affirmed.

Petitioner's representative has failed to support a %%% cap rate. Furthermore, her income approach had to be reconstructed to correct errors and to remove the deduction for the value of the (X). After her income approach is corrected, even her %%% cap rate cannot support a decrease in value because the resulting value is within 5% of the initial assessment.

On the whole, the County's appraisal is a better representation of the facts in this case. The County's appraiser used the best income information available, which accounts for the high vacancy losses. He has selected a cap rate somewhat above the averages for retail properties overall to give additional consideration for the risk involved with this property. His suggested %%% cap rate may be conservative, but even a less conservative rate of %%% results in a value that is above the initial assessed value. We tend to agree with the Respondent that the initial assessment undervalued the property. Having no other information upon which to base a decision concerning value, the Commission finds that the County's appraised value is the best evidence of value. If this matter comes back for a Formal Hearing, the parties should be prepared to offer more specific evidence on this issue.

DECISION AND ORDER

The Commission finds the value of the subject parcel as of January 1, 2004 to be \$\$\$\$.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2006.

Irene Rees, Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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