

OHIO BOARD OF TAX APPEALS

Banc One Management Corp.,)	
)	
Appellant,)	CASE NOS. 2002-A-1786,
)	2002-A-1787
vs.)	
)	(REAL PROPERTY TAX)
Franklin County Board of Revision, Franklin County Auditor, and the Board of Education of the Westerville City School District,)	
)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Roetzel & Andress Kevin J. Osterkamp National City Center, 12 th Floor 155 East Broad Street Columbus, Ohio 43215
For the County Appellees	-	Ron O'Brien Franklin County Prosecuting Attorney Richard Hoffman Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, Ohio 43215
For the Appellee Bd. of Edn.	-	Rich, Crites & Wesp James Gorry 300 East Broad St., Suite 300 Columbus, Ohio 43215

Entered March 7, 2003

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the above-named appellant from

decisions of the Franklin County Board of Revision. In said decisions, the board of revision dismissed one of the three parcels included in appellant's complaints for lack of jurisdiction (#080-8068-90¹) and determined the taxable value of the remaining two parcels for tax year 1999.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcripts certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel for the appellant and counsel for the board of education.²

The subject real property consists of two contiguous parcels of approximately 47 acres on which four buildings owned by Banc One Realty Corporation are located. The subject property is located in the city of Westerville/Westerville city school district taxing district, Franklin County, Ohio, and appears on the auditor's records as parcel numbers 080-8068-80 and 080-8097. The value of the parcels, as determined by the auditor and retained by the board of revision, is as follows:

	Parcel # 080-8068-80
TRUE VALUE	TAXABLE VALUE
Land \$ 3,193,100	\$1,117,590
Bldg 9,077,200	3,177,020
Total \$12,270,300	\$4,294,610

¹ Although listed on its notice of appeal, appellant did not present any evidence or testimony with regard to parcel #080-8068-90 and the dismissal of appellant's complaint with regard to such parcel by the board of revision, and, therefore, we will not address such parcel herein.

² The instant appeal is a continuation of matters earlier filed with this board but dismissed upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Banc One Management Corp. v. Franklin Cty. Bd. of Revision* (Oct. 23, 2002), BTA Case Nos. 2001-A-691, 692, unreported. In light of the fact that no party has objected, although given an opportunity to do so by order of this board dated January 10, 2003, and in the interests of administrative economy, this board will accept the previous testimony and legal argument provided by the parties as probative of the issues in the current appeals.

Parcel # 080-8097

TRUE VALUE	TAXABLE VALUE
Land \$ 1,307,000	\$ 457,450
Bldg 11,193,000	3,917,550
Total \$12,500,000	\$4,375,000

Appellant Banc One Management Corp. (“Banc One”) contends that the auditor and the board of revision have overvalued the parcels in question and claims the total value of both parcels, based upon an appraisal, is \$22,500,000. The appellee school board agrees with the auditor/board of revision valuation of the subject parcels, based, in part, upon its appraisal that was submitted to the board of revision.

The subject property includes four buildings, built between 1981 and 1995, used for office/production/warehouse purposes. The first parcel under consideration, #080-8097, consists of 10 acres of land on which is located one office building with 78,805 square feet of rentable space. Also located thereon is part of a second building which has 77,573 square feet of space; the auditor has included the entire value for the second building in the valuation of parcel #080-8097. The second parcel, #080-8068-80, consists of approximately 37 acres and two buildings (the larger of the two being partially tax exempt) containing a total of 330,403 square feet. According to appellant’s appraiser, the subject is estimated to be 80% finished office space and 20% combination partially finished production area and warehouse space. (Ex. 1, p. 3)

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local*

Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction," *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant case, true value in money can be calculated by applying any of three alternative methods provided for in OAC 5705-3-03: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income from the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Banc One offered the appraisal (Ex. 1) and testimony of Thomas R. Horner, MAI, SRA, ASA, a state-certified general real estate appraiser in Ohio. Mr. Horner appraised the subject parcels as one economic unit due to its "continuity of ownership, it's a contiguous parcel, and * * * it has a continuity of highest and best use." (R., p. 24, 25)

At the outset, we note that Mr. Horner indicated in his report that it “should be used in conjunction with the prior appraisal report submitted February 6, 1998.” (Ex. 1, p. 1) The prior appraisal report was never made part of the record herein, but Mr. Horner claimed that the instant appraisal (Ex. 1) could stand on its own as a complete summary appraisal report, meeting the Uniform Standards of Professional Appraisal Practice (USPAP). (R., p. 19)

In discussing the subject’s highest and best use in his appraisal, Mr. Horner indicated that “(T)he highest and best use of the subject property is considered to be the same as presented in the original appraisal report.” (Ex. 1, p. 2) He testified that “(T)he highest and best use of the property is in the office and production category. * * * I think the future highest and best use of the subject is in the owner occupied category. * * * So its highest and best use is, hopefully, for continued use by Banc One. If for some reason they left the building, then you have several different alternatives; either have to find another owner/user that would employ the building similarly to Banc One’s use of the buildings, or you’re going to have to find a speculator that’s going to lease the buildings up, or try and subdivide the parcel and incur those expenses. ” (R., p. 28-29)

In assessing the approaches to valuing the subject that he would undertake, Mr. Horner indicated in his appraisal that “(W)ithin the original appraisal report, the Cost Approach to Value was completed. As part of the Cost Approach estimates, the Land Valuation was also presented. Within the original appraisal report, this approach to value was considered to be weak and only offered as support for the

comparable sales analysis. Therefore, within this update, the Cost Approach to Value has not been developed.” (Ex. 1, p. 2) He elaborated in his testimony, stating that he did not develop a cost approach to value “because of the age of the buildings and their current use. Their functional and external obsolescence factors lead me to believe that the cost approach value would not be relied upon by an investor, so I did not develop it.” (R., p. 29)

Using the sales comparison approach, Mr. Horner updated his earlier analysis in his prior appraisal with five more recent sales of allegedly comparable properties. The comparable sales, which occurred between September 1997 and November 2000, and one offering that was in contract, ranged in site size from approximately six acres to twenty-two acres and building size from 50,150 square feet to 212,449 square feet. The comparables indicated a range of value from \$61.81 per square foot to \$75.71 per square foot.

In arriving at his final conclusion of value using the sales comparison approach, Mr. Horner said:

“The comparable sales support indicate [sic] a range in office space value from \$70.00 to \$75.00 per square foot. It is my opinion that this value range must be adjusted downward 25% to reflect the subject’s extreme size. This indicates the value of the subject’s office area to be, say, \$55.00 per square foot. Warehouse space that is associated with office space typically rents at 50% of the office area rent. This ratio is also considered reasonable when determining the relationship between related office and warehouse values. The subject’s production area has a higher-grade finish; therefore, a slightly higher ratio is applicable. After considering these relationships, the value of the subject’s production and office area is estimated to be \$30.00 per square foot. Applying a

weighted average against the value estimates indicates the value of the subject property to be \$50.00 per square foot.” (Ex. 1, p. 4)

Applying \$50.00 per square foot to the subject’s 485,281 square feet, Mr. Horner concluded to a final value by the sales comparison approach of \$24,000,000 (rounded). (Ex. 1, p. 3-4)

Thereafter, Mr. Horner completed an income approach to value the subject. He began by determining the gross potential income for the subject, using a survey of four office building rental rates. He concluded to a rate of \$14.00 per square foot for the subject’s office area, \$8.00 per square foot for the production area, and \$7.00 per square foot for the warehouse area, for a total gross potential income of \$6,216,860 for the entire subject. From that total, based upon the subject’s size and the neighborhood vacancy rates, he deducted a 10% vacancy and credit loss figure of \$621,686, to arrive at an effective gross income of \$5,595,174. From that EGI number, based upon expense comparables, 1999 Institute of Real Estate Management (IREM) figures, and the subject’s operating history, he deducted fixed expenses for insurance and operating expenses, including management fees, building maintenance and repairs, janitorial costs, utilities, and miscellaneous, of \$2,593,807; after making an additional deduction of \$100,000 for reserves for replacement, he arrived at a net operating income of \$2,901,367. He selected a capitalization rate of 11% based on comparable sales, financing rates and terms available as of 1-1-99, the tax lien date in question. After adjusting the rate to include a tax additur of 1.9%, Mr. Horner’s final capitalization rate was 12.9%. Applying the 12.9% capitalization rate to the net

operating income, Mr. Horner concluded to a final value via the income approach of \$22,500,000 (rounded). (Ex. 1, p. 6-9)

In reconciling these approaches to value, Mr. Horner stated that “(T)he Sales Comparison Approach to Value indicates the lower of the range. This approach to value is suspect due to the extreme size of the subject, as compared to the available sale information. Within the Income Capitalization Approach to Value, the subject property has been assumed to be stabilized. If the subject property were vacant, the value should be discounted to reflect the time and cost needed to achieve stabilized occupancy. As stabilized, the Income Approach to Value reflects the best indication of the subject’s market value.” (Ex. 1, p. 10) Accordingly, he concluded to a final value for the subject of \$22,500,000.

The appellant offered no further evidence of value to this board.

While not present before this board, at the board of revision, the board of education offered the limited-scope appraisal and testimony of Samuel D. Koon, MAI, a state-certified general real estate appraiser in Ohio. (S.T., Ex. 10/1)

Mr. Koon’s appraisal only considered parcel #080-008097. In that regard, Mr. Koon indicated that the buildings and parking areas on the subject 10-acre parcel encroach upon the larger, 40-acre contiguous parcel. Further, the subject’s main entrance and only access point to the subject is located on the neighboring parcel, as well. He indicated, “(A)s such, we have assumed that crossover easements would be granted to a non-Bank [sic] One owner or affiliate, providing for access to/from the property, as well as adequate parking to support the subject buildings.” (S.T., Ex. 10/1,

p. 3) Mr. Koon indicated that the highest and best use for the subject, as improved, was “for continued use as a suburban office complex.” (S.T., Ex. 10/1, p. 4)

In discussing the appraisal problem presented to him, Mr. Koon stated:

“(I)n valuing the subject property, we have utilized the income capitalization and comparable sales analyses. The cost-depreciation analysis has not been developed due to the subject’s advanced age and multi-phase construction, as accurately estimating accrued depreciation would be nearly impossible and would severely reduce the reliability of this approach. Additionally, a cost-depreciation analysis would not accurately reflect the economic considerations considered important to a prospective purchaser.” (S.T., Ex. 10/1, p. 4)

Mr. Koon began his income approach analysis by developing a market rent potential for the subject by reviewing rental rates of seven properties. Merging the areas of the two buildings under consideration, Mr. Koon considered that the subject offered approximately 155,000 square feet of leasable area. The rental rates of the comparables ranged from \$9.50 per square foot to \$19.75 per square foot, and after being adjusted “to reflect the attributes of the subject property, inclusive of its size and overall condition, the comparable rentals indicated an adjusted range from approximately \$9.00 to \$10.00 per square foot, net.” (S.T., Ex. 10/1, p. 6) Mr. Koon determined that the best estimate for the subject’s potential gross income, based upon its location, size, condition, curb appeal, and overall marketability was \$9.25 per square foot, net, or \$1,433,611. From that figure, Mr. Koon deducted 7% for vacancy and credit loss, or \$100,353, based upon the physical/locational attributes of the subjects and on the local suburban office market within the subject neighborhood,

resulting in an effective gross income of \$1,333,258. In discussing the expenses for the subject, Mr. Koon stated:

“In keeping with the net-to-landlord rental structure utilized in estimating potential gross income for the subject, operating expenses incurred by the landlord would include only those expenses incurred during periods of vacancy, as well as an appropriate reserve for the replacement of short-lived building components, mainly the roof and mechanical equipment. Actual operating expense data has not been provided to us. Excluding the replacement reserve cost, janitorial costs, and utilizing an adjusted utility cost estimate (for purposes of estimating non-collectible expenses), operating expenses are estimated at \$5.00 per square foot. The previously estimated overall vacancy/collection loss factor of 7% has been applied to this figure in estimating non-collectible operating expenses for the subject. Non-collectible operating expenses are thus, estimated at \$54,245, say \$54,250. ($\$5.00/\text{SF} \times 154,985 \text{ SF} \times 7\% = \$54,245$) per annum.” (S.T., Ex. 10/1, p. 7)

Additionally, Mr. Koon deducted \$15,500, or approximately \$.10 per square foot for reserves for replacement, to arrive at a net operating income of \$1,263,508. Applying a 10% capitalization rate (based on the “physical and locational attributes of the subject property, as well as the economic climate as of the effective date of valuation” (S.T., Ex. 10/1, p. 8) to the NOI resulted in an overall value, using the income approach, of \$12,500,000 (rounded). (S.T., Ex. 10/1, p. 4-8)

Using the sales comparison approach, Mr. Koon determined the value of the subject parcel by comparing it to sales of eight properties. Specifically, he considered the eight sale properties and made adjustments to them “to reflect the attributes of the subject property,” resulting in an adjusted range in value from approximately \$75.00 to \$85.00 per square foot. Sale dates under consideration

ranged from January 1994 through October 1998. Mr. Koon concluded to a value of \$80.00 per square foot, or \$13,000,000 (rounded). (S.T., Ex. 10/1, p. 8-9)

In reconciling the foregoing approaches to value, Mr. Koon indicated that “(F)or the tax year 1999, payable in 2000, the Auditor had the subject property appraised for \$12,500,000, the equivalent of \$76.62 per square foot of gross building area. The taxpayer has requested a reduction to \$5,116,800, the equivalent of \$31.36 per square foot of gross building area. Based upon the information analyzed, it appears that the Auditor’s value is reasonable and that the taxpayer’s request is unjustified.” (S.T., Ex. 10/1, p. 10)

As we review the appraisals before us, we initially note that the major difference between the two appraisals and between the appellant’s appraisal and the county’s valuation of the subject results from the original premise from which each party began its analysis. The appellant’s appraiser, Mr. Horner, treated the subject parcels as one economic unit while the county as well as the board of education’s appraiser, Mr. Koon, treated the subject parcels individually and derived values for each, independently. We find that the evidence in the record belies Mr. Horner’s conclusions. Specifically, throughout his report Mr. Horner made deductions and concessions, some significant, based upon the subject’s extremely large size; yet, if the subject were not treated as one economic unit, but as two separate parcels, operating independent of each other, for office/production/warehouse purposes, arguably, there would not be a need for such major deductions/adjustments since there would presumably be a greater market for the subject when treated as separate, independent parcels. In addition, with only a bare description of the subject improvements,

including each building's square footage, it is difficult to determine from the record how the property is so interrelated/interconnected to make its individual valuation or subdivision prohibitive. In fact, it would appear that each building could easily be converted to a use independent of the other buildings, with the possible exception of the buildings that share an HVAC unit. However, without more information about the physical structures themselves, no conclusions can be drawn.

Thus, by disagreeing with Mr. Horner's treatment of the subject as one economic unit, we ultimately disagree with his determination of highest and best use for the subject. As the Supreme Court recognized in *Park Ridge Co. v. Franklin Cty. Bd. of Revision* (1987), 29 Ohio St.3d 12, "(T)he true value for real property may well depend on its potential use as an economic unit. That unit may well include multiple parcels, or it may be part of a larger parcel, on the auditor's records. The boundaries of that unit may change with time and circumstances. Thus, a separate tract for valuation purposes need not correspond with a numbered parcel. * * * This court has previously approved aggregate valuations for economic land units which contain multiple permanent parcels. * * * The decision whether the property serves its highest and best use as a single unit or as multiple units is generally a factual issue." Clearly, based upon the facts herein, we disagree with Mr. Horner's conclusion as to highest and best use and do not agree that the subject should be treated as a single economic unit.

Having disagreed with the initial premise of the Horner appraisal, we are unable to accord significant weight to the conclusions set forth therein. However,

even if we were to accept Mr. Horner's characterization of the subject as a single economic unit, we find other problems associated with his appraisal that render it less reliable. Initially, we note that Mr. Horner's appraisal was drafted with the understanding that the instant appraisal be used in conjunction with a prior appraisal of the subject, which was not part of the record under consideration herein. While we acknowledge Mr. Horner's statement that the instant appraisal could stand on its own and meet all necessary appraisal standards, we find that certain assumptions have to be made in order for the instant appraisal to be deemed an adequate reflection of the subject. For example, Mr. Horner agreed with the attorney examiner at hearing when she pointed out that his conclusions with regard to items such as rent comparables and sales comparables were based not only on the updated appraisal, but also on the original one. (R., p. 16) Further, there is no analysis offered in the updated appraisal regarding the physical description of the buildings/site improvements and no supporting information regarding Mr. Horner's determination of the land values.

Specifically, with regard to Mr. Horner's sales comparison approach, we find his 25% adjustment to reflect the subject's "extreme size" to be wholly unsupported and too significant to the overall valuation conclusion to be deemed acceptable without more evidence in the record to support such a large deduction from value. Under his income approach, Mr. Horner indicated that he utilized various sources for his expense calculations; however, none of the expense comparables were included in his report. Further, Mr. Horner's use of rent comparable information from July 2001 may not necessarily be reflective of market rents on tax lien date, and

without more to support his use of the later rents, we would not rely upon them as the basis of our valuation.

As we review Mr. Koon's appraisal, we find no significant problems with the methodology or conclusions drawn, although, without opposing counsel or this board having the opportunity to cross examine Mr. Koon on his conclusions, we must treat his appraisal only as limited support for the county's valuation of one (#080-008097) of the two parcels under consideration. With regard to the second parcel (# 080-8068-80), we note that with no other evidence of market value before us that we find to be probative and credible, we will utilize the county board of revision's valuation of the subject. See *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47.

Therefore, based upon the preponderance of evidence, the Board of Tax Appeals finds the value of the subject for tax year 2000 shall be as follows:

Parcel # 080-8068-80	
TRUE VALUE	TAXABLE VALUE
Land \$ 3,193,100	\$1,117,590
Bldg 9,077,200	3,177,020
Total \$12,270,300	\$4,294,610

Parcel # 080-8097	
TRUE VALUE	TAXABLE VALUE
Land \$ 1,307,000	\$ 457,450
Bldg 11,193,000	3,917,550
Total \$12,500,000	\$4,375,000

It is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision.

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