

OHIO BOARD OF TAX APPEALS

Claycraft Road, Inc.,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Franklin County Board of Revision,)
 Franklin County Auditor and Gahanna-)
 Jefferson City School District,)
)
 Appellees.)

APPEARANCES:

For the Appellant	- Ricketts Co., LPA Richard T. Ricketts 580 South High Street, 3 rd Floor Columbus, Ohio 43215-5644
For the County Appellees	- Ron O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, Ohio 43215
For the Appellee Gahanna-Jefferson City School District	- Martin Hughes & Associates Martin J. Hughes III 100 E. Wilson Bridge Road-Suite 210 Worthington, Ohio 43085-2326

Entered December 19, 2003

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

Through its notice of appeal filed with this board on November 21, 2002, appellant challenges a decision of the Franklin County Board of Revision ("BOR"), mailed on October 25, 2002, wherein the BOR determined the value of certain real property as of tax lien date, January 1, 2001. The property in issue, located in the city of

Gahanna, is identified in the records of the Franklin County Auditor (“auditor”) as parcel number 025-12056. The subject is comprised of approximately five acres¹ of land. The property is improved with a building which has some office, warehousing and manufacturing space.

The values of the subject property as originally determined by the auditor, and retained by the BOR, are as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$196,400	Land	\$ 68,740
Building	<u>\$162,700</u>	Building	<u>\$ 56,950</u>
Total	\$359,100	Total	\$125,690

Through its notice of appeal,² appellant asserted that the subject property should have values consistent with those set forth below:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 65,000	Land	\$22,750
Building	<u>\$100,000</u>	Building	<u>\$35,000</u>
Total	\$165,000	Total	\$57,750

This matter is now considered by the board based upon appellant’s notice of appeal, the statutory transcript certified by the BOR, the record of the evidentiary hearing convened on May 21, 2003, and the written argument³ submitted on behalf of

¹ The property record card indicates that the subject property is comprised of 5.237 acres, while transfer documents to which appellant has directed this board’s attention refer to the parcel being 5.365 acres.

² Following the evidentiary hearing before this board, in its post-hearing brief, appellant now asserts that the subject’s market value is “not more than \$120,000 (taxable value of \$42,000).”

³ In its brief, appellant makes references to incidents allegedly occurring subsequent to the hearing held in this matter. As such allegations are evidentiary in nature, they are hereby stricken from this board’s consideration. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 16; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Lynde v. Tracy* (Dec. 19, 1994), BTA No. 1994-M-111.

appellant. Although accorded an opportunity to file post-hearing briefs in this matter, none have been timely forthcoming from the appellees.

While a county board of revision's value determination is not presumptively correct, an appellant nevertheless has a burden to present evidence supporting any adjustment requested. See, e.g., *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Zindle v. Summit Cty. Bd. of Revision* (1989), 44 Ohio St.3d 202; *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198. It is therefore incumbent upon an appellant challenging the decision of a board of revision to offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

Relying upon a sale of the subject property, coupled with the dollar-for-dollar costs associated with certain improvements, the subject's location and the overall conditions of both the site and the building improving it, appellant maintains that the subject's fair market value is no more than \$120,000. In support of its arguments, appellant called as a witness Louis J. Castelli, who testified regarding the aforementioned sale and the general conditions of the subject property.

Castelli indicated that W.K. Brick Company ("W.K. Brick") is a "second fire brick glazing company" that leased space in the subject property beginning sometime in 1999. He also testified he has an "ownership interest" in and serves as the "operator

partner” of both W.K. Brick and White Knight of Central Ohio, Ltd. (“White Knight”).⁴ According to Castelli, in the winter of 1999, appellant and W.K. Brick entered into an agreement whereby it was granted an option to purchase the subject property “on an as is basis” for \$25,000.⁵ Castelli testified that sometime subsequent to that time frame, improvements were made to the subject property at a cost of approximately \$94,000,⁶ and that ultimately, on May 20, 2003, White Knight exercised the aforementioned option and purchased the subject property for \$25,000.

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm’s-length sale. *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543, 545 (“[W]e have always insisted that the sale price of an arm’s-length transaction occurring within a reasonable time of the tax lien date was the value of the property as of tax lien date.”); *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Conalco v. Bd. of Revision*

⁴ Castelli testified that he, appellant’s counsel, i.e., Richard Ricketts, and two other individuals each have a twenty-five percent ownership interest in White Knight.

⁵ Offered as evidence of this arrangement, appellant submitted correspondence dated June 21, 1999 from Richard Ricketts to Phillip Tefft, appellant’s sole shareholder and director. Ex. 3. This letter makes reference to a number of matters, including extending to W.K. Brick an option to purchase the subject property. While the letter suggests that Ricketts would proceed to prepare “documents necessary to accurately reflect the terms of these arrangements,” a written agreement regarding the option was not provided to this board nor could Castelli recall exactly when the agreement was entered into.

⁶ Castelli testified that W.K. Brick, White Knight or its tenants expended between \$75,000 and \$96,000 in improvements over the six-month period following W.K. Brick’s initial lease of the property. Although the precise time frame and costs of such improvements was not detailed, among the improvements Castelli described were the following: an addition of approximately 2,500 square feet of office space and approximately 4,000 square feet of warehouse space; the replacement of floors and windows; the erection of a demising wall; and the installation of new HVAC, carpeting, floors, restrooms, drop ceiling and overhead lighting.

(1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Although we have been presented with evidence of a sale of the subject property, the May 20, 2003 transfer is of extremely limited utility in determining the subject's value as of tax lien date. Appellant's witness testified that the purchase price of \$25,000 was agreed to sometime in 1999, at least as early as June. The precise terms and conditions of the parties' agreement are not available for this board's review. The option to purchase was not exercised until four years later, subsequent to improvements having been made to the property. Since the purchase price was negotiated more than eighteen months prior to tax lien date, and it was exercised twenty-nine months subsequent to tax lien date, with intervening improvements having been made to the property, we do not consider the ultimate sale to be competent, probative evidence of the subject's value on January 1, 2001. Cf. *Parkwood Industrial Holdings, Inc. v. Franklin Cty. Bd. of Revision* (June 29, 1990), BTA No. 1989-F-30, unreported. We now proceed to consider the other evidence appellant has presented.

Castelli also described the condition of the improvements of the property as being extremely poor. He indicated that portions of the building's roof and walls are missing or in disrepair, rendering the building subject to flooding; many of its windows are old or broken; loading dock doors are rotted and unusable; access to utilities is limited, i.e., there exists no sanitary sewer to the entire site (only a limited septic system) and no electric to a portion; telephone poles are located on the property, the upkeep of which is the responsibility of the owner; the site has limited frontage; the subject

property is adjacent to a landfill which has a methane gas recovery system in place; and the topography and general drainage of the property renders it subject to extensive flooding.

While Castelli testified to a number of defects affecting the subject property, we have been presented with no evidence as to how these defects negatively impact the subject's market value. As the Supreme Court stated in *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 228:

“Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. *It is the decrease in true value that may result from the need for repairs that is the important factor to be determined by the BTA.*” (Emphasis added.)

The court's decision in *Throckmorton* mirrored this board's reasoning in *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported:

“A recitation of defects in a taxpayer's property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the diminution [sic] in value caused by the defects, or some evidence of the value of the property as so diminished. Appellant has established to our satisfaction that there are detrimental aspects to the subject property (which, however, are shared by his neighbors to a large degree, and to certain of the comparables) but he has utilized none of the approaches to value that would allow us to determine a value for the property as affected by the defects.” *Id.* at 7.

See, also, *DiFranco v. Bd. of Revision of Lake Cty.* (Apr. 19, 1996), BTA No. 1995-J-560, unreported (defect cited was the adverse affect of neighboring vacant property which had attracted vermin, ground hogs, snakes and rats); *Luken v. Miami Cty. Bd. of Revision*

(Sept. 19, 1997), BTA No. 1996-G-976, unreported (claimed defects included alleged potential for soil or ground water contamination from the operation of a sewage sludge pit or dump on an adjacent property); *Stickles v. Franklin Cty. Bd. of Revision* (Nov. 21, 1997), BTA No. 1997-P-430, unreported (factors which were claimed to diminish the property's value included neighborhood crime, vandalism and an adjoining sewage treatment plant); *Even, Inc. v. Hamilton Cty. Bd. of Revision* (July 30, 1993), BTA No. 1991-H-632, unreported (defects cited were absence of sanitary and water access).⁷

Unquestionably, a property's condition affects its value. However, costs of remediation do not directly correlate with a property's market value. Without evidence as to the impact adverse conditions or features have upon the marketability of a property, this board can only speculate as to its value. See, e.g., *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299; *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339; *Hunterwood Park, Ltd. v. Fairfield Cty. Bd. of Revision* (June 30, 2003), BTA No. 2002-J-2455, unreported.

For the foregoing reasons, we find appellant has failed in its affirmative burden to establish that the value of the subject property is other than that determined by both the auditor and the BOR. See *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Accordingly, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of tax lien date January 1, 2001, shall remain as follows:

⁷ We note that many of these same arguments were raised by appellant and rejected by this board involving the subject property for a prior tax year when it was apparently part of a larger tract. See *Claycraft Road*,

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$196,400	Land	\$ 68,740
Building	<u>\$162,700</u>	Building	<u>\$ 56,950</u>
Total	\$359,100	Total	\$125,690

It is the order of this board that the Franklin County Auditor list and assess the subject property in conformity with our decision as announced herein. It is further ordered that these values carry forward in accordance with law. Cf. *Oberlin Manor, Ltd. v. Lorain Cty. Bd. of Revision* (1994), 69 Ohio St.3d 1.

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Footnote contd. _____
Inc. v. Franklin Cty. Bd. of Revision (May 10, 2002), BTA No. 2000-T-2139, unreported.