

OHIO BOARD OF TAX APPEALS

South-Western City Schools)
Board of Education,) CASE NO. 2002-R-1929¹
)
Appellant,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Franklin County Board of Revision,)
Franklin County Auditor, and)
Meijer, Inc./Meijer Stores LP,)
)
Appellees.)

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer
Board of Education Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, OH 43215

For the County - Ron O'Brien
Appellees Franklin County Prosecuting Attorney
Paul M. Stickel
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, OH 43215

For the Appellee - Siegel, Siegel, Johnson & Jennings Co., LPA
Property Owner Annrita Johnson
3001 Bethel Road, Suite 208
Columbus, OH 43220

Entered July 15, 2005

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

¹ The matter that is the subject of the current appeal was the subject of an earlier appeal: that appeal was dismissed upon the authority of *Cleveland Elec. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision* (Oct. 30, 2002), BTA No. 2002-N-636, unreported.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by the South-Western City Schools Board of Education (“BOE”). The BOE appeals a final determination of the Franklin County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 1999.

The Franklin County Auditor determined that the true and taxable values for the subject property for 1999 should be as follows:

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-144448 | | |
| Land | \$ 79,240 | \$ 226,400 |
| Building | \$ 21,700 | \$ 62,000 |
| Total | \$ 100,940 | \$ 288,400 |

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-207035 | | |
| Land | \$ 897,400 | \$ 2,564,000 |
| Building | \$ 2,859,850 | \$ 8,171,000 |
| Total | \$ 3,757,250 | \$10,735,000 |

The BOR reduced the 1999 true and taxable values for the subject property to:

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-144448 | | |
| Land | \$ 79,240 | \$ 226,400 |
| Building | \$ 21,700 | \$ 62,000 |
| Total | \$ 100,940 | \$ 288,400 |

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-207035 | | |
| Land | \$ 897,400 | \$ 2,564,000 |
| Building | \$ 2,542,090 | \$ 7,263,100 |
| Total | \$ 3,439,490 | \$ 9,827,100 |

The BOE, however, according to its notice of appeal, contends that the true and taxable values of the subject property should be returned to the auditor's values as follows:

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-144448 | | |
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| 570-207035 | | |
| Land | \$ 897,400 | \$ 2,564,000 |
| Building | <u>\$ 2,859,850</u> | <u>\$ 8,171,000</u> |
| Total | \$ 3,757,250 | \$10,735,000 |

The subject property is comprised of two contiguous parcels, containing approximately 30 to 34 acres.² The improvements were constructed in 1986 and consist of a single-story retail building containing approximately 208,561 to 213,746 square feet of space.³ The exterior of the building consists of concrete walls under brick and masonry finishes on a concrete slab foundation. The interior of the building consists of vinyl flooring, painted drywall walls, and an acoustical panel ceiling with recessed fluorescent lighting. The rear of the store has several loading docks. The site is also improved with a paved parking area, concrete curbing and sidewalks, and pole lighting. The subject's land-to-building ratio is approximately 6.13 to 1.

² The appraisers differ in their determination of the acreage. However, the property record cards contained in the statutory transcript indicate that the subject property consists of 30.097 acres.

The property is located at 775 Georgesville Road, Columbus, Franklin County, Ohio, in the city of Columbus – South-Western City School District taxing district. It is currently occupied by a Meijer store.

Meijer filed a complaint against the valuation of real property at the BOR, requesting a reduction in value for tax year 1999. The BOE filed a counter-complaint. After consideration, the BOR issued a decision reducing the value of the subject property, from which the BOE appealed.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, the record of the evidentiary hearing before this board (“H.R.”), including exhibits, and the briefs of counsel. At the hearing before the board, the BOE called Samuel D. Koon, an MAI appraiser, who testified and presented a complete, narrative appraisal report. The property owner, Meijer, Inc./Meijer Stores LP (“Meijer”), called Robin M. Lorms, an MAI appraiser, who also testified and presented a complete, narrative appraisal report. The BOR appeared and was represented by counsel, but called no witnesses and submitted no additional evidence aside from the statutory transcript and cross-examination.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*

³ Again, the appraisers differ in their determination of square footage. In addition, the property record card indicates that there is an additional 4,400 square foot mezzanine in the structure. However, since it was not observed by either appraiser, it was excluded from the square footage.

(1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers*, supra; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Mr. Koon, an MAI appraiser, testified before this board on behalf of the BOE. Of the three approaches to value, cost, sales, and income, Mr. Koon performed only the sales and income approaches. It was his opinion that the cost approach was irrelevant as to this property because of its age.

In his income approach, Mr. Koon examined five rental properties all located in the central Ohio area. The rental comparables ranged from 74,901 to 149,401 square feet. The rent per square foot ranged from \$5.67 to \$10.22. After making adjustments, Mr. Koon determined that the range was \$5.00 to \$6.00 per square foot, so he used \$5.50 per square

foot for the subject property. Applying that rate to the square footage of the subject property, Mr. Koon determined that the potential gross income would be \$1,175,603.

From this, Mr. Koon deducted \$58,780 in vacancy and collection loss at five percent. Then, he calculated expenses using Dollars and Cents of Shopping Centers at \$2.16 per square foot. However, since he assumed a triple net lease, Mr. Koon concluded that the \$23,000 in expenses would already be included in the vacancy adjustment. After allowing for ten cents per square foot for replacement for reserves for a total of \$21,500, Mr. Koon arrived at a net operating income of \$1,072,323.

In arriving at a ten percent capitalization rate, Mr. Koon examined the capitalization rates for his sales comparables and the Korpacz Real Estate Investor Survey. In addition, he utilized a debt coverage ratio analysis. Applying the capitalization rate to the net operating income, Mr. Koon concluded that the value for the subject property using the income approach to value would be \$10,725,000.

In his sales comparison approach, Mr. Koon relied upon six sales, all located within Franklin County. These properties ranged from 60,000 to 155,979 in square footage and were all built between 1994 and 1995. The sales occurred between April 1996 and April 2001. The unadjusted price per square foot ranged from \$61.36 to \$99.71. After adjusting for time of sale, age, condition, demographics, and size, Mr. Koon concluded that the square foot price as adjusted ranged from \$50.00 to \$60.00. Using \$50.00 per square foot at the low end of the range, Mr. Koon determined that the value of the subject property using the sales comparable approach to value would be \$10,700,000.

Reconciling the two approaches to value, Mr. Koon opined that the value of the subject property as of the tax lien date of January 1, 1999 would be \$10,725,000.

As previously noted, Meijer presented the testimony and appraisal report of Robin M. Lorms, also an MAI appraiser, before this board. Mr. Lorms also utilized the sales and income approaches to value, and it was also his opinion that the cost approach was not relevant to this property because of its age.

In his income approach, Mr. Lorms utilized only rental properties for discount stores leased to second generation tenants. It was his opinion that the market for these so-called "big boxes" was down due to the bankruptcy of Kmart and the business policy of Wal-Mart of discarding its smaller stores and moving into super centers located nearby. In addition, due to the age of the subject, the realm of potential buyers or tenants was restricted in Mr. Lorms' opinion, so the utilization of second generation tenants was appropriate.

Mr. Lorms examined ten rental properties, located in Columbus, Ohio, Reynoldsburg, Ohio, Cincinnati, Ohio, Toledo, Ohio, and Florence, Kentucky. The rental comparables ranged in square footage from 65,547 to 117,000. The rent per square foot ranged from \$2.30 to \$6.00. After making adjustments, Mr. Lorms determined that the per square foot range was \$3.00 to \$4.00, so he used \$4.00 per square foot for the subject property. Applying that rate to the square footage of the subject property, Mr. Lorms determined that the potential gross income would be \$834,244.

Mr. Lorms utilized an expense reimbursement study of Kmart stores to establish an expense reimbursement range of \$1.56 to \$3.36 per square foot. From this, Mr.

Lorms determined a \$1.80 per square foot expense reimbursement for the subject property, for a total of \$274,929, which was added to potential gross income.

Mr. Lorms derived a ten percent vacancy and collection loss rate from the market. He estimated operating expenses at \$449,289 based on an analysis of \$2.16 per square foot for comparable properties and a review of other published expense data.

After deducting vacancy and collection loss and operating expenses, Mr. Lorms arrived at a net operating income of \$638,967.

In arriving at a 10.5 percent capitalization rate, Mr. Lorms utilized the capitalization rates from the market, the Korpacz Real Estate Investor Survey, and a debt coverage ratio analysis. Applying the capitalization rate to the net operating income, Mr. Lorms concluded that the value for the subject property using the income approach to value would be approximately \$7,000,000.

In his sales comparison approach, Mr. Lorms relied upon five sales, only four of which sold. One was located within Franklin County; the other four were 75 to 230 miles away.

Comparable number one was a former Kmart located in Mansfield, Ohio, 75 miles from the subject property. The unadjusted price per square foot was \$34.86, which Mr. Lorms adjusted to \$35.00. This potential sale was never finalized.

Comparable number two was a former Kmart located in Maple Heights, Ohio, in Cuyahoga County. This property sold in March of 2003 and was converted to a new car dealership. Mr. Lorms determined the adjusted price per square foot for comparable number two at \$35.00.

Mr. Lorms' third comparable property was located in Franklin County, some eight and a half miles from the subject property. It was the former Incredible Universe store at Mill Run that Garden Ridge now occupies. It sold in May of 1998 for \$51.93 per square foot, which Mr. Lorms adjusted to \$44.14. This comparable, in Mr. Lorms' opinion, was the most comparable to the subject property.

Comparable number four was a former Wal-Mart located in Lafayette, Indiana. This property was renovated into a sports complex, and was subject to a deed restriction by Wal-Mart. Mr. Lorms determined that the price per square foot should be adjusted from \$29.31 to \$30.00.

Mr. Lorms' comparable number five was also converted into a sports complex. It was located in Cincinnati, Ohio, and in Mr. Lorms' opinion, inferior as to age and condition compared to the subject property. Mr. Lorms calculated an adjusted price per square foot for this property of \$29.00.

From an adjusted range of \$29.00 to \$44.14 per square foot, Mr. Lorms determined that the subject property should be valued at \$35.00 per square foot. Applying \$35.00 per square foot to the square footage of the subject property, and adding the value of the two out parcels, Mr. Lorms calculated that the value of the subject property would be approximately \$8,200,000.

Reconciling the two approaches to value, Mr. Lorms opined that the value of the subject property as of the tax lien date of January 1, 1999 would be \$8,200,000.

The two appraisers have several areas of agreement. Both agree that the subject property is overvalued. Both appraisers agree that the highest and best use for the

subject property is its continued use as a commercial/retail store. They both agree that the cost approach is not applicable to the valuation of the subject property. Further, both appraisers agree that size impacts value. The larger the square footage, the less the sale/lease price per square foot. Both appraisers agree that the sale of the Incredible Universe property at Mill Run, Mr. Koon's sale number one and Mr. Lorms' sale number four, is the best comparable for the subject property.

However, the two appraisers also have several significant areas of disagreement. Mr. Koon utilized newer, first generation properties as lease and sales comparables, several of which were either build-to-suit or sale-leasebacks. Mr. Lorms, on the other hand, utilized only second generation properties to the exclusion of any first generation properties. It was Mr. Koon's opinion that as of the tax lien date, January 1, 1999, the market would not have been affected by the Kmart bankruptcy and glut of big boxes soon to come on the market. However, it was Mr. Lorms' opinion that the market would have been aware of this condition and would have reacted accordingly. Mr. Koon's lease and sales comparables were all located in the central Ohio market, whereas Mr. Lorms' comparables were located as far away as Indiana and Kentucky.

As to the income approach, the board is unconvinced as to the accuracy of Mr. Koon's five percent vacancy and collection loss figure, since he presents no basis for it in his report. The board finds Mr. Lorms' ten percent figure is better supported. However, the board also does not find that the use of only second generation lease or sales comparables is required, since this building continues to be utilized by a first generation tenant. In addition, Mr. Koon's lease comparables are located in the subject property's market area.

If we were to utilize Mr. Koon's lease rate per square foot of \$5.50, Mr. Lorms' ten percent vacancy and collection loss ratio, an average of the total square footage, and Mr. Koon's methodology, the effective gross income would be \$1,045,210. After deducting Mr. Koon's estimate of non-collectible expenses (at a ten percent vacancy rate, however, rather than a five percent vacancy rate), and replacement for reserve, net operating income would total \$977,710. Utilizing a ten percent capitalization rate, the value of the subject property would be \$9,777,100.

Utilizing the same assumptions as above, but instead using Mr. Lorms' methodology, would result in a potential gross income of \$1,541,421.⁴ After a ten percent vacancy and collection loss is deducted, the total effective gross income would be \$1,387,279. Operating expenses of \$2.16 per square foot times the average square footage results in total expenses of \$456,092. Subtracting expenses from total effective gross income produces a total net operating income of \$931,187. At a ten percent capitalization rate, the value of the subject property would be \$9,311,870.

As to the sales comparison approach, if we were to utilize only the Incredible Universe sale that both appraisers agreed was most comparable to the subject, the adjusted price per square foot would be \$51.93 for Mr. Koon, and \$44.14 for Mr. Lorms. If a mid-way value were utilized between the two appraisers, for both adjusted price per square foot and total square footage of the subject property, then that would equate to a fair market value of the subject property of \$10,142,758.

⁴ This is the result of taking Mr. Koon's \$5.50 rental rate per square foot and adding Mr. Lorms' expense reimbursements at \$1.80 per square foot times the average square footage of 211,153.5.

In reconciling the three alternative valuations, relying more heavily on the sales comparison approach to eliminate any differences in methodology between the two appraisers in the income approach, the value clearly supports the BOR's value of \$10,115,500.

Where parties rely upon appraisers' opinions of value, this board may accept all, part, or none of those appraisers' opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609. Further, we have often acknowledged in cases where competing appraisals are offered, that the appraisal of real property is not an exact science but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Based upon the foregoing, the board finds that the existing record supports the valuation as determined by the BOR. Therefore, the Board of Tax Appeals finds the value of the subject property as of January 1, 1999 to be as the BOR determined as follows:

| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|--------------------|
| 570-144448 | | |
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| <u>PARCEL NUMBER</u> | <u>TAXABLE VALUES</u> | <u>TRUE VALUES</u> |
|----------------------|-----------------------|---------------------|
| 570-207035 | | |
| Land | \$ 897,400 | \$ 2,564,000 |
| Building | <u>\$ 2,542,090</u> | <u>\$ 7,263,100</u> |
| Total | \$ 3,439,490 | \$ 9,827,100 |

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Franklin County list and assess the subject property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

ohiosearchkeybta