

(“O-I”¹). O-I appeals a final determination of the Lucas County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 2000.

The instant appeal is a continuation of a matter 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 *Owens-Illinois Community Redevelopment Corporation v. Lucas Cty. Bd. of Revision* (Nov. 1, 2002), BTA No. 2002-R-278, unreported.

The Lucas County Auditor and the BOR determined that the true and taxable values for the subject property for 2000 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
14-55950		
Land	\$ 3,343,410	\$ 9,552,600
Building	<u>\$15,906,590</u>	<u>\$45,447,400</u>
Total	\$19,250,000	\$55,000,000

O-I, based upon its appraisal evidence, contends that the true and taxable values of the subject property are too high and should be reduced to:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
14-55950		
Land	\$ 3,433,500	\$ 9,810,000
Building	<u>\$ 7,574,500</u>	<u>\$20,690,000</u>
Total	\$10,675,000	\$30,500,000

¹ There is a corporation known as Owens-Illinois, which is separate and distinct from the appellant. References to this corporation will be “Owens-Illinois.”

The subject property is commonly known as One Seagate and is located in Toledo, Lucas County, Ohio. It consists of approximately 5.63 acres of land. The subject property is improved with a multi-story office tower,² which was constructed in 1980-1981 at a cost in excess of \$100,000,000. It was first occupied in June of 1981. The subject property was intended to be used as the corporate headquarters for Owens-Illinois, but due to downsizing, it was shortly converted to multi-tenant use. As of the tax lien date, Owens-Illinois occupied approximately thirty percent of the building.

The property has a partial basement, a loading dock, a small underground parking area with 37,222 square feet of space, a fitness center, a two-story lobby, and a retail park level with some restaurants, a food court, a cafeteria, banquet facilities, a private dining room, some bank space, a credit union, a pharmacy, and a dry cleaner. It has fifteen elevators and a large freight elevator, as well as a penthouse. The subject property has approximately 863,608 gross square feet, with net rentable square feet of 707,482. The retail space totals between 60,000 and 68,000 square feet.

All agree that this property is the only “signature-type building” in Toledo. It has good quality, commercial/institutional grade construction, the most desirable location in Toledo, occupying the best corner within the Toledo central business district, and the best quality finished space in Toledo.

² The witnesses differ on the number of floors. One of the appraisers, Thomas Upton, states that the building has twenty-nine floors. However, Frank Butler, the building manager, testified that it had thirty-four floors.

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, O-I called Thomas E. Upton, an MAI appraiser, who testified and presented a complete, narrative appraisal report. In addition, the appellant called Steven R. Lennex, a commercial realtor in Toledo, and Frank E. Butler, the building manager, to testify. The appellees relied on the deposition testimony of Kenneth Laskey, an MAI appraiser and senior real estate analyst for the Lucas County Auditor’s office. Mr. Laskey prepared a “review appraisal” of Mr. Upton’s appraisal report.³

I. A PRELIMINARY MATTER

Before addressing the merits of this appeal, the board deems it appropriate to visit an issue raised by the BOE in its brief. Counsel for the BOE submits that this board may have no jurisdiction to hear and decide this matter. According to the BOE, there were three complaints filed at the BOR, one signed by Thomas Upton, the appraiser in this case, one signed by Frank Butler, and one signed by Dennis A. Lyle, the attorney for O-I.

The Supreme Court of Ohio has found that the preparation and filing of a complaint (DTE Form 1) before the BOR is the practice of law. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 470. Furthermore, the filing of a

³ Mr. Laskey did not testify at the hearing before this board and did not provide counsel with the underlying supporting documentation at the deposition.

complaint form on behalf of a corporation requires an attorney. *Bd. of Edn. of Worthington City School Dist. v. Hamilton Cty. Bd. of Revision*, 85 Ohio St.3d 156, 1999-Ohio-449.

Mr. Upton and Mr. Butler are not attorneys. Therefore, according to the BOE, their complaints are invalid. Further, the BOE argues, although Mr. Lyle is an attorney, his complaint was the third complaint filed within a triennial period; all three complaints, however, were timely filed for the same year. See 5715.19(A)(2).

The board finds the BOE's challenge to jurisdiction to be without merit. First, an examination of the three complaint forms filed indicates that there was only one complaint filed by an attorney, with three parts to it. And, indeed, that is how the BOR treated the submission. The BOR issued one case number, 00-0995, held one hearing, and issued one decision with regard to the value of the subject property.

In addition, although not perfectly clear, O-I is named as the property owner on the face of the complaint. This information is sufficient to give the parties adequate notice. Finally, R.C. 5715.19(A)(2) does not apply so as to preclude a multiple filing for the same year if all complaints were filed prior to March 31. *Normandy II L.P. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, May 26, 2004), BTA Nos. 2003-A-661, et al., unreported; *Visconsi v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Mar. 9, 2001), BTA Nos. 1999-S-1076, et seq., unreported; *Montlack Mgmt. v. Cuyahoga Cty. Bd. of Revision* (June 6, 1997), BTA No. 1996-A-1507, unreported.

II. THE MERITS

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* (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.

O-I filed a complaint with the BOR requesting a decrease in value for tax year 2000. At the hearing before the BOR, O-I presented the same three witnesses that it presented here at the board: Thomas Upton, Steven Lennex, and Frank Butler. Mr.

Lennox and Mr. Butler testified that the Toledo Class A office market was weak and that landlords were required to provide tenant improvements to achieve competitive rental rates. Mr. Upton gave appraisal testimony and presented his appraisal report, concluding that based on the Toledo market conditions, the fair market value of the subject property as of the tax lien date was \$30,500,000.

After consideration, the BOR determined that the value of the subject property should not change and should remain at \$55,000,000. It is from that decision of the BOR that O-I now appeals.

Before this board, O-I called Steven R. Lennox as a witness. Mr. Lennox testified that he had been a commercial real estate broker in the Toledo office market for twenty years. He was a partner with Michael Realty, one of the two largest commercial leasing agencies in Toledo, and had been the listing agent for four of the five Class A buildings in Toledo. He had represented both lessors and lessees, as well as buyers and sellers.

Mr. Lennox testified that by the tax lien date, January 1, 2000, the Toledo office market was not experiencing growth in size or tenant base. H.R. at 86, 89. As the tenant base declined, so did the rental rates. H.R. at 88. Because of these competitive market conditions, it was Mr. Lennox's experience that landlords were forced to provide tenant improvements as part of the ordinary course of doing business. H.R. at 88, 89.

Frank E. Butler was also called to testify on O-I's behalf. Mr. Butler was the building manager for the subject property. He stated that tenant improvements

amounted to ten to fifteen percent of the gross lease value and leasing commissions were approximately five percent. H.R. at 295, 298-299. These tenant improvements, according to Mr. Butler, were not only required when a new tenant moved into a building, but also upon lease renewals. H.R. at 401-402. In discussing the weak market conditions in the Toledo commercial business district, Mr. Butler indicated that the vacancy rate for the subject property on tax lien date was between eighteen and twenty percent, and that number had increased dramatically since the tax lien date. H.R. at 292.

O-I called Thomas E. Upton, an MAI appraiser, to present testimony in support of his full, self-contained, narrative appraisal report. Mr. Upton has been an appraiser for thirty-nine years, specializing in commercial properties located in the Toledo commercial business district. Since 1989, Mr. Upton has been heavily involved in valuing Class A, multi-tenant properties. In the five years preceding the tax lien date, Mr. Upton had appraised all five of the Class A buildings located in Toledo, Ohio.

Mr. Upton performed all three approaches to value: cost, sales, and income. However, he used the cost approach to value the land, but rejected it as a method of valuing the improvements. In his opinion, the cost approach was not a reliable indicator of value because of the subjective nature of determining the depreciation factor on a building nineteen years old.

Mr. Upton analyzed thirteen land sales, some of them assemblages. The sales prices ranged from \$20.00 per square foot to \$69.02. Based on this data, Mr.

Upton concluded that the value of the land for the subject property as of tax lien date should be \$40.00 per square foot. This equates to a total fair market value of \$9,810,000.

In performing the sales comparison approach to value, Mr. Upton utilized three sales of downtown Toledo office buildings. Sales comparable #1, the NCB building, sold in June of 1997 for \$8,300,000, or \$30.18 per square foot. This property was the former corporate headquarters of Owens-Illinois. However, it is smaller and older than the subject property and not Class A space.

Sales comparable #2, the Four Seagate building, sold in April of 2001 for \$12,000,000, or \$42.57 per square foot. It was one of the five Class A buildings in Toledo, Ohio; however, it was subject to a distress sale, having a fifty percent occupancy rate at the time of sale.

Sales comparable #3, the Summit Center or HCR Manor Care building, sold on January 21, 1999 for \$19,000,000, or \$47.56 per square foot. Mr. Upton made conditions of sale adjustments to the sales price of this building, reducing it to \$13,325,000, equating to \$38.05 per square foot. This building was also one of the five Class A buildings.

After adjusting for size, location, age, and financing terms, Mr. Upton concluded that the fair market value for the subject property as of the tax lien date was \$36.50 per square foot, for a total value of \$31,525,000.

In his income approach, Mr. Upton reviewed market rental rates and the actual rates experienced by the subject property. Based upon this data, Mr. Upton

concluded that the market rental rate for the subject property as of the tax lien date should be \$17.50 per square foot, for a potential gross rental income of \$12,380,936.

From this, Mr. Upton deducted a vacancy and/or collection loss of 17.5 percent. In determining the vacancy rate, Mr. Upton talked with building managers and leasing agents, reviewed market information, inspected the subject property four times, and test checked the subject property for actual vacancy. He concluded to an effective gross rental income of \$10,214,200.

To this figure, Mr. Upton added other income, including storage and tenant services, as well as interest and deposit income. Thus, the total effective gross income was \$10,439,220.

In deriving expenses, Mr. Upton reviewed the actual expenses attributable to the subject property and looked to the market. After deducting for reimbursable expenses at \$7.50 per square foot and for non-reimbursable expenses, such as owner's administration expenses, general building reserves, repair, tenant finish allowances, and leasing commissions, Mr. Upton arrived at a net operating income before debt service of \$3,752,440.

He derived a capitalization rate of 10.5 percent before the tax additur of 2.18 percent by consulting the Korpacz real estate investor survey, reviewing standard mortgage-equity rates in the local market, and examining capitalization rates for sales of properties located in the Toledo central business district as well as sales of suburban properties. Based upon these facts and assumptions, Mr. Upton arrived at an opinion of value for the subject property using the income method of \$29,600,000.

In reconciling these values, Mr. Upton placed the most weight on the income and sales comparison approach as to value because in his opinion these are the approaches that “would undoubtedly be the main consideration of any serious potential buyer ***.” Appellant’s Ex. 13, 44. As a final opinion of value, Mr. Upton concluded that the fair market value of the subject property as of January 1, 2000 should be \$30,500,000.

The appellees relied on the deposition testimony of Kenneth Laskey, who performed a review appraisal of Mr. Upton’s appraisal report. Mr. Laskey is an MAI appraiser and a senior real estate analyst for the Lucas County Auditor’s office.

Mr. Laskey agreed with Mr. Upton that the cost approach to value was not appropriate. However, Mr. Laskey criticized Mr. Upton’s appraisal report on four bases. First, it was Mr. Laskey’s opinion that Mr. Upton failed to use appropriate regional comparable sale properties in his sales comparison approach. Second, Mr. Laskey took the position that Mr. Upton’s vacancy rate was too high and not reflective of the market as of the tax lien date. Third, in Mr. Laskey’s opinion, Mr. Upton should not have deducted future tenant improvements and leasing commissions from his income approach to value. Fourth, Mr. Laskey disagreed with Mr. Upton’s method of choosing a capitalization rate.

As to Mr. Upton’s use of local rather than regional sales comparables, although the Toledo properties are not perfect comparisons, this board finds that at least one of them, sales comparable #3, provides an adequate indication of value for the subject property.

As to the vacancy rate, Mr. Upton reviewed the experience of the subject property and examined the market. The board finds that there is sufficient competence and probability to rely on his conclusion, despite the fact that the leasing information for the subject indicated a much lower vacancy rate. Mr. Lennex's and Mr. Butler's testimonies also support the high vacancy rates for the subject property and in the Toledo market. H.R. at 88-89, 113-120, 155-156, 291-292, 325-327, 343-344.

The tenant improvements and leasing commissions seem to be at the crux of disagreement between these two appraisers. The board heard extensive testimony from Mr. Lennex and Mr. Butler with regard to the conditions in the Toledo market as of the tax lien date. The appellees submit that this testimony is unreliable because the witnesses misrepresented some figures on a promotional piece. In addition, the appellees claim that these amounts are unsubstantiated and speculative.

Although there was sufficient credible testimony before this board to conclude that these amounts reflected the actual experience of the subject property, the board is reluctant to directly rely on this data to support the income approach to value. The vacancy rates for the subject property and in the Toledo market are volatile. There is documentary evidence in the form of the promotional piece that contradicts the conclusions reached. These factors in conjunction with other weaknesses regarding the income approach to value cause the board to question the value of the income approach in this instance.

The board finds sufficient evidence in the record that the Toledo market conditions may have required the appellant to make tenant improvements and incur

leasing commissions to keep the property competitive and to achieve the market rental rate. Accordingly, it is understandable that Mr. Upton included those items as business expenses. However, based upon the changing vacancy rates, as well as tenant improvements and leasing commissions, the board does not find that the income approach is the best method of deriving value for the subject property.

Finally, Mr. Laskey objected to the method by which Mr. Upton derived his capitalization rate. The board finds that Mr. Upton utilized several methods to arrive at a rate of 10.5 percent. Therefore, any error in one method is diminished by the inclusion of other methods in the analysis.

The board does not find Mr. Laskey's opinion of value to be sufficiently competent, reliable, and probative of the value of the subject property as of the tax lien date, January 1, 2000. First, Mr. Laskey did not prepare a full, self-contained, narrative appraisal report. Not that a full appraisal report is required in every instance; however, in this case Mr. Laskey did not testify before the BOR and was not able to testify before this board.⁴ In addition, his supporting documentation was not available for inspection, review, or cross-examination by counsel.

Second, Mr. Laskey did not appear, from what was presented to this board, to adequately and sufficiently analyze and take into consideration the Toledo market conditions. He did not review properties that sold which were located in the Toledo area.

⁴ Mr. Laskey presented his opinion via deposition testimony prior to the board's evidentiary hearing.

The board finds that the sales comparison approach to value provides the best indication of value for the subject property. Although Mr. Upton is very familiar with the Toledo, Ohio market and made adjustments to the properties to compensate for time of sale, age of improvements, condition of the property, and special financing arrangements, the board finds that sales comparable #1 is not sufficiently comparable to the subject, since it is not class A space and is much smaller and older than the subject. Sales comparable #2 was the subject of a distress sale, because it was fifty percent vacant. Further, the board is skeptical regarding the need for a twenty percent adjustment to sales comparable #3. Mr. Upton does not fully explain, to the board's satisfaction, why such a downward adjustment is required. In addition, even the distress sale comparable #2 sold for \$42.57 per square foot, well above Mr. Upton's adjusted price per square foot of \$38.05 for sales comparable #3.

Although it is newer and smaller than the subject, according to Mr. Upton's appraisal report, sales comparable #3 was eighty percent occupied prior to its sale, which is similar to the subject. In addition, Mr. Upton testified that sales comparable #3's location was fairly similar to the subject's. The sale date for sales comparable #3 was within one year of the tax lien date. Parking is provided within sales comparable #3 for executives and managers in the same manner as it is provided for with the subject property. In addition, both buildings are connected to parking garages in such a way that tenants need not go outside in bad weather. Therefore, this board finds that sales comparable #3 is the best comparable for the subject property of the three presented by Mr. Upton.

Applying the unadjusted sale price per square foot of \$47.56 for sales comparable #3, the Summit Center, to the gross square footage of 863,608 for the subject property, indicates a value for the subject property of \$41,073,196 .

In resolving the issues, this board must examine the available record and determine value based upon the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, the board is given broad discretion to determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Based upon the foregoing, the board finds that the property owner submitted sufficient competent, probative, and reliable evidence to allow the board to determine a value for the subject property. Therefore, upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds the value of the subject property as of January 1, 2000 to be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
14-55950		
Land	\$ 3,433,500	\$ 9,810,000
Building	<u>\$10,942,120</u>	<u>\$31,263,200</u>
Total	\$14,375,620	\$41,073,200

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Lucas 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.

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