

**OHIO BOARD OF TAX APPEALS**

MLP Associates LP, )  
 )  
 Appellant, ) CASE NO. 2003-A-1153  
 )  
 vs. ) (REAL PROPERTY TAX)  
 )  
 Wood County Board of Revision and ) DECISION AND ORDER  
 Wood County Auditor, )  
 )  
 Appellees. )  
 )

APPEARANCES:

For the Appellant - Karen H. Bauernschmidt Co., LPA  
Karen H. Bauernschmidt  
The Hoyt Block  
700 West St. Clair Avenue, Suite 214  
Cleveland, Ohio 44113-1230

For the County Appellees - Rich, Crites & Dittmer, LLC  
James R. Gorry  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

Entered May 6, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Wood County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2002.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel to the parties.

The subject real property consists of a strip shopping center located on approximately 13.47 acres of land in the Bowling Green City east taxing district, Wood County, Ohio, and appears on the auditor's records as parcel numbers B07-511-310101014000 and B07-511-310101015000. The value of the parcels, as determined by the auditor and by the board of revision, is as follows:

PARCEL #B07-511-310101014000

AUDITOR

TRUE VALUE	TAXABLE VALUE
Land \$ 992,200	\$ 347,270
Bldg 1,507,800	527,730
Total \$ 2,500,000	\$ 875,000

BOARD OF REVISION

TRUE VALUE	TAXABLE VALUE
Land \$ 992,200	\$ 347,270
Bldg 1,382,800	483,980
Total \$ 2,375,000	\$ 831,250

PARCEL #B07-511-310101015000

AUDITOR

TRUE VALUE	TAXABLE VALUE
Land \$ 715,000	\$ 250,250
Bldg 1,647,500	576,630
Total \$ 2,362,500	\$ 826,880

BOARD OF REVISION

TRUE VALUE	TAXABLE VALUE
Land \$ 715,000	\$ 250,250
Bldg 1,535,000	537,250
Total \$ 2,250,000	\$ 787,500

Appellant contends that the auditor and the board of revision have overvalued the parcels in question and claims the subject's total market value, based upon an appraisal, is \$2,770,000.

The subject consists of 138,343 square feet of freestanding multi-tenant retail space divided into four storefronts, ranging in size from 8,450 square feet to 87,543 square feet. As of tax lien date, approximately 36,660 square feet, or 27.1%, was vacant, which increased to a 91.9% vacancy rate by October of 2003. Built in 1978, with some additions in 1992, the subject is considered to be in "average" to "fair" condition, with some roof leaks in at least two of the storefronts. The vacant storefronts are in need of renovation and the asphalt paving and parking area also require resurfacing. The subject is located approximately 20 miles south of Toledo, on the south side of the city of Bowling Green, a college town in a primarily "rural" county, with easy access to U.S. Highway 6.

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 Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

The appellant offered the appraisal and testimony of Richard G. Racek, MAI, a state-certified general real estate appraiser. Mr. Racek discussed the subject’s highest and best use, indicating that “[t]he highest and best use of the subject site, if vacant, is considered to be for a retail-commercial development.” Ex. A at 25. He went on to conclude that the “highest and best use of the subject improvements, as improved, is considered to be for the continued utilization of the existing improvements. \*\*\* [T]he building improvements are considered to contribute a value over and above that of the land as if vacant. Therefore there is no justification for razing the improvements and redeveloping the site for an alternative use.” Ex. A at 26.

Within his report, Mr. Racek utilized two approaches, the sales comparison approach and the income capitalization approach, to determine the subject’s market value. Mr. Racek did not consider the cost approach “directly applicable since the

improvements were constructed between 1978 and 1992.” He went on to indicate that since the improvements are “considered to be reaching the end of their economic life” and “[g]iven the difficulty in accurately estimating the total amount of accrued depreciation, this approach does not have the reliability to be used for a value conclusion.” Ex. A at 26.

Using the sales comparison approach, Mr. Racek reviewed four sales of similar retail properties in the Bowling Green/Toledo area, dating from July 1999 through January 2003. The sales data generated from these sales ranged from \$2.72 per square foot of gross building area to \$41.25 per square foot. After adjusting the sales for differences from the subject, including net operating income generated, physical attributes, condition of property, and location, Mr. Racek arrived at an adjusted sale price of \$20.00 per square foot, or \$2,770,000 (rounded). Ex. A at 27-36.

Under the income approach, Mr. Racek reviewed the previous and current leases in place at the subject as well as the lease information from seven other businesses in the Bowling Green/Fremont/Findlay area. The rental survey information indicated rents ranging from \$.56 per square foot to \$12.64 per square foot. Mr. Racek felt that “[b]ased upon the rent survey, the recent lease within the subject property and the current asking rents for available space, it is optimistic that the subject property could support an average rental rate of say \$4.50 per square foot. Thus, the total gross potential income is estimated to be \$622,544.” Ex. A at 38-39.

To the total gross potential income, Mr. Racek applied a vacancy and credit loss factor of 25%, considering the history of the subject, commercial property market

vacancy rates, and “the fact that the property is functionally obsolete by current standards,” to arrive at an effective gross income of \$466,908. He then added additional income of \$24,242, based upon the actual experience of the subject in generating reimbursements of common area maintenance charges, utilities, and late charges to arrive at total effective revenue of \$491,150.<sup>1</sup>

From that total, Mr. Racek deducted operating expenses of \$138,343 (based upon the subject’s actual experience and the expenses of six expense comparables from the market) and replacement reserves of \$48,420 (for replacement of short-lived components of the property, e.g., roof, parking lot, HVAC equipment, tenant build-outs, and leasing commissions) to arrive at a net operating income of \$304,387. Ex. A at 40-41. Mr. Racek then derived a capitalization rate, extracted from the market, of 11%, which was intended to reflect the “location, multi-tenant design, construction and the age of improvements.” Ex. A at 42. After incorporating a tax additur of 1.194% to represent the taxes which are the responsibility of the landlord, Mr. Racek applied the overall capitalization rate of 12.194% to the net operating income to arrive at a final value, via the income approach, of \$2,500,000 (rounded).

In reconciling the results from the two approaches to value that he utilized, Mr. Racek indicated that in consideration of the recent operating history of the subject and the increase in vacancies since tax lien date, he considered the income approach determination solely as support for the valuation determined using the sales comparison approach. He therefore concluded to a value of \$2,770,000. Ex. A at 44.

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<sup>1</sup> Mr. Racek disregarded both the real estate tax reimbursements and the tax liability in deriving the subject’s additional income, and, as such, “the net effect is to reduce the tax additur from 1.416% to 1.194%.” Ex. A at 39.

After indicating his final conclusion of value for the subject property, Mr. Racek also provided an analysis of the subject land value. Based upon three sales of land in Bowling Green between May 1992 and November 2001, he arrived at a value of \$130,000 per acre, or \$1,750,000, for both of the subject parcels. Ex. A at 45.

The county did not offer any appraisal testimony or other evidence of value. Instead, it chose to rely upon its cross examination of appellant's witness to establish that the appraisal appellant offered did not constitute competent, probative, and credible evidence of value of the subject.

First, in his brief, appellees' counsel suggested that Mr. Racek improperly appraised/valued the subject parcels together, as one economic unit, rather than individual, independent parcels. We disagree. First, the appellees introduced no evidence to establish that the subject "property will [not] serve its highest and best use as a single unit." *Park Ridge Co. v. Franklin Cty. Bd. of Revision* (1987), 29 Ohio St.3d 12. Further, Mr. Racek supported the approach he utilized in his report, specifically in his discussion of the highest and best use, which justified his treatment of the subject as one economic unit.

Next, appellees' counsel criticized the sales comparables utilized in appellant's report and ultimately, the conclusions rendered using the sales comparison approach. We agree, in part, with appellees' counsel's concerns about the comparability of sales comparables #1 and #3, considering that adjustments of over 200% and over 600%, respectively, were required to bring them in line with the subject. However, we find that comparables #2 and #4 are clearly more reflective of the subject and were

appropriately considered by the appraiser, and, as such, they provide a sufficient basis for development of the appraiser's sales comparison approach. While appellees' counsel may not agree with the methodology used, or the adjustments made under Mr. Racek's sales comparison approach, we are not convinced by counsel's protestations that all of appellant's appraiser's sales comparables were utilized inappropriately or adjusted improperly. We find Mr. Racek's description of his treatment of sales comparables #2 and #4 sufficiently identifies how he arrived at his conclusions, and, lacking any other contrary evidence to dispute such conclusions, we will rely upon them.

Finally, appellees criticized appellant's appraiser's use of a 25% vacancy and credit loss figure in his income approach. However, such figure is borne out by the subject's experience on tax lien date, i.e., a vacancy rate of 27.1% of the net rentable building area, and without more from the appellees to establish what they would deem to be a more appropriate vacancy figure, this board will rely upon the appraiser's conclusions.

Thus, we find that the appellant has offered sufficient, probative evidence of the subject's value. Mr. Racek, through the course of his report and his testimony, provided this board with a thorough analysis of the subject, as it related to the market. He identified his sources of information and sufficiently justified the approaches to valuation that he utilized. We find that the appellant, through Mr. Racek's report, successfully shifted the burden of proof to the appellees to provide this board with other appraisals or substantive information that would refute the conclusions made in Mr. Racek's report.

Thus, we conclude that appellant's appraisal constitutes sufficient, probative evidence of the subject's value. Accordingly, based upon the preponderance of evidence currently before this board, the total value of the subject property for tax year 2002 shall be \$2,770,000, allocated<sup>2</sup> as follows:

PARCEL #B07-511-310101014000	
TRUE VALUE	TAXABLE VALUE
Land \$1,015,000	\$ 355,250
Bldg 489,600	171,360
Total \$ 1,504,600	\$ 526,610

PARCEL #B07-511-310101015000	
TRUE VALUE	TAXABLE VALUE
Land \$ 735,000	\$ 257,250
Bldg 530,400	185,640
Total \$ 1,265,400	\$ 442,890

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

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<sup>2</sup> The subject land and building values have been assigned based upon the allocation to land and building as set forth in appellant's appraisal, but in the same proportion between the two subject parcels as that which the auditor utilized in the subject's initial valuation.