

OHIO BOARD OF TAX APPEALS

Meijer Stores Limited Partnership,)
)
 Appellant,) CASE NO. 2003-A-1204
)
 vs.) (REAL PROPERTY TAX)
)
 Wood County Board of Revision and) DECISION AND ORDER
 Wood County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA
Jay P. Siegel
Annrita S. Johnson
Suite 210, Landmark Centre
25700 Science Park Drive
Cleveland, Ohio 44122

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

Entered July 15, 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 provided 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 appellant and counsel to the county appellees.

The subject real property consists of one parcel measuring approximately 37 acres. Located thereon are two buildings, a discount department store and associated service station. The property, built in 1998, is located in the Bowling Green City east taxing district and is identified in the auditor's records as parcel number B07-511-210000009000. The real property tax values for the subject, as determined by the auditor and retained by the board of revision, are as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 3,146,200	\$1,101,170
Bldg	8,669,700	3,034,400
Total	\$11,815,900	\$4,135,570

Appellant contends that the auditor and the board of revision have overvalued the parcel in question and claims that the total true value of the subject property is \$7,200,000, based upon an appraisal of the subject.

A review of the statutory transcript indicates this appeal originated at the board of revision with the property owner, Meijer Stores Limited Partnership ("Meijer"), filing an original complaint with the Wood County Board of Revision. Meijer sought to decrease the subject's value to \$7,200,000, based upon an appraisal of the subject, which relied primarily upon the sales comparison approach in its

conclusions. No counter complaint was filed. The board of revision went on to retain the auditor's valuation of the subject for tax year 2002.

In making our determination herein, we initially note 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.

Further, 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 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.

Before this board, Meijer offered the appraisal and testimony of Robin M. Lorms, MAI, CRE, a state-certified general real estate appraiser. He described the subject as a 180,250 square foot “prototypical Meijers store developed and used for the sale of soft goods and grocery store related items.” H.R. at 20. He indicated that the subject had adequate parking and was in good condition, with no evidence of any deferred maintenance. He also indicated that approximately four acres of the subject land were allocated to an out parcel on the corner on which a Meijer service station is located.

Mr. Lorms, in discussing the subject’s neighborhood, indicated that the subject’s location is somewhat “isolated” from the main retail development and activity in downtown Bowling Green, to the west of the subject. H.R. at 13, 14. Specifically, “the subject site is located at I-75 and S.R. 105, which is known as Wooster Street. *** This immediate area has primarily light industrial and rural farm land. The subject represents the only major retail development at this interchange location.” H.R. at 19.

In valuing the subject, Mr. Lorms indicated that an overriding consideration for him in his analysis was the fact that the supply of big box retail space is growing, yet its absorption has been very slow. He said, “[s]o what’s happened is in the big box phenomenon, you have more and more new development, which is – causes for vacating existing facilities. You have bankruptcies. *** So while you’ve got this phenomena of supply growing at a rapid pace, the absorption of this space has been very, very slow because, there’s a reason,

the users in the big box industry, they build-to-suit or they build for their own use.” H.R. at 16. Accordingly, his approach to the instant appraisal problem takes this occurrence in the market into consideration.

As we begin our review of Mr. Lorms’ appraisal, we start with his analysis of the subject’s highest and best use. He indicated that “retail is concluded to be the maximally productive use and thus the highest and best use of the site as though vacant. Based on its location near the interchange and the signalized intersection, the corner site is best suited for outparcel development.” Ex. A at 28. Further, considering the site, as improved, Mr. Lorms indicated that “[t]he subject improvements conform to the highest and best use as though vacant.” Id.

Specifically, in considering the valuation of the subject, Mr. Lorms completed a land value analysis as well as a cost approach, a sales comparison approach, and an income approach. First, Mr. Lorms began his valuation analysis by determining a value for the subject land, comparing it to four sales between November 1994 and November 2001, including the sale of the subject acreage. Based upon such sales, he developed an unadjusted range of \$25,627 to \$202,020 per acre. Based upon the most recent sale, Mr. Lorms concluded to a final unit value of \$75,000 per acre for the subject, or \$2,800,000 (rounded). Ex. A at 31-33.

Next, the replacement cost new of the subject’s improvements was estimated using Marshall Valuation Service, which included all of the applicable direct costs and some of the indirect costs. Mr. Lorms estimated that the subject’s classification falls between a discount store and a warehouse discount store, and, as

such, he developed two cost estimates for the subject. After developing the two estimates, \$12,755,455 (including 10% indirect costs and 15% entrepreneurial incentives) and \$8,742,222 (including 5% indirect costs and no entrepreneurial incentives), Mr. Lorms concluded to a mid replacement cost estimate of \$10,750,000, since the subject has characteristics of both classifications. He then made deductions for age/life depreciation of \$1,370,000 and functional and external obsolescence of \$4,475,000, which resulted in a depreciated replacement cost of \$4,900,000 (rounded). To that figure, he added the previously derived land value of \$2,800,000, to arrive at a final value, via the cost approach, of \$7,700,000. Ex. A at 34-37.

Using the sales comparison approach, Mr. Lorms analyzed five sales and three offerings of properties on a price per square foot of gross leasable area basis. The comparable properties sold between November 1999 and March 2003. The sales/offering comparables ranged in price from \$16.54 per square foot to \$40.61 per square foot, unadjusted, and in building size from 49,754 square feet to 186,480 square feet of gross leasable area. Mr. Lorms adjusted the sales for differences, if any, from the subject, including location and other retail influences. H.R. at 58. After making such adjustments, Mr. Lorms concluded to an adjusted value of \$30 per square foot, or \$5,407,500, for the main building. To that value, he added \$1,000,000 for the service station (based upon a depreciated replacement cost of the mini-mart, canopy, and 40,000 square feet of paving and a land value for the 4-acre service station site based upon comparable sales/offerings of outparcels), and

\$750,000 for the ten acres of surplus acreage, for a total value, via the sales comparison approach, of \$7,200,000 (rounded). Ex. A at 38-43.

Finally, in completing an income approach, Mr. Lorms first estimated market rent by analyzing eleven comparable rentals, specifically focusing on discount department stores that have been developed and vacated by the owner-occupant or leased fee occupant and later re-leased to a second generation tenant. The eleven comparables indicated a market rental range of \$2.50 to \$6.00 per square foot. Giving the rental rates in the subject's market area more weight, Mr. Lorms determined that a rental rate of \$3.50 per square foot, or \$630,875, would be most appropriate. To that figure, he added \$342,475 for expense reimbursement income, to arrive at a potential gross income of \$973,350. Vacancy and credit loss of 10% was deducted and an effective gross income of \$876,015 resulted. From that amount, Mr. Lorms deducted total expenses, including replacement reserves, of \$404,805 based upon an analysis of historic expenses at comparable properties, which rendered a net operating income of \$471,210. The NOI was capitalized at 10.5%, based upon investor surveys and the band of investment method, for a final value indication of \$4,487,714. After adding the value of the service station (\$1,000,000) and the excess acreage (\$750,000), Mr. Lorms concluded to an overall value for the subject, via the income approach, of \$6,200,000 (rounded). Ex. A at 44-51.

In reconciling the foregoing value conclusions, Mr. Lorms indicated that the sales comparison approach was given the greatest weight. He viewed the

income approach value as supportive of the sales approach value, stating that it was “supported by a relatively large quantity of market data regarding rental rates, expenses and capitalization rates.” He gave the cost approach the least amount of weight due to the significant amount of obsolescence taken. Accordingly, Mr. Lorms’ final value for the subject property was \$7,200,000. Ex. A at 52.

The county did not offer any evidence but chose to primarily 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.

In reviewing the evidence before us, we first note that 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 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.

At the outset, the county criticizes Mr. Lorms’ overall approach to the instant appraisal problem by claiming that he is unable to prove the truth of his underlying theory, i.e., that there is no demand in the market for first generation big box properties from first generation users. The county contends that Mr. Lorms’ claim

that no other first generation user would be interested in purchasing or leasing the subject property is simply unsupported opinion. We disagree and believe that Mr. Lorms' report is sufficiently supported with evidence from the market to confirm the theories contained therein. Mr. Lorms' research did not uncover any sales between first generation users, e.g., Meijer, Wal-Mart, Lowe's, Target. The county speculates as to the reasons why there are no sales between first generation users, but we find those reasons are somewhat irrelevant to the appraisal problem herein. Whether it is because first generation users prefer to build to suit their specific needs when opening a store or it is related to concerns over allowing competitors to occupy space previously owned by them, in recent years, first generation users appear to rarely purchase and/or rent other previously owned first generation locations. The bottom line is that no sales or leases between first generation users have been offered into evidence to rebut Mr. Lorms' position. As demonstrated by Mr. Lorms' survey of the market and sales/leases, and the lack of evidence to the contrary, there are no sales or leases between first generation users, which establishes, for purposes of the instant appraisal problem, that second generation users are the most viable potential buyers/renters of big box space.

Looking at Mr. Lorms' appraisal, we will first consider his sales approach, as that is the analysis upon which he placed the greatest weight in arriving at his final conclusion of value. First, the county appellees argue that the sales comparables that Mr. Lorms utilized are abandoned and vacant properties which are not truly comparable to the subject. We disagree. Just because the sales comparables

are vacant and/or abandoned does not render them inapplicable to the analysis of the subject. All of the comparables considered are similar, big box properties, warehouse department stores, built within nine years of the subject. Mr. Lorms clearly stated that he adjusted the sales for differences in location, age and condition and, arguably, he compensated for any differences between the properties.

The county also contends that the presence of deed restrictions in the sales of big boxes prevents these sales from being used as comparable sales. We would agree that even though, arguably, a deed-restricted sale could be reflective of the market, it would not be considered the best evidence of value. See, e.g., *Muirfield Assn. Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710; *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16; *National City Bank of Cleveland v. Cuyahoga Cty. Bd. of Revision* (Oct. 29, 2004), BTA No. 2003-R-453, unreported; *Jefferson Savings Assoc. v. Madison Cty. Bd. of Revision* (Dec. 28, 2001), BTA No. 2000-E-1332, unreported; *Bd. of Edn. of the Columbus city School Dist. v. Franklin Cty. Bd. of Revision* (June 30, 2003), BTA Nos. 2002-A-2014, et seq., unreported; *Society Bank v. Franklin Cty. Bd. of Revision* (Nov. 24, 2000), BTA No. 1999-M-204, unreported, remanded on appeal to the Ohio Supreme Court, Case No. 00-2237, on Feb. 20, 2001. However, Mr. Lorms testified that not all of the sales he used under the sales comparison approach had deed restrictions; specifically, he only indicated that the Wal-Mart sales regularly involved deed restrictions. H.R. at 116.

Thus, we will disregard the one Wal-Mart sale and one offering¹ included in the sales comparison approach.

Further, we note that by acknowledging that some big boxes are sold with such deed restrictions, Mr. Lorms' theory that the big boxes are only being sold or leased to second generation users is factually bolstered, i.e., we already have well-supported testimony in the record that first generation users are generally not interested in purchasing or leasing big box properties anyway, as their business plans/needs require that they build their own stores to suit their specific requirements and, in addition, now, in some instances, due to deed restrictions, second generation users are the only viable buyers/lessees in the big box market. H.R. at 115, 116, 122.

Finally, we do not agree with the county's further contention that Mr. Lorms has artificially limited the market for the subject property by excluding, for example, Meijer, and other first generation users from consideration. Mr. Lorms credibly testified that generally, big box properties are not sold or leased to first generation users and provided evidence to support that position. If the county believes that there is evidence in the market to the contrary, it needs to come forward with it and substantiate its position. Thus, Mr. Lorms has provided us with four sales of big box-type properties within fifteen months of the tax lien date under consideration. He made adjustments to the sales to bring them in line with the characteristics of the

¹ We will disregard all of Mr. Lorms' "offerings" of property for sale under his sales comparison analysis, as an offering is not sufficient to establish market prices since the sale was not consummated. See *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397. Accordingly, we are left with four comparable sales to be considered.

subject, and, as such, we find Mr. Lorms' sales approach reasonably reflects the value of the subject property as of tax lien date.

As we consider the other approaches to value utilized by Mr. Lorms, we first find that his income approach provides competent support for the sales approach. There is nothing in the record to refute the rent²/expense comparables and capitalization rate that were employed in the analysis. The county contends that the "feasibility rents" which were based on actual costs and utilized by Mr. Lorms in his cost approach (to calculate obsolescence) are more reflective of what the subject's actual rents should be. It claims that the feasibility rents more accurately reflect the subject's potential, as compared to the amounts actually obtained from second and third generation users in the market. We disagree. The feasibility rents are tied to new construction and do not reflect an existing building in the tax lien year marketplace.

Finally, we agree with Mr. Lorms that the cost approach provides the least reliable valuation of the subject, considering the large deduction taken for obsolescence.

The county also asserts that an earlier case involving a different Meijer store, namely, *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, established the applicable principles which govern the instant case and therefore, is dispositive of the issues raised herein. We disagree. At issue in *Meijer* was the value, for tax year 1992, of what virtually was a brand new store, constructed in 1991. Herein, we are considering the tax year 2002 value of a store that was built in 1998.

² Asking rents, not unlike asking sale prices, are not necessarily considered market rents, so we have focused our review of Mr. Lorms' income approach on the four actual lease rates listed.

Further, market conditions have changed with each succeeding tax year after 1992, as the phenomenon of build-to-suit big box properties has become more prevalent in the market. While this board found that the cost approach was the best appraisal methodology to utilize in valuing the brand new property in *Meijer*, for the reasons stated by Mr. Lorms in his appraisal, the cost approach is not the best or most reliable method herein, due to the large deductions taken for functional obsolescence, which, as discussed earlier, were appropriately taken, considering the existing market conditions on tax lien date. Further, in this case, Mr. Lorms, unlike the appraiser in the prior *Meijer* case, was able to identify the outside forces that support a finding of functional and external obsolescence.

Thus, upon review of appellant's appraisal report, we find that the appellant has offered sufficient, probative evidence of the subject's value. Accordingly, based upon the preponderance of evidence currently before this board, we have determined the value³ of the subject property, as of January 1, 2002, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$1,944,000	\$ 680,400
Bldg	5,256,000	1,839,600
Total	\$7,200,000	\$2,520,000

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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³ The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject's initial valuation.