

**OHIO BOARD OF TAX APPEALS**

Shewango Valley High, LLC, ) CASE NO. 2003-J-1440  
)  
Appellant, ) (REAL PROPERTY TAX)  
)  
vs. ) DECISION AND ORDER  
)  
Lorain County Board of Revision, )  
Lorain County Auditor, and the )  
Elyria Board of Education, )  
)  
Appellees. )

APPEARANCES:

For the Appellant - Statman, Harris, Siegel & Eyrich, LLC  
Brian T. Giles  
Tracy L. Hawkins  
255 East Fifth Street  
29<sup>th</sup> Floor  
Cincinnati, Ohio 45202

For the County Appellees - Dennis P. Will  
Lorain County Prosecuting Attorney  
John G. Morrison  
Assistant Prosecuting Attorney  
226 Middle Avenue  
4<sup>th</sup> Floor  
Elyria, Ohio 44035

For the Appellee Board of Education - Armstrong, Mitchell, Damiani & Zaccagnini  
Timothy J. Armstrong  
1725 The Midland Building  
101 Prospect Avenue, West  
Cleveland, Ohio 44115

Entered March 11, 2005

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by Shewango Valley High, LLC (“appellant”). The appellant has appealed from a decision of the Lorain County Board of Revision (“BOR”) that determined the value of the subject real property for tax year 2002.

The property is located in the Elyria taxing district and is identified on the auditor's records as parcel 06-24-095-000-016.

The value determined by the Lorain County Auditor and the BOR is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 442,000	\$ 154,700
Building	\$3,731,000	\$1,305,850
Total	\$4,173,000	\$1,460,550

In the notice of appeal appellant has alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 169,600	\$ 59,360
Building	\$1,430,400	\$ 500,640
Total	\$1,600,000	\$ 560,000

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR, and the briefs filed by counsel for the appellant and counsel for the Elyria Board of Education ("BOE"). The parties waived an evidentiary hearing before this board.

The subject property is a 62.37-acre parcel in Elyria, Ohio. The site is improved with a 634,965 square foot industrial facility. The building is configured to allow for 227,720 square feet of manufacturing space, 344,695 square feet of warehouse space, and 62,550 square feet of office, research and development, and training space. The parking lot is paved and marked for a capacity of 776 cars. On tax lien date the property was vacant.

In early 2002, the then current owner, York International, entered into a “bargain-sale” agreement with the National Council for Community Development, Inc., a non-profit corporation. York agreed to sell the factory to National, taking the difference between the fair market value of the property and the sale price as a charitable deduction. As part of the agreement National would purchase the property at the time it received an offer to sell. National then listed the property for sale.

Appellant’s president testified that he heard about the availability of the property through a real estate agency. He also testified that he had been informed that four entities were interested in the property and presented offers of purchase. The appellant purchased the subject property in June 2002 for \$1,251,000. The purchase price was allocated as \$700,000 for the real estate and improvements and \$551,000 for contract and intangible rights. The conveyance statement indicated that the sale included non-realty items of \$6,012,000 for a total consideration of \$6,712,000. The conveyance fee statement also indicated that the grantor was York International Corporation and the grantee was the appellant, thus not informing the county of the interim transfer to the National Council for Community Development, Inc.

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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *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; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. However, the record indicates that the purchase price included non-realty items. The appellant made an allocation of the purchase price between realty and intangible items. In addition, the sale included an interim sale that allowed the vendor to take the difference between the fair market value of the property and the sale price as a charitable deduction. The board therefore finds that the allocated purchase price is not a reliable indicator of value. Accordingly, the board must look to the remainder of the record to determine value.

The Ohio Supreme Court has also held that where the only evidence is the record of the proceeding before the BOR, this board must examine the statutory transcript in order to perform our statutory duty of making a de novo finding of value. In this regard we acknowledge *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, wherein the court held:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court’s review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision’s determination \* \* \*.” *Id.* at 13-14.

The Supreme Court again addressed the review standard this board must follow in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, wherein the court stated:

“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

With the proper standard of review in mind we shall examine the evidence submitted to the BOR. The appellant submitted an appraisal report performed by John F. Sasso. Mr. Sasso derived a value of \$3,300,000 as of January 1, 2002 using the three commonly recognized approaches to value.<sup>1</sup> His land value analysis examined six industrial sales. After making adjustments for land mass, location, age and condition, and time, he derived a value range of \$143,326 to \$569,563. Allowing for the subject’s lack of direct highway access and its lack of an on site railroad spur, he used the lower end of the range, concluding that the land had a value of \$350,000.

His cost approach used the Marshall and Swift commercial replacements, which he adjusted for physical, functional, and external depreciation. He assumed a blended effective age of thirty years for the existing structures. He allowed for a configuration of 227,720 square feet of

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<sup>1</sup> Ohio Adm. Code 5703-25-07(D) provides that in the absence of a recent arm’s-length sale, “true value in money” may be arrived at by an appraisal which considers any or all of the following recognized valuation approaches: (1) the market approach, in which recent sales of comparable properties are analyzed; (2) the income approach, in which net income attributable to the property is capitalized; and (3) the cost approach, which adds the depreciated cost of the improvements to the land to the value of the land itself.

manufacturing, packing, and miscellaneous mechanical and support space. He estimated the value to be \$7,550,000 inclusive of the land valued at \$350,000.

The market approach examined six sales. After adjusting for location, the comparable sales indicated a value range between \$564,474 and \$3,885,675. Allowing for the subject's proximity to commercial and industrial centers, and also allowing for its size, which he opined narrowed its marketability, and taking into consideration the fact that the subject does not directly abut an interstate highway, he used the lower end of the range and derived a value of \$1,600,000 via the market approach.

The income approach analyzed six income comparables. After adjusting one comparable for location, the comparables provided a rental range of \$1.76 to \$3.00 per square foot. Given the age and condition of the subject, but allowing for its large structural size, he used the lower end of the range and thus allowed that the subject should lease for approximately \$1.75 per square foot.

He derived a capitalization rate using a mortgage equity analysis. He assumed a 75% to 25% loan-to-equity ratio, a 7.50% interest rate, an investor internal rate return of 18.25%, a lease period of four years, a 15% vacancy rate, a ten-year holding period, a fifteen-year financing term, an annual income stream of \$1,111,189 exclusive of operating expenses paid by the respective tenants, with a stabilized net income in year four of \$568,398, and a capitalization rate of 12.9%. This calculation produced a value of \$3,308,658, which he rounded to \$3,300,000.

He gave the most weight to the market approach, given the age and size of the subject's physical space. He concluded that the value was \$1,600,000 as of January 1, 2002.<sup>2</sup>

Mr. Sasso's opinion was corroborated by the testimony of Mr. Michael DiScala, the managing partner of Shewango Valley LLC. He opined that older, surplus corporate properties, such as the subject, are difficult to sell. It is a large complex, which limits the number of potential users. It would be costly to bring such an older building within code requirements, and it would be costly and time consuming to subdivide the space.

The board notes that the appellees did not submit an appraisal of their own. Although counsel for the appellees was present at the BOR hearing, counsel was unable to successfully refute the appraisal's analysis, nor did he submit evidence refuting Mr. Sasso's conclusion. Appellee's counsel has challenged the reliability of the comparable properties used in the market approach, noting that the properties used are dissimilar. However, Mr. Sasso noted the dissimilarities and made appropriate location adjustments. Appellee's counsel has also attacked the appraisal alleging that the appraisal is not as of the tax lien date. However, the appellee has misinterpreted the purpose of the report. Although the report states that its purpose is to estimate value for loan underwriting purposes as of February 19, 2003, the report actually determines

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<sup>2</sup> He noted that the property was essentially vacant at the time of his inspections. He estimated that should the stabilized occupancy rate of 85% be reached, the value would be \$3,300,000.

value as of January 1, 2002. In doing so it estimated value based upon market factors as they existed on the tax lien date.

In *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, the Supreme Court addressed the importance of valuing a property as of the tax lien date:

“R.C. 5715.19(D) requires that the determination of a complaint filed for a particular tax year ‘shall relate back to the date when the lien for taxes \* \* \* for the current year attached.’ R.C. 323.11 provides that the lien for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that ‘[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year \* \* \*.’ Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, \* \* \*.”<sup>3</sup>

Counsel for the BOE has alleged in its brief that the appellant’s appraisal was actually a mortgage financing report that was slightly recast for use in this appeal. Counsel further alleges that the original mortgage financing report did not determine value as of tax lien date. However, there is no factual support for these arguments in the record. The board therefore is unable to verify the accuracy of the arguments.

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<sup>3</sup> In *Olmsted Falls Village Assn.*, the court specifically stated: “We emphasize that the BTA ‘\*\*\* may consider pre-and post-tax lien date factors that affect the true value of the taxpayer’s property on the tax lien date.’ \*\*\* However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.” Id. at 555.

The board therefore finds and determines that the best evidence of value is the report submitted to the BOR by Mr. Sasso. Accordingly, the value of the property as of January 1, 2002 is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 350,000	\$ 122,500
Building	\$1,250,000	\$ 437,500
Total	\$1,600,000	\$ 560,000

The Auditor of Lorain County is ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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