

OHIO BOARD OF TAX APPEALS

Wilmington Center Ltd.,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Montgomery County Board of Revision,)
 the Montgomery County Auditor and the)
 Board of Education of the Kettering City)
 School District,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Todd W. Sleggs & Associates
Todd W. Sleggs
820 W. Superior Avenue, Suite 410
Cleveland, Ohio 44113

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Douglas Trout
Assistant Prosecuting Attorney
301 West Third Street, Fifth Floor
Dayton, Ohio 45422

For Bd. of Edn.- Rich, Crites & Dittmer, LLC
Mark Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered April 15, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on December 16, 2004, from a

decision, dated December 5, 2004, of the Montgomery County Board of Revision ("BOR"), appellee herein.

The subject property is located in the city of Kettering taxing district of Montgomery County, Ohio, and further identified as parcel no. N64-34-6-8.

The Montgomery County Auditor found the true and taxable values of the subject property for tax year 2002 to be as follows:

Parcel No. N64-34-6-8	True Value	Taxable Value
Land	\$ 1,255,360	\$ 439,380
Building	\$ 2,264,180	\$ 792,460
Total	\$ 3,519,540	\$ 1,231,840

Both the property owner, Wilmington Center Ltd. ("Wilmington"), and the Board of Education of the Kettering City School District ("BOE") filed complaints challenging the auditor's value with the BOR. Upon consideration of those complaints, the BOR determined the true and taxable values to be as follows:

Parcel No. N64-34-6-8	True Value	Taxable Value
Land	\$ 1,255,360	\$ 439,380
Building	\$ 1,901,910	\$ 665,670
Total	\$ 3,157,270	\$ 1,105,050

Through its notice of appeal, Wilmington challenges the values assigned to the subject property by the BOR. The property owner asserts the correct values for tax year 2002 are as follows:

Parcel No. N64-34-6-8

	True Value	Taxable Value
Land	\$ 1,255,370	\$ 439,380
Building	\$ 1,574,630	\$ 551,120
Total	\$ 2,830,000	\$ 990,500

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Montgomery County Auditor as the secretary for the BOR, the testimony adduced at the hearing before this board, and the legal argument provided by counsel for the property owner and counsel for the school board.

The property under consideration is a strip shopping center containing approximately 11.280 acres. The center contains approximately 120,446 square feet of leasable area, divided among four buildings: a retail building located near the back of the property containing 97,221 square feet and configured for large users; a smaller retail building perpendicular to the back building containing 17,900 square feet and configured for smaller users; and two freestanding restaurants located at the front of the property, containing 2,626 square feet and 2,700 square feet. The largest building was constructed in the late 1960s. The other improvements were constructed during the 1980s.¹ The buildings were, as of tax lien date, aging retail structures attracting local (as opposed to national) users of retail space. The two restaurants attracted regionally based users, White Castle and Skyline Chili.

¹ It was revealed at hearing that the property owner built a new building for one of the restaurants in 2004. However, as of tax lien date, the construction on the property was of 1980s vintage.

As to the specific evidentiary burdens placed upon the parties to a real property valuation appeal, a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value 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. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once competent and probative evidence of true value has been presented by an appellant, other parties asserting a different value then have a corresponding burden to provide sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Before the BOR, Wilmington presented the testimony of Mr. Fred Scalese, the Director of Operations for Carnegie Companies, Wilmington's managing agent. The principals of both Carnegie Companies and Wilmington are the same. Mr. Scalese has oversight of all operations, management, maintenance and leasing of this property as well as others within the Carnegie Companies' control.

It was Mr. Scalese's testimony before the BOR that when Wilmington purchased the subject property, tenants included at least three national retailers: CVS,

a national pharmacy, Heilig Meyers, a national furniture retailer, and Brownberry, a national retailer of breads. The presence of the national retailers did not remain long after purchase. Almost immediately after Wilmington completed its purchase, Heilig Meyers declared bankruptcy and closed its locations. Even before the transfer, CVS had moved from the subject but continued to be responsible for lease payments until 2002. As of 2002, Brownberry was no longer a tenant. Mr. Scalese explained that the property owner was unable to attract other tenants of the same caliber. New tenants interested in the property were local businesses with weaker credit (and, therefore, more likely to default on rent payments), destination businesses, such as a mortgage company, which created no complementary traffic for other retailers, or church-based organizations, such as a thrift store and a youth ministry. Mr. Scalese also described some physical difficulties the property was suffering from, such as a leaky roof for which a warranty to the previous owners did not transfer at the time of purchase.

The BOR considered the testimony and the other evidence presented and reduced value. Wilmington seeks a further reduction before this board. To support its claim that the property was entitled to a greater reduction than found by the BOR, Wilmington presented the testimony of Mr. Robin Lorms, a principal with Integra Realty Resources. Mr. Lorms is both an MAI and a CRE. It was Mr. Lorms' opinion that the property's fair market value as of tax lien date was \$2,850,000.

Wilmington's appraiser first provided the board with an overview of retail opportunities in the Kettering/southeast Dayton area, identifying 21 retail

centers available in the market. The appraiser did not limit his review to only those he believed competitive with the subject, but provided all available retail centers within the market. The appraiser then provided an opinion of value considering all three generally accepted methods of determining value, but concluded to value under just two, the sales comparison method and the income capitalization method. The appraiser concluded that opining value under the cost approach would not provide any assistance in valuing a property of the age and character of the subject. The board agrees.

The sales comparison method of valuing the subject was, according to the appraiser, performed much more as a check on the value derived under the income capitalization method, as properties such as the subject are bought and sold based upon their ability to generate income. When valuing the subject under the income capitalization approach, the appraiser divided the property according to user to estimate rent income. The appraiser first estimated rents for the largest building in the back of the property, which is divided into four large spaces of more than 20,000 square feet each. The appraiser used three recent leases entered into with tenants of the property itself as indicators of market rents. The first least considered by the appraiser was a lease recently negotiated with a former sublessee. As stated earlier, CVS had left the subject property prior to the purchase by the present owner. However, CVS remained responsible for lease payments until October 2002. During the time period after it vacated, CVS sublet its space to a thrift shop. When CVS'

lease expired, Wilmington negotiated directly with the thrift shop to continue its presence in the center. The new lease was made on terms similar to CVS' sublease. The new rental rate was significantly less than the rental rate CVS was formerly obligated to pay, but similar to the amount for which CVS had sublet the property.

The two other leases within the subject property referred to by the appraiser were two leases made for a single location. A lease was entered into in April 2001 for 20,225 square feet at a base rent of \$2.37 per square foot. The tenant was responsible for a proportionate share of real estate taxes, insurance and common area maintenance. The tenant was evicted for non-payment of rent, and the same space was re-leased as of September 2002 under the same terms to a youth ministry. In further support of his opinion that the newest leases were market driven, the appraiser provided information regarding a recent lease of anchor-type space in a comparable location and a current (2003) rental listing in a competitive property. While the recent lease and the rental listing were for slightly higher rental rates, we agree with the appraiser that a fair estimate of market rents for the 20,000+ units was \$2.50 per square foot as of tax lien date.

The appraiser performed a similar exercise for the smaller rental spaces, providing information concerning three locations within the subject and a location in a neighboring center. While the rental rates garnered by three leases within the subject ranged from \$7.00 to \$8.50 per square foot, the rental rate garnered by the comparable

in the neighboring center was \$10.00 per square foot, the amount the appraiser ultimately found to be market rents for the smaller spaces.

Finally, the appraiser concluded to a rental rate for the two fast food restaurants. As many fast food restaurants constructed on outparcels of shopping centers enter into a land lease with the owner of the property, the appraiser reviewed the market and obtained recent sales of former fast food restaurants. He then concluded that the smaller restaurants comparable to those constructed on the subject property sold for a value of \$160 to \$180 per square foot. It was the appraiser's opinion that such a value range, capitalized at 10 per cent, would support a rental for the fast food restaurants of approximately \$18.00 per square foot. Utilizing the rental rates derived from the market, the appraiser opined that the potential gross rent for the subject was \$517,903.

The appraiser then reconstructed market expenses in order to derive net operating income. The appraiser concluded that a reasonable market vacancy/collection loss for the property was 15 percent. The appraiser also concluded to reimbursable expenses of real estate taxes, insurance and common area maintenance, and non-reimbursable expenses such as administrative expenses, management fees, and a reserve for replacement. Using both the historical expenses as well as expenses reported by a comparable property, and market expenses as reported in an industry publication, the appraiser concluded to a total figure of both reimbursable and non-reimbursable expenses of \$215,559, or \$1.79 per square foot.

Subtracting income from expenses, the appraiser concluded to net operating income of \$357,916. The appraiser derived a capitalization rate, after reviewing market sales, industry surveys and the band of investment method, of 11 per cent. Capitalizing his net operating income of \$357,916, the appraiser concluded to a stabilized value indication for the subject as of tax lien date of \$3,253,786.

The appraiser did not opine value until he made further adjustments to his value indication. The appraiser testified that based upon certain information obtained from the property owner, he concluded that deductions of \$300,000 for roof replacement and \$100,000 for HVAC replacement were required prior to opining market value. After these deductions, the appraiser concluded to a value of \$2,850,000.

The adjustments for roof repairs and HVAC replacement were also utilized when concluding to value under the sales comparison method. The appraiser reviewed the market and found three recent sales of shopping centers he believed comparable to the subject. The appraiser also found two current listings he believed to be comparable. Adjusting for condition of the property at the time of sale, location, occupancy, tenant mix and configuration of the improvements on the parcel, the appraiser concluded to a value range, after adjustments, of \$20.38 per square foot to \$31.82 per square foot. Based upon his expertise, the appraiser placed the subject property at approximately the mean of his values, or \$27.00 per square foot, which, multiplied by the 120,446 square feet contained by the subject, calculated to a value

of \$3,252,042. The appraiser then made the same adjustments previously made to the value derived under the income capitalization method and concluded to an indicated value under the sales comparison approach of \$2,850,000, rounded.

The BTA is vested with wide discretion in determining the weight to be given evidence and credibility of witnesses. *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, (1975), 44 Ohio St.2d 13. See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. In the present matter, we find the property owner has provided competent and probative evidence of value through its appraiser's testimony. We do not, however, find that the appraiser's opinion of value is entitled to significant weight in determining the value of the subject property.

We agree with Wilmington's appraiser that the property under consideration is an aging property no longer able to attract a national clientele. Nevertheless, we do not conclude that the property, as of tax lien date 2002, was overvalued by the BOR. The property generated significant income for the two years for which historic income statements were provided. New leases made at or near the tax lien date generally matched the income earned from previous leases and rental increases during the lease terms were a part of most of the newly negotiated leases. The exception to the property's ability to garner the same or higher rental rates was the lease of the former CVS space. However, CVS remained obligated to pay the

higher lease rate until nearly the end of 2002, and, at the time it purchased the property, the landlord was well aware of the termination date of the lease and the potential difficulty of re-leasing that space at the same rate.

Wilmington's appraiser's opinion of value, prior to any deduction for roof and HVAC repair, recognizes that the property generates significant income, despite the fact that the actual vacancy and credit loss is high. In fact, the appraiser's opinion of value is very close to the BOR's valuation finding. As to the deduction for repairs, Wilmington has not directed this board to a single case where deductions similar to those taken in valuing the subject property have been approved by this board or by any appellate body. In fact, such dollar-for-dollar deductions for repairs have consistently been rejected by this board, following the Ohio Supreme Court's holding in *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227 and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299. See *Union Central Life Insurance Co. v. Franklin Cty. Bd. of Revision*, (Mar. 12, 2004) BTA No. 2002-V-1689, unreported; *Heights Medical Building LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 2004), BTA No. 2002-T-1260, unreported; *Cleveland Municipal School District Bd. of Edn., v. Cuyahoga Cty. Bd. of Revision* (Nov. 21, 2003), BTA No. 2002-K-1378, unreported; *Hunterwood Park, Ltd., Appellant, v. Fairfield Cty. Bd. of Revision* (June 30, 2003), BTA No. 2002-J-2455, unreported.

This board has, in the past, accepted an appraiser's testimony and opinion of value prior to the deductions similar to the ones made in the present matter. *Union Central Life Insurance Co.*, supra. We do the same in this appeal.

Given the foregoing, and considering the full record before us, this board finds based on the preponderance of competent and probative evidence that the value of the subject property as of tax lien date 2002 was as follows:

Parcel No. N64-34-6-8	True Value	Taxable Value
Land	\$ 1,255,360	\$ 439,380
Building	\$ 1,994,640	\$ 698,120
Total	\$ 3,250,000	\$ 1,137,500

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