

OHIO BOARD OF TAX APPEALS

Parmalat Bakery Group aka)
Archway Cookies, Inc.,)
)
Appellant,)
)
vs.)
)
Ashland County Board of Revision,)
the Ashland County Auditor and)
the Ashland City School District)
Board of Education,)
)
Appellees.)

CASE NO. 2004-M-792

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant -	Todd W. Sleggs & Associates Todd W. Sleggs 820 W. Superior Avenue, Suite 410 Cleveland, Ohio 44113
For the County - Appellees	Ramona J. Rogers Ashland County Prosecuting Attorney James Gorry Special Prosecuting Attorney Rich, Crites & Dittmer LLC 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the Appellee - Bd. of Edn.	Pepple & Waggoner, Ltd. Christian M. Williams Crown Center Building 5005 Rockside Road, Suite 260 Cleveland, Ohio 44131

Entered August 12, 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, Parmalat Bakery Group aka

Archway Cookies, Inc. ("Parmalat"), on August 26, 2004, from a decision, dated July 30, 2004, of the Ashland County Board of Revision ("BOR"), appellee herein.

The subject property is located in the Ashland City School taxing district of Ashland County, Ohio, and further identified as parcel nos. P44-083-0-0010-00, P44-083-0-0007-00, P44-083-0-011-00, P44-083-0-012-00, and P44-083-0-0017-00.

The Ashland County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. P44-083-0-0010-00

	True Value	Taxable Value
Land	\$ 46,600	\$ 16,310
Building	\$ 3,298,200	\$ 1,154,370
Total	\$ 3,344,800	\$ 1,170,680

Parcel No. P44-083-0-0007-00

	True Value	Taxable Value
Land	\$ 316,000	\$ 110,600
Building	\$ -0-	\$ -0-
Total	\$ 316,000	\$ 110,600

Parcel No. P44-083-0-0011-00

	True Value	Taxable Value
Land	\$ 25,400	\$ 8,890
Building	\$ -0-	\$ -0-
Total	\$ 25,400	\$ 8,890

Parcel No. P44-083-0-0012-00

	True Value	Taxable Value
Land	\$ 35,800	\$ 12,530
Building	\$ -0-	\$ -0-
Total	\$ 35,800	\$ 12,530

Parcel No. P44-083-0-0017-00

	True Value	Taxable Value
Land	\$ 55,200,	\$ 19,320
Building	\$ -0-	\$ 0-
Total	\$ 55,200	\$ 19,320

Upon consideration of the complaint filed by Parmalat and countercomplaint filed by the Ashland City School District Board of Education ("BOE"), the BOR determined that the auditor's values were correct and informed the parties that no change to the assessed values would be made.

Through its notice of appeal, Parmalat has alleged that the correct value for the parcel for tax year 2003 is as follows:¹

Parcel No. P44-083-0-0010-00

	True Value	Taxable Value
Land	\$ 46,600	\$ 16,310
Building	\$ 1,871,000	\$ 654,850
Total	\$ 1,917,600	\$ 617,160

Parcel No. P44-083-0-0007-00

	True Value	Taxable Value
Land	\$ 316,000	\$ 110,600
Building	\$ -0-	\$ -0-
Total	\$ 316,000	\$ 110,600

Parcel No. P44-083-0-0011-00

	True Value	Taxable Value
Land	\$ 25,400	\$ 8,890
Building	\$ -0-	\$ -0-
Total	\$ 25,400	\$ 8,890

¹ Parmalat does not provide a breakdown of land value for parcel No. P44-083-0-0010-00. As it does not challenge land values for the additional parcels, we will assume that it alleges no change in the land valuation for the main parcel.

Parcel No. P44-083-0-0012-00

	True Value	Taxable Value
Land	\$ 35,800	\$ 12,530
Building	\$ -0-	\$ -0-
Total	\$ 35,800	\$ 12,530

Parcel No. P44-083-0-0017-00

	True Value	Taxable Value
Land	\$ 55,200,	\$ 19,320
Building	\$ -0-	\$ -0-
Total	\$ 55,200	\$ 19,320

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript² certified by the Ashland County Auditor as secretary of the BOR. The parties waived hearing before this board. We have received legal argument from representatives of both the property owner and the BOR.

The subject property is a 23-plus acre plat of land improved with a food processing and distribution plant used to bake and distribute Archway cookies. The plant was constructed over the period of 1945 through 1990 with the major portion of the plant, some 115,000 square feet out of the 166,435 square feet, constructed in 1978

² Pursuant to R.C. 5717.01, county boards of revision are required to "certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith." To assist county boards of revision with this obligation, the Tax Commissioner has prescribed Department of Tax Equalization ("DTE") Form 3, entitled "Transcript on Appeal from County Board of Revision." DTE Form 3 asks certain questions and directs county auditors to attached certain documentation which aid this board in assuring our jurisdiction and ultimately concluding to value. In the present appeal, the county auditor did not submit a DTE Form 3, nor did the auditor provide all the information generally accompanying a statutory transcript. For example, the board did not receive a copy of the appellant's original complaint, nor do we know the date on which the BOR received the notice of appeal. We suggest that in the future, the better practice is to include a DTE Form 3 with the statutory transcript.

and 1990. The property also includes site improvements such as adequate parking and landscaping.

We begin our review of this matter by acknowledging the duties of the parties to an ad valorem tax challenge as well as the obligations of this board in considering a valuation change. 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 of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

According to R.C. 5715.10, "[t]he county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws." Therefore, boards of revision are required to consider "facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its

obsolete character, if any, the income capacity of the property, if any and any other factor that tends to prove its true value ***." R.C. 5715.01. When a challenge is made to a finding of a board of revision, this board must review the evidence presented to the BOR to determine whether the BOR acted properly in amending the value of the subject property. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, where the court held, "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."

The record contains an appraisal report prepared by Mr. Robin Lorms, MAI, a certified general real estate appraiser with Integra Realty Resources. Mr. Lorms also testified at the hearing before the BOR. Mr. Lorms prepared an appraisal of that part of the subject property located on Claremont Avenue. The value of 3.44 acres of vacant land located on Seddon Court was not included in the appraisal.

Mr. Lorms prepared an opinion of value based upon the market sales approach to valuing property. The appraisal suggests that he considered both the cost approach and the income capitalization approach, but based upon the relative age and owner-occupied characteristics of the subject, he relied only upon the sales comparison approach. The appraisal contains no evidence regarding costs or comparable rental rates.

The appraisal does contain evidence of five sales taking place in Ashland County, Wayne County and Stark County during the period May 2002 through June 2003. All five sales were of owner-occupied manufacturing buildings. The properties ranged in size from 49,090 square feet of gross building area to 226,140 square feet of gross building area and sales prices from \$12.78 per square foot to \$20.37 per square foot. The ages of the properties ranged from 26 years old as of sale date to 49 years old as of sale date. The appraiser made certain adjustments for time of sale, location and physical characteristics and reduced the sales prices to a range of \$10.86 per square foot to \$17.40 per square foot. Concluding to a number very close to the middle of his range, the appraiser concluded to a value for the subject property of \$14.00 per square foot, gross building area, multiplied by the 166,435 square feet contained in the subject, or a value of \$2,350,000 rounded.

At the BOR, the appraiser was subjected to questions by members of the BOR as well as by counsel for the BOE. Certain members of the BOR questioned the appraiser on his consideration of sale number 1. There was a suggestion that the sale was between the Timken Corporation and Timken employees. The BOR ultimately denied any reduction in value.

Before this board, Parmalat has argued that the report and testimony of its appraiser submitted before the BOR constitute reliable, credible, competent and probative evidence on the issue of the true value in money or fair market value of the subject real property. Parmalat argues that this board is required to make an

independent judgment as to value based upon our weighing of the evidence contained in the transcript and that independent review will result in a decrease in valuation.

The representative for the county appellees argues, however, that the BOR essentially disagreed with four aspects of the appraisal presented by Parmalat:

"First, it disagreed with Lorms (sic) characterization of the Archway plant as having an average age of 25 years and that the 'age of improvements' was '30+ years' and that the 'estimated effective age' of the plant was '25 years" (Lorms' report, p. 1;15, and 24). Second, as one of his five comparable sales, Lorms used the transfer of the Timken machinery shop in Ashland to Ashland Precision Properties (Comp No. 1, report, p. 34 and data sheet following the map on page 35 of report). Since this plant was located in Ashland, at least two of the BOR members were much more familiar with this sale than was Lorms. Both members noted at the BOR hearing that Timken sold the property to its employees (who then made up the name Ashland Precision Properties) and the sale involved, and was based on, much more than just the mere transfer of the real estate, and the price paid by the employees did not reflect the value of the plant itself. Third, the BOR also rejected Lorms' Comp No. 4 (report, p. 34), which was the sale of a property in Canton, because the BOR was aware that the vacancy rates for industrial facilities in Stark County was much greater than that in Ashland County. Fourth, the BOR also noted that Lorms' Comp No. 5, the property bought by the Wooster Brush plant in Wooster, Ohio, was much older than the Archway property and was not truly comparable to the Archway plant ***." Appellee's brief at 2-3.

Despite the characterization of the BOR's decision made by counsel, the actual BOR decision does nothing more than find no change in the value of the subject property. While certain members of the BOR did question the Timken sale and noted the location of comparable sale no. 4, as mentioned above, the hearing tape evidences

no discussion of the effective age of the property, nor did the BOR discuss the age of the Wooster Brush plant. The record before this board contains no more information about the comparables questioned than did the record before the BOR. Thus, this board has no independent means of corroborating the criticisms made by the county appellees.

Even if we accept the county appellees' critique as true, as Parmalat's appraiser did not opine to a value under the cost approach, we find the county appellees' criticism regarding Mr. Lorms' age consideration to bear little weight upon his ultimate conclusion of value. Additionally, it is common practice for an appraiser who is struggling to find comparable sales to widen his search to adjoining neighborhoods, cities, counties, and at times, states, to assist in arriving at an opinion of value. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 17, 1994), BTA No. 1992-K-463 (appraiser compared 1,000,000 square foot former manufacturing facility currently used as a distribution center to other sales of similarly sized facilities throughout the midwestern United States). This board would need more than a member of the BOR's comment regarding higher vacancies in an adjoining county for us to reject a market sale as a basis of comparison.

Despite the county appellees' protests to the contrary, we find in this matter that an appraisal prepared by a certified appraiser which supports the opinion with market evidence is some evidence demonstrating value. Therefore, it is incumbent upon the county appellees and/or the BOE to come forward with some evidence to rebut the appellant's evidence.

The county appellees attempt to rebut Parmalat's evidence by criticizing the work of its appraiser. However, we do not find the critiques to be sufficient to wholly reject Parmalat's evidence. We consider the auditor's property record card to be evidence of value contained in the statutory transcript. The property record card indicates that the auditor's assessment relied upon the cost approach to valuing real property. The county appellees point out that Parmalat's claimed value for the entire plant is less than the auditor's assessments related to the two newest additions to the plant, built in 1978 and 1990.

To sustain the county appellees' objections, this board would have to agree that the cost method of valuing the subject property is the best method of deriving value in this instance. We do not. Even the newest portion of the plant, the 57,168 square feet of warehouse and distribution space added in 1990, was 13 years old as of tax lien date. In *Weiss v. Lake Cty. Bd. of Revision* (Feb. 12, 1999), BTA No. 1997-T-699, unreported, we held:

"In addition, the cost approach is appropriate for consideration in situations where the structure is of recent construction. As a building ages, the utility of the cost approach degrades due to the difficulty in accurately calculating the impact of depreciative and obsolescence factors. In short, the cost approach becomes highly subjective in nature. *Minerva Convalescent Center, Inc. v. Stark Cty. Bd. of Revision* (Apr. 15, 1994), BTA No. 92-A-39, unreported (cost approach is more reliable when utilized with a newer property)." at 13.

Therefore, we place little reliance for the value of the subject upon the auditor's cost calculations.

While the county appellees claim that Parmalat's appraiser presented only unsupported opinions and not "facts and figures," we must disagree. The appraiser disclosed actual sales of manufacturing properties taking place within the marketplace within a reasonable time both before and after tax lien date. That the county appellees do not consider the sales to be comparable to the subject does not belie the fact that the sales themselves are facts which this board must review.

While the county appellees cite *The Rollman & Sons Co. v. Board of Revision of Hamilton Cty.* (1955), 163 Ohio St.3d 355, for the proposition that a witness must substantiate his opinion with facts and figures, the Ohio Supreme Court in *Westhaven, Inc. v. Wood County Bd. of Revision* (1998), 81 Ohio St. 3d 67, rejected the same argument. In *Rollman*, this board rejected an appraiser's functional obsolescence deduction, finding that the deduction was not supported by an independent factual basis. The court affirmed that finding. However, in *Westhaven*, the court was asked to reject an appraiser's opinion of value because of a claimed inadequate highest and best use analysis, inappropriate selection of comparable sales, and inaccurate adjustments to comparables. Therein the court held:

"This case does not present a situation similar to *Rollman*. Here [the appraiser] did present data in support of his opinion of value. Appellants may not like the data used by [the appraiser] to arrive at his opinion of value, however, the BTA reviewed [the appraiser]'s appraisal in light of the deficiencies claimed by appellants and stated, 'The comparability of properties or the appropriateness of expense items are matters we must carefully weigh when we consider the record as a whole.' Having weighed the evidence, the BTA did not find 'any infirmity so serious that it would cause us to reject Westhaven's evidence in its

entirety and exclude it from consideration.' The BTA found that Westhaven had 'met its duty to submit competent and probative evidence of value.'" Id. at 69.

We make the same finding herein. While the sales found within the marketplace are not model comparables, we must assume, given the fact that no other sales were brought forth, that these sales are the best comparables available to the appraiser.

We now must consider the adjustments to the comparable sales. It is at this point that the county appellees' representative argues that there is no market evidence supporting the adjustments made. The representative argues there is not enough explanation of the adjustments made because Parmalat's appraiser combined the upward and downward adjustments and concluded to net adjustments that are not supportable by the appraisal submitted.

We find some merit in this criticism. There is no explanation as to why four properties are deemed to be in inferior locations but have superior physical characteristics, and yet two receive a net adjustment to purchase price of 15 per cent, one receives a net adjustment of 10 per cent, and a third receives no adjustment at all.

Instead, the Board of Tax Appeals finds that the best evidence of value is comparable sale no. 4, the sale located at 2655 Harrison Avenue, in Stark County. This sale included smaller land acreage but an 85,730 square foot building, the closest in size to the subject. We reject all adjustments made by the appraiser, including the adjustment for time, finding that a sale of a manufacturing facility six months after tax lien date is sufficiently timely without adjustment. Multiplying \$14.58 times the square footage found in the subject, a value of \$2,430,000 (rounded) is derived. We

conclude that this value for the parcels located on Claremont is supported by the evidence contained in this record.

Therefore, and upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 2003 was:

Parcel No. P44-083-0-0010-00

	True Value	Taxable Value
Land	\$ 46,600	\$ 16,310
Building	\$ 2,006,200	\$ 702,170
Total	\$ 2,052,800	\$ 718,480

Parcel No. P44-083-0-0007-00

	True Value	Taxable Value
Land	\$ 316,000	\$ 110,600
Building	\$ -0-	\$ -0-
Total	\$ 316,000	\$ 110,600

Parcel No. P44-083-0-0011-00

	True Value	Taxable Value
Land	\$ 25,400	\$ 8,890
Building	\$ -0-	\$ -0-
Total	\$ 25,400	\$ 8,890

Parcel No. P44-083-0-0012-00

	True Value	Taxable Value
Land	\$ 35,800	\$ 12,530
Building	\$ -0-	\$ -0-
Total	\$ 35,800	\$ 12,530

Parcel No. P44-083-0-0017-00

	True Value	Taxable Value
Land	\$ 55,200	\$ 19,320

Building	\$	-0-	\$	-0-
Total	\$	55,200	\$	19,320

It is the order of the Board of Tax Appeals that the Auditor of Ashland 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.

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