

OHIO BOARD OF TAX APPEALS

Liberty Commons Limited,)
)
Appellant,) CASE NO. 2004-P-18
)
vs.) (REAL PROPERTY TAX)
)
Summit County Board of Revision,) DECISION AND ORDER
Summit County Auditor and the)
Akron City School District Board)
of Education,)
)
Appellees.)

APPEARANCES:

For the Appellant Property Owner - Karen H. Bauernschmidt, Co. L.P.A.
Karen H. Bauernschmidt
Charles J. Bauernschmidt
The Hoyt Block
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Cleveland, Ohio 44113

For the County Appellees - Sherri Bevan Walsh
Summit County Prosecuting Attorney
Marvin D. Evans
Assistant Prosecuting Attorney
220 South Balch Street
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For the Appellee Board Education - Britton, Smith, Peters and Kalail Co., L.P.A.
Karrie M. Kalail
David H. Seed
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Entered April 1, 2005

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

In this appeal Liberty Commons Limited seeks review of the valuation placed upon a 5.89± acre parcel of vacant land situated on Romig Road near the

Rolling Acres Mall in Akron, Ohio. The auditor placed a true value of \$191,750¹ upon the subject property for tax year 2002. Disagreeing with the auditor's valuation, Liberty Commons Limited filed an original complaint asserting the true value of the subject property was \$85,000.² The Akron City School District Board of Education responded with a counter-complaint seeking a true value of \$192,740.³ After conducting a hearing upon the matter, the Cuyahoga County Board of Revision determined the true value of the subject property to be \$191,750.⁴ Liberty Commons Limited now seeks review of that final determination. The record before us consists of the notice of appeal, the statutory transcript filed by the Summit County Auditor in accordance with the provisions of R.C. 5717.01, and the record from the merit hearing we conducted upon the matter. Upon careful review of that record, we find that Liberty Commons Limited has established its right to a reduction.

We begin by observing that a party that asserts a right to an increase or a decrease in the value of real property has the burden of proving its right to the value it asserts. *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* (1998), 37 Ohio St.3d 318. It is incumbent upon a party challenging a decision of the board of revision to come forward and offer evidence that demonstrates a right to the value it seeks.

¹ Taxable value = \$67,110.

² Taxable value = \$29,750.

³ Taxable value = \$67,460.

⁴ Taxable value = \$67,110.

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 value is presented by an appellant, other parties asserting a different value then have a corresponding burden to provide evidence to rebut the appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra, *Mentor Exempted Village Bd. of Edn.*, supra.

Section 2, Article XII, of the Ohio Constitution provides: "Land and improvements thereon shall be taxed by uniform rule *according to value* ***." (Emphasis added.) And R.C. 5713.03 provides:

"The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the *true value* of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***." (Emphasis added.)

The Supreme Court has held that the best evidence of true value is an actual, recent sale of the subject property in an arm's-length transaction negotiated in the open market between a willing seller and a willing buyer.⁵ But here there is no evidence of such a sale. In these circumstances, the Supreme Court has indicated that we may consider appraisal evidence to assist us in determining true value.⁶

Liberty Commons Limited offers a complete real estate appraisal report presented in summary form, together with the sworn testimony of John W. Emig.

⁵ See *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604, *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, *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, *Bd. of Edn. of the Princeton City School District v. Butler Cty. Bd. of Revision* (Dec. 20, 1991), BTA No. 1990-J-829, unreported, *Bd. of Edn. of the Princeton School District v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported.

⁶ *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59.

Mr. Emig is a “Member of the Appraisal Institute” (“MAI”), served as president of the Akron/Canton Society of Real Estate Appraisers, and is duly certified as a “General Appraiser” by the state of Ohio. He has been engaged in the appraisal field for twenty-nine years and has valued many parcels of real property within the subject market area.

Mr. Emig explained that the subject property is a residual parcel that was left over after development of the Romig Road corridor. It suffers from numerous deficiencies, not the least of which is that it is located behind two other commercial tracts of land that have already been developed with a Payless shoe store and a Sherwin Williams paint store. Although the subject property comprises almost six acres, it has only 50± feet of frontage along Romig Road. Moreover, the site contains a near one hundred-foot slope from front to rear. Mr. Emig testified that substantial costs would be incurred to prepare the subject property for development. The subject property sits in close proximity to the Rolling Acres Mall. This is one of four shopping malls in the Akron/Canton marketplace. But, Mr. Emig indicates that the Rolling Acres Mall has suffered tremendously from competition from the other three shopping malls, to the extent that it was recently taken back by its lender and re-sold to a “workout expert.” The property immediately to the north of the subject property originally served as a discount store, was later converted to a flea market, but now sits vacant. Liberty Commons Limited placed a “for sale” sign on the property and has actively attempted to sell the property since 1995 for a purchase price of \$80,000, but no buyers have been found.

Mr. Emig testified that the sales comparison approach is the best method to utilize to determine the true value of the subject property. The cost approach is not appropriate because there are no improvements upon the property, and there is no income that could be used to apply the income approach to valuation. The key, Mr. Emig testified, was to find sales transactions that involved properties with similar attributes or physical characteristics to those of the subject property. Upon surveying the marketplace, he selected three transactions for comparison. Comparable Sale Number 1 is a 1.8137-acre vacant parcel of land with modestly sloping topography and one hundred feet of road frontage. It sold in May of 2003 for \$27,900, or \$15,383 per acre. Comparable Sale Number 2 is a 2.44-acre site located on the opposite side of the same street as the subject property. It is only one-half mile from the subject property. It had 180 feet of road frontage and substantially superior physical characteristics. Comparable Sale Number 2 sold in March of 2004 for \$46,000, or \$18,852 per acre. Comparable Sale Number 3 is a 5.34-acre site that sold in October of 2002 for \$100,000, or \$18,727 per acre.

Mr. Emig next performed a series of adjustments to “elements of comparison.” The Appraisal of Real Estate (12th Ed. 2001) 426, the authoritative publication of the Appraisal Institute, provides: “Elements of comparison are the characteristics of properties and transactions that help explain the variance of prices paid for real estate.” The Appraisal of Real Estate further states at page 430:

“Elements of Comparison:

“The first step in any comparative analysis is to identify which elements of comparison affect property values in the subject market. Each of the basic elements of comparison must be analyzed to determine whether an adjustment is required. ***

“Adjustments for differences are made to the price of each comparable property to make that property equivalent to the subject in market appeal on the effective date of the opinion of value. Adjustments for differences in elements of comparison may be made to the total property price, to a common unit price, or to a mix of both, but the unit prices used must be applied consistently to the comparable properties. The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property. Appraisers should consider all appropriate elements of comparison and avoid adjusting for the same difference more than once.”

Mr. Emig considered such factors as sales dates in relation to market conditions, location, parcel size, zoning, and utilities, as well as physical attributes such as road frontage, topography, and parcel shape.⁷ Placing greatest emphasis on Comparable Sale Number 2 because it offered similar locational attributes and Comparable Sale Number 3 because it was most similar to the subject property in size and physical characteristics, Mr. Emig determined the adjusted price per acre range to be \$9,400 to \$15,000. He averaged these two figures to arrive at an adjusted price per acre of \$12,200,⁸ and rounded this figure to obtain an adjusted price per acre of \$12,500. Mr. Emig then multiplied the adjusted price per acre of \$12,500 by the subject property’s 5.89 acres to arrive at his opinion of value for the subject property

⁷ See Appellant’s Exhibit 1, Appraisal Report, page 6.

⁸ $\$9,400 + \$15,000 = \$24,400$;

as of the January 1, 2002 tax lien date of \$73,500. We find that the appraisal evidence offered by Liberty Commons Limited constitutes competent, credible, and probative evidence of the true value of the subject property.

We turn now to the appellees' case. Both the board of education and the county appellees have elected not to present any evidence of value. The Supreme Court stated in *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67:

“Where the county auditor and the board of revision are appellees before the BTA, they are not required to present any evidence. ***

“At the conclusion of Westhaven's case before the BTA, the auditor and the BOR *** had two choices: (1) they could have presented evidence to rebut that presented by Westhaven, or (2) they could have presented no evidence and relied on their cross-examination of Westhaven's appraiser to have discredited him or his appraisal.

“***

“If the appellee before the BTA in a valuation case does not present any evidence to rebut appellant's evidence, the appellee takes the chance that the BTA may, as in this case, find the valuation evidence presented by the appellant to be competent and probative, and adopt it as the true value.” (Emphasis added.)

Liberty Commons Limited offers us evidence of value that we find competent, credible and probative. On the other hand, the board of education and county appellees have elected not to present any evidence of value whatsoever.

Footnote contd.

$\$24,400 \div 2 = \$12,200.$

Accordingly, we find the evidence presented by Liberty Commons Limited persuasive and determine the taxable value of the subject property to be as follows as of the applicable tax lien date of January 1, 2002:

TAXABLE VALUE

<u>PERMANENT PARCEL NUMBER</u>	<u>LAND</u>	<u>BUILDING</u>	<u>TOTAL</u>
67-12657	\$25,730	\$ -0-	\$25,730

The Summit County Auditor is directed to correct his records to reflect these values and to cause the same to be carried forward in accordance with applicable law.

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