

Todd's Enterprises,)	
)	CASE NO. 96-M-5
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	(DECISION AND ORDER)
Hamilton County Board)	
of Revision and the Hamilton)	
County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant-	Paul D. Ratterman
	John W. Eilers
	Kepley, MacConnell & Eyrich
	525 Vine Street, Suite 2200
	Cincinnati, Ohio 45202

For the County-	Joseph T. Deters
Applies	Hamilton County Prosecuting
	Attorney
	By: Thomas J. Scheve
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	Suite 300
	Cincinnati, Ohio 45202-3125

Entered February 7, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes on to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant herein under date of January 4, 1996, from a decision, dated December 6, 1995, of the Hamilton County Board of Revision, appellee herein.

The subject property is located in the 162-Delhi Township taxing district of Hamilton County, Ohio, and further identified as Parcel No. 540-42-352.

The Hamilton County Auditor found the true and taxable value of the subject property for tax year 1993 to be as follows:

Parcel No. 540-42-352

	True Value	Taxable Value
Land	\$ 1,988,000	\$ 695,800
Building	\$ 3,566,000	\$ 1,248,100
Total	\$ 5,554,000	\$ 1,943,900

Upon consideration of the complaint filed by the appellant, the Hamilton County Board of Revision determined that there should be no change in value.

In its notice of appeal, the appellant has alleged that the correct value for the parcel for tax year 1993 to be as follows:

Parcel No. 540-42-352

	True Value	Taxable Value
Land	\$ 1,533,855	\$ 536,850
Building	\$ 2,751,855	\$ 963,150
Total	\$ 4,285,710	\$ 1,500,000

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 Hamilton County Board of Revision, the testimony adduced at the hearing before this Board, and the legal arguments provided by the parties.

The subject property, known as Delco Plaza, is located on Delhi Pike in Hamilton County. The subject is described as a

community shopping center and is improved with a large main building. Three outlots also comprise the improved parcel, however, only two, totalling approximately 4,900 square feet are the subject of this appeal. The total land size equals approximately 15.2 acres.

The center was developed in 1977. A national retail discount store and a regional grocery store were the original tenants of the main building. The two outlots in issue were developed for a drive-thru bank and a fast food restaurant. As of January 1, 1993, the tax lien date here in issue, the property was 100% occupied, but not by the original tenants. The discount retailer remained, pursuant to its twenty-five year lease and a discount furniture store occupied the grocery store's original location under a sublease arrangement. New tenants also occupied the outlots in issue. The site is further improved with approximately 450 parking spaces.

At the hearing before this Board, the appellant presented the testimony of Dr. Khosrow Alamin, a member of the ownership group, who testified concerning the history of ownership, identified the current and past leases of space, and presented an opinion of value. Dr. Alamin first discussed his concern with the long term prospects of the project. It was the witness' opinion that the property would be extremely difficult to lease to any other lessee(s). In fact, as of the hearing date in 1996, part of the property was vacant and had not been re-leased. Dr. Alamin was also concerned about K-Mart, the current lessee, and its desire or ability to re-lease the subject at the end of the current lease

(1999), based upon low sales figures on a dollar-per-square foot calculation as well as K-Mart's own current financial health.

It was Dr. Alamin's opinion that an investor would base a decision to purchase the subject solely upon the income earned. Based upon the subject's actual income for 1993, it was Dr. Alamin's opinion that true value was \$2,950,000 as of the tax lien date.

Appellant also presented the testimony and written appraisal report of Mr. Howard G. Thiemann. Mr. Thiemann is a member of the Society of Real Estate Appraisers, the American Society of Appraisers and holds a state certification. He is Chairman of the Board of the Appraisal Company of America. It was Mr. Thiemann's testimony that the property was worth \$3,850,000 as of February 9, 1996. However, at hearing, Mr. Thiemann testified that there was no "dramatic" change in value between the tax lien date of January 1, 1993 and the "as of" date of his appraisal.

Testifying on behalf of the county and presenting a written appraisal report was Ms. Jean Bechtold, a staff appraiser with the Hamilton County Auditor's office. It was Ms. Bechtold's opinion that the property was worth \$6,100,000 as of the valuation date here in issue, January 1, 1993.

Both appraisers presented opinions of value based only upon the income capitalization and sales comparison approaches, two accepted forms of appraisal methodology. Both appraisers opted not to use the cost approach due to the age of the property.

In order to value property under the income capitalization approach, rents and expenses of comparable properties are

customarily reviewed and compared with the income and expenses of the subject. Mr. Thiemann analyzed five rental properties in the subject's immediate and surrounding area. These comparable properties indicated a rental range of \$3.50 to \$6.50 per square foot. The rental comparables range from 6,249 square feet to 79,000 square feet in size. Mr. Thiemann estimated, based on the subject improvements' size, location, age and condition, that the subject would fall in the lower end of the range, indicating a rental price per square foot of \$4.00 to \$4.50. Taking into consideration the comparable rentals, it was Mr. Thiemann's opinion that the subject's current leases reflected the market and thus he used the then current rent roll in developing his income approach.

Ms. Bechtold also estimated the value of the subject property by analyzing market rents, market expenses and market vacancy. Ms. Bechtold discounted the actual leases currently in place because it was her belief that such leases did not reflect market rents as of the date of valuation. Instead, Ms. Bechtold presented quoted rental rates for three centers she believed comparable to the subject, Delhi Plaza, directly across from the subject, Delhi Shopping Center, and Brentwood Plaza. Quoted lease rates were in the \$10.00 to \$11.00 range for smaller spaces, and the appraiser indicated that Central Hardware space in the Delhi Plaza, directly across the street from the subject, was available for \$5.50 per square foot on a triple net lease basis.

After analyzing what she testified were market rates, Ms. Bechtold concluded that the following market rental rates would be applied to the subject property: Anchor discount \$5.50/S.F. triple

net, medium \$10.00/S.F. triple net and outlot \$10.00/S.F. triple net.

Prior to establishing the effective gross income both appraisers established vacancy and rent loss factors. Mr. Thiemann deducted, as a normal course of operation, vacancy and credit loss. After he surveyed the retail marketplace and took into consideration the subject property's lack of visibility from primary roadways, Mr. Thiemann concluded that the subject property would take longer to rent than similar properties with better visibility. He thus established as reasonable a 15 per cent vacancy and credit loss factor for analysis purposes.

Ms. Bechtold also relied on a market vacancy analysis. She did not use the subject property's 100 per cent occupancy rate but instead relied on market data which showed an average vacancy for community centers at 6.15 per cent as of January 1, 1993 and an average vacancy for all centers at 10 per cent. She utilized a vacancy rate of 8 per cent.

Both appraisers deducted management and other related expenses. Mr. Thiemann deducted a 4 per cent management fee and an amount for replacement of short lived items such as the mechanicals, paving, and roof. He also deducted for expenses such as legal, audit, leasing, and commissions. Ms. Bechtold analyzed market data as well as actual expenses to arrive at a 5 per cent management and a 4 per cent administrative and general maintenance expense.

Based upon his analysis, Mr. Thiemann projected the operating statement of the subject property as follows:

Projected Operating Statement:

POTENTIAL GROSS ANNUAL INCOME:	\$559,000
Less Vacancy & Credit Loss: (15%)	<u>(83,850)</u>
EFFECTIVE GROSS INCOME:	\$475,150

Less Expenses:

Management: (4%)	\$19,006
Reserves for Replacement (\$.15/sq.ft.x 128,743 SF)	19,311
Miscellaneous	<u>2,500</u>
Total Expenses	<u>(40,817)</u>
NET OPERATING INCOME	\$ 434,333

Mr. Thiemann set forth an overall capitalization rate of 10.75 per cent. He believed this rate was indicative of the subject property's size, type of improvements and present rents in relation to the comparable market rates. He arrived at a value of \$3,865,000 after deducting for roof replacement in the amount of \$175,000.

Ms. Bechtold's stabilized income and expense statement calculated net operating income as follows:

Base Rent:

130,266 S.F. Anchor Space at \$5.50	\$716,463
4,899 S.F. Out Lot at \$10.00	<u>48,990</u>
Potential Gross Income	\$765,453
Less Vacancy and Collection Loss at 8%	<u>(61,236)</u>
Effective Gross Income	\$704,217
Less Total Operating Expenses at 9%	<u>(63,380)</u>

NET OPERATING INCOME

\$640,837

Ms. Bechtold then derived an overall capitalization rate of 9.97 per cent from published market data and utilized a tax additur to arrive at an estimated market value of \$6,351,209.

Both appraisers supported their value conclusions through the sales comparison method of valuing real estate. When valuing the subject property under the sales comparison approach, appellant's appraiser surveyed the surrounding market and found five properties he considered comparable to the subject. The sale dates range from January, 1977 to May, 1994. The size of the comparable properties ranged from 59,523 square feet to 221,041 square feet. Mr. Thiemann indicated that he believed his first sales comparable to be the most comparable. While the property was significantly larger, the selling price calculated to a square foot value of \$31.82.

Under her market approach, Ms. Bechtold listed four sales of similar properties taking place in the greater Cincinnati region during a period from May of 1993 through May of 1996. The properties ranged in size from 142,995 square feet to 235,303 square feet. Ms. Bechtold's comparable sale she believed most similar to the subject was the Western Village Shopping Center. This property sold in May of 1994 for \$6,800,000. This comparable, like the subject, had two big box spaces although not as big as that of the subject. The largest property relied upon by Ms. Bechtold was the sale of 172,239 square feet on or about May, 1996, for \$66.41 per square foot. Based upon Ms. Bechtold's review of

the comparable sales, it was her opinion that the subject property would sell for \$50.00 per square foot or a value of \$6,700,000.

Reconciling his two value conclusions, Mr. Thiemann placed the greatest weight on the income approach, valuing the property at \$3,850,000. Correlating her two approaches Ms. Bechtold indicated that the income approach was the most reliable approach, but believed the value derived under her sales comparison approach supported the value derived under the income approach. Thus, it was her opinion that the subject property, on tax lien date January 1, 1993, should be valued at \$6,100,000.

We begin with a discussion of the evidentiary burdens placed upon parties before the Board of Tax Appeals. The issue in ad valorem tax appeals is the determination of "true value in money". In State, ex rel. Park Investment Co. v. Board of Tax Appeals (1964), 175 Ohio St. 410, the Ohio Supreme Court defined "true value in money" and described how such may be determined by reference to "fair market value":

"In the last analysis the value or true value in money of any property is the amount for which that property would sell on the open market by a willing seller to a willing buyer. In essence, the value of property is the amount of money for which it may be exchanged, i.e., the sales price.

"The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In re Estate of Sears, 172

Ohio St. 443, 178 N.E. 2d, 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market."

See, also, First Union Real Estate and Mortgage Investment v. Cuyahoga Cty. Bd. of Revision (1990), 53 Ohio St. 3d 236.

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, the Supreme Court made it clear that in an appeal filed pursuant to R.C. 5717.01, the appellant bears the burden of presenting evidence in support of the value which it asserts. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318, 319.

While there are three accepted methods of valuing real property for the purpose of determining true value in money, value itself is a question of fact. American Steel & Wire Co. v. Bd. of Revision of Cuyahoga County (1942), 139 Ohio St. 388. Moreover, when differences of opinion are offered by expert witnesses, this Board is mindful that expert opinion evidence, under any circumstances, is but an opinion, and the reliability of that

opinion depends upon the skill and ability demonstrated by the expert as well as the expert's ability to find truly comparable properties in the marketplace. In such cases, the Board of Tax Appeals is vested with wide discretion in determining the weight to be given to the evidence before us and the credibility of the witnesses. Cardinal Federal S & L Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St. 2d 13.

This Board has carefully reviewed the record in this matter and find that we are unable to agree in total with either appraiser. While both appraisers considered virtually the identical market, their final conclusions of value are vastly dissimilar. In reviewing the evidence before us, it is apparent that the dissimilarity in value is directly related to the estimated rental income used by the appraisers. Appellant's appraiser opined a market rent range of approximately \$4.00 to \$4.50 per square foot and then utilized actual rents to begin the valuation process.

Appellee's appraiser, on the other hand, utilized lease asking rates to derive what she considered market rents. This Board must, however, consider Ms. Bechtold's reliance upon the rental asking rate of the former Central Hardware space, a property which was available during the tax year here in issue.

Dr. Alamin first mentioned the Central Hardware space, stating that the 59,000 square foot property, on the market for seven years, stood empty for three. Mr. Thiemann, appellant's appraiser, then identified a sale, which he believed was the Central Hardware property, on or about January, 1977 for \$566,500,

indicating a price per square foot of \$9.51. While Ms. Bechtold acknowledged that the property was sold in bankruptcy, it was unclear as to whether the sale indicated by Mr. Thiemann was the sale after Central Hardware closed or was an earlier sale of the property which had once been owned by Gold Circle, also a company which had been in financial difficulty, and whose property had been sold through foreclosure.

While we are unable to place any weight on the sale of the property, either in 1977 or later when sold out of bankruptcy, this Board does find it significant that appellee's appraiser opined a \$5.50 per square foot market rental rate for the subject even though a similarly sized building directly across the street was unable to rent at that asking price.

Ms. Bechtold's opinion of market rents appears to rely heavily on rental asking prices, as opposed to actual rental amounts. Ms. Bechtold does identify three leases for "Discount Anchors", but the properties are not further described or identified, making it difficult for this Board to make an independent evaluation as to their comparability to the subject. Asking prices, especially in commercial leases where the parties are sophisticated negotiators, are traditionally higher than the lease amounts reduced to contract. Therefore, we are unable to place substantial weight upon Ms. Bechtold's market rents.

Mr. Thiemann, on the other hand, substantiates his actual rents with market comparables. However, the lower end of his market comparables relate to leases which the appraiser admits are older leases, thus, not really market rents as of the tax lien

date. Mr. Thiemann also opines that the lower end of his \$3.50 to \$4.50 per square foot rental range are indicative of larger spaces and the upper end indicative of smaller spaces. Yet, he uses as a comparable the lease of a T.J. Maxx store in Florence, Kentucky. That lease of 79,000 square feet in January, 1991 was for an extended term at a fixed rent of \$5.30 per square foot. Thus, we find it appropriate to value the subject at the upper end of Mr. Thiemann's opined market rents, or \$4.50 per square foot.

This Board is also unable to agree with Mr. Thiemann's higher vacancy rate. We must note that while Mr. Thiemann did not believe the appraisal's "as of" date of February 6, 1996 significantly affected value, we believe it greatly affected his opinion as to the proper vacancy rate. On January 1, 1993, the property was fully occupied. On February 6, 1996, one tenant had quit the premises, leaving the property 74 per cent occupied. Despite his acknowledgement that Cincinnati's overall vacancy rate for retail was 5 to 10 per cent and despite the fact that as of tax lien date the property was fully occupied, Mr. Thiemann opined a 15 per cent vacancy rate. We do not find this rate to be supported by probative evidence.

Instead, we find Ms. Bechtold's vacancy rate supported by the evidence before us. We also must conclude that Ms. Bechtold's indication of square footage is more accurate than Mr. Thiemann's, as Mr. Thiemann acknowledged that he did not include the rental space of the outlots in his calculations. As the other expenses are not greatly dissimilar, the Board concludes to the following income calculation:

Projected Operating Statement:

POTENTIAL GROSS ANNUAL INCOME (135,165 SF x \$4.50):	\$608,243
Less Vacancy & Credit Loss: (8%)	<u>(48,659)</u>
EFFECTIVE GROSS INCOME:	\$559,584

Less Expenses:

Management: (4%)	\$22,383
Reserves for Replacement (\$.15/sq.ft.x 135,165 SF)	24,775
Miscellaneous	<u>2,500</u>
Total Expenses	<u>(49,658)</u>

NET OPERATING INCOME \$ 509,926

We further find that, given the condition of the property and the availability of other similar property in the marketplace (notably, the Central Hardware location directly across the street), Mr. Thiemann's 10.75 per cent capitalization rate is supportable. Capitalizing the net operating income, this Board finds that the value of \$4,743,500 is supported by competent and probative evidence.

This value, on a per square foot basis is equal to a value of \$35.00 per square foot. We acknowledge that this per square foot price is lower than Ms. Bechtold's comparables. However, Ms. Bechtold's comparables all appear to have a mix of large and small-tenant spaces, which is not present in the subject. Thus, the subject is in a more precarious position once a large tenant is lost.

While appellant would have this Board place some weight on the fact that this property is nearing the end of its long-term leases, it is important to emphasize that, during the triennial in issue, the property was fully occupied. Any further effect on value that a high vacancy rate may have must be considered when, and if, the property suffers from such a condition.

Therefore, in consideration of the entire record, the Board of Tax Appeals finds and determines, upon the preponderance of the evidence, that the value of the subject property, as of January 1, 1993, was as follows:

Parcel No. 540-42-352

	True Value	Taxable Value
Land	\$1,215,000	\$ 425,250
Building	<u>\$3,528,500</u>	<u>\$1,234,980</u>
Total	<u>\$4,743,500</u>	<u>\$1,660,230</u>

It is the order of the Board of Tax Appeals that the Auditor of Hamilton 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 ohiosearchkeybtaw.