

OHIO BOARD OF TAX APPEALS

Easton Town Center, LLC,)
)
 Appellant,) (CASE NO. 2002-R-2334
) (REAL PROPERTY TAX)
 vs.)
) (DECISION AND ORDER
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and)
 Columbus City Schools)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Vorys, Sater, Seymour and Pease, LLP
Raymond D. Anderson
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P.O. Box 1008
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For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
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Assistant Prosecuting Attorney
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For the Appellee Board of Education - Rich, Crites & Dittmer
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Entered January 14, 2005

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Easton Town Center, LLC (“Easton”). Easton appeals a final determination of the

Franklin County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 2001.

The Franklin County Auditor and the BOR determined that the true and taxable values for the subject property for 2001 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251516-80		
Land	\$ 254,800	\$ 728,000
Building	\$ <u>-0-</u>	\$ <u>-0-</u>
Total	\$ 254,800	\$ 728,000

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251516-90		
Land	\$ -0-	\$ -0-
Building	\$ <u>3,546,200</u>	\$ <u>10,132,000</u>
Total	\$ 3,546,200	\$ 10,132,000

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251157-80		
Land	\$ 311,150	\$ 889,000
Building	\$ <u>-0-</u>	\$ <u>-0-</u>
Total	\$ 311,150	\$ 889,000

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251157-90		
Land	\$ -0-	\$ -0-
Building	\$ <u>3,545,850</u>	\$ <u>10,131,000</u>
Total	\$ 3,545,850	\$ 10,131,000

Easton, however, according to its notice of appeal, contends that the true and taxable values of the subject property should be reduced to:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251516-80		
Land	\$ 34,970	\$ 99,900
Building	\$ -0-	\$ -0-
Total	\$ 34,970	\$ 99,900

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251516-90		
Land	\$ -0-	\$ -0-
Building	\$ 486,260	\$ 1,389,300
Total	\$ 486,260	\$ 1,389,300

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251157-80		
Land	\$ 42,630	\$ 121,800
Building	\$ -0-	\$ -0-
Total	\$ 42,630	\$ 121,800

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
010-251157-90		
Land	\$ -0-	\$ -0-
Building	\$ 486,150	\$ 1,389,000
Total	\$ 486,150	\$ 1,389,000

The subject property consists of approximately 7.171 acres of land. It is improved with two parking garages. One parking garage is located on the east side of Easton Town Center and has four levels with 1,677 parking spaces on 3.901 acres. The other garage is located on the west side of Easton Town Center and has five levels with 1,625 parking spaces on 3.270 acres. The garages were built in 1999, and are located at Easton Loop West and Chagrin Drive, Columbus, Franklin County, Ohio, in the city of Columbus – Columbus City School District taxing district.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, the record of the evidentiary hearing before this board (“H.R.”), including exhibits, and the briefs of counsel. At the hearing before the board, Easton called three witnesses. Thomas J. Kaliker, an MAI appraiser, testified and presented a summary appraisal report. Samuel D. Koon, an MAI appraiser, testified and presented a complete, narrative appraisal report. Beau Arnason, chief operating officer of Steiner & Associates, the property manager for Easton Town Center, also testified on Easton’s behalf. The BOR and the Columbus City Schools Board of Education (“BOE”) appeared and were represented by counsel, but called no witnesses and submitted no additional evidence aside from the statutory transcript and cross-examination.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has 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. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to

the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.¹

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers*, supra; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Easton filed a complaint with the BOR requesting a decrease in value for tax year 2001. The BOE filed a counter-complaint. At the hearing before the BOR, Easton called Thomas J. Kaliker, an MAI appraiser, to testify. After consideration, the BOR determined that the value of the subject property should not be changed. It is from that decision of the BOR that Easton now appeals.

Easton contends that the BOR has overvalued the parcels in question by relying upon the construction costs of the garages incurred in 1999 as the indicator of their value. Easton claims that the 1999 construction costs would not equate to the value of the

¹ It is long established that the "best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. Although this property transferred for \$2,370,000 in December 2000, the record suggests, and there has been no argument to the contrary, that this transfer was subject to encumbrances on the subject property and between related parties. Therefore, it was not arm's length.

subject property as of tax lien date because there was an enormous amount of functional and economic obsolescence associated with these garages.

The BOR and BOE, however, maintain that the construction costs are indicative of value because the project was completed only two years before tax lien date, January 1, 2001. Therefore, the BOR properly considered those costs in determining value.

Before this board, Easton first presented the testimony and appraisal report of Thomas J. Kaliker, an MAI appraiser. Of the three approaches to value, cost, sales, and income, Mr. Kaliker performed only the income approach. It was his opinion that there were no sales of comparable suburban parking garages. Further, Mr. Kaliker testified that the cost approach was irrelevant as to this property.

In his income approach, Mr. Kaliker compared the subject property to the parking garage associated with City Center Mall because it is connected to a retail shopping area. City Center charges one dollar for every three hours of parking. Based on this, Mr. Kaliker assumed that each of the 3,302 parking spaces on the subject property would generate two dollars a day, 365 days a year with a fifty percent vacancy rate, which he determined based at least in part upon his personal observation. Consequently, the effective gross income would equate to \$1,200,000. Based upon a review of the historical operating costs for the subject and operating costs for four comparable properties, Mr. Kaliker determined that the operating cost per space would be \$237. After deducting operating expenses of \$782,500, the net operating income for the property would be

\$422,730. Assuming a twelve percent capitalization rate with a 1.83 percent tax additur, Mr. Kaliker opined that the fair market value for the subject property would be \$3,000,000.

Samuel D. Koon, also an MAI appraiser, testified that the subject property was a special purpose structure that would not be built under normal circumstances. It was Mr. Koon's testimony that this property would not sell on the open market. This property was not developed as an income-producing property, but rather to support the retail mall space. Furthermore, Mr. Koon testified that the income approach to value with regard to the subject property was unreliable. Therefore, Mr. Koon did not utilize the sales comparable or income approaches to value.

Mr. Koon determined a value for the subject property under the cost approach, using a replacement method. The replacement method concentrates not on what the cost of reproducing the actual structure would be, but instead on what the cost of replacing the utility of the present structure would be.

In this methodology, Mr. Koon first estimated the cost of replacing the 3,302 parking spaces located in the garages with surface parking, including lighting, paving, curbs, and landscaping. He determined that twenty-seven acres would be needed to replace the garage parking spaces with surface parking. Based upon various land sales, Mr. Koon concluded that the cost of the land would be \$300,000 an acre. After reviewing Easton's actual cost for constructing surface parking of \$664 a space and utilizing Marshall Valuation Services, Mr. Kook determined that the actual cost of \$664 a space to construct surface parking was within the acceptable range. Therefore, he determined that the cost of the land and the cost to build the parking lots would total \$10,300,000.

The second step in Mr. Koon's replacement method required him to subtract the cost of the 7.17 acres on which the present garages are located. For this value, Mr. Koon used \$500,000 an acre, since the cost of a smaller parcel of land is greater than the economy derived from the purchase of a larger parcel. That left \$6,700,000 attributable to the improvements.

From that value, Mr. Koon depreciated the improvements by 7.5 percent in his third step. Then, in his fourth step, Mr. Koon added back the cost of the land to the value of the depreciated improvements. Therefore, Mr. Koon arrived at a final opinion of value for the subject property of \$9,800,000 as of January 1, 2001.

Mr. Arnason, the chief operating officer of Steiner & Associates, the property manager for Easton, verified the financial information contained in the appraisers' reports.

The board does not find Mr. Kaliker's opinion of value to be competent, reliable, and probative of the value of the subject property as of the tax lien date, January 1, 2001. First, the income used by Mr. Kaliker was based upon a downtown Columbus parking facility that has little or no resemblance to the subject property. Mr. Kaliker himself testified that parking garages located in a metropolitan downtown are not comparable to those located in suburban locations. Second, Mr. Kaliker failed to give a basis for his determination of the vacancy rate. There was no data from Easton to support these figures. Third, both appraisers admitted that part of the value of the parking garages was reflected in the rents charged for the retail space. However, no attempt was made to designate what portion of the rents was attributable to having adequate parking available.

Fourth, even Mr. Koon testified that the income approach was not reliable in determining a value for this property. Therefore, based upon the foregoing, this board rejects Mr. Kaliker's opinion of value as an indication of the value of the subject property.

Regarding the cost approach utilized by Mr. Koon, in *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision* (1984), 12 Ohio St.3d 270, the Supreme Court of Ohio acknowledged the applicability of the theory of substitution, that a knowledgeable buyer would pay no more for a property than the cost of producing a substitute property. The court also noted that such a theory was particularly applicable to new improvements that represent the highest and best use of the land. See, also, *Wenk v. Cuyahoga Cty. Bd. of Revision* (May 21, 1999), BTA No. 1997-T-816, unreported. As the Supreme Court found in the seminal case of *Meijer, Inc. v. Montgomery Cty. Bd. of Revision*, 75 Ohio St.3d 181, 1996-Ohio-223, the cost valuation is a supportable method of valuation and, properly presented, indicates market value absent evidence of an aging or non-functional building or a changing market.

In addition, The Appraisal of Real Estate, Twelfth Edition, states that “[i]n the cost approach, the appraiser compares the cost to develop a new property or a substitute property with the same utility as the subject property.” *Id.* at 349. According to the Appraisal Institute, the cost approach should be utilized when “a lack of market activity limits the usefulness of the sales comparison approach and when the properties to be appraised *** are not amenable to valuation by the income capitalization approach.” *Id.* at 354. The cost approach works best when the property is newer and the highest and best use remains consistent.

In the present matter, Mr. Kaliker did not perform a cost approach, and Mr. Koon rejected the actual cost incurred to construct the improvements that was supplied by Easton. Instead, he chose to use a replacement method. However, despite assertions that there is extensive functional and economic obsolescence associated with the parking garages, neither appraiser clearly identified what constituted these conditions. Further, Mr. Koon, who utilized the cost approach, did not demonstrate how the replacement method of valuing the cost to construct surface parking spaces was dictated by the market as “a more suitable comparison” to the actual cost of constructing parking garage spaces.

As the parties acknowledged, this case represents a very difficult valuation problem. In resolving the issues before it, this board must examine the available record and determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, the board is given broad discretion to determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Therefore, based upon the foregoing, the board finds that the property owner failed to submit sufficient competent, probative, and reliable evidence to support the claim that the actual cost to construct the parking garages does not reflect the true value of the subject property. Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds the value of the subject property as of January 1, 2001 to be as the BOR determined as follows:

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Total	\$ 3,545,850	\$ 10,131,000

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Franklin County list and assess the subject 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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