

**OHIO BOARD OF TAX APPEALS**

7700 Tyler Blvd. Company, LLC, )  
 )  
 Appellant, ) (REAL PROPERTY TAX)  
 )  
 vs. ) DECISION AND ORDER  
 )  
 Lake County Board of Revision, )  
 Lake County Auditor, and Mentor )  
 Exempted Village School District )  
 Board of Education, )  
 )  
 Appellees. )

APPEARANCES:

For the Property Owner -	Dworken & Bernstein Co. L.P.A. Jodi Littman Tomaszewski 60 South Park Place Painesville, Ohio 44077
For the County Appellees -	Charles E. Coulson Lake County Prosecuting Attorney Eric Condon Assistant Prosecuting Attorney 105 Main Street, P.O. Box 490 Painesville, Ohio 44077
For the Bd. of Edn. -	Brindza McIntyre & Seed LLP Robert A. Brindza 1111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114

Entered May 19, 2009

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

This matter is before the Board of Tax Appeals as a result of a notice of appeal filed by the appellant, 7700 Tyler Blvd. Company, LLC. Appellant’s notice of appeal was filed August 24, 2006, and challenges a decision of the Lake County Board

of Revision (“BOR”), which, in its decision dated July 31, 2006, determined the value of parcel number 16-B-033-A-00-001-0 for tax year 2005.

Counsel for appellant and the Mentor Exempted Village School District Board of Education (“BOE”) appeared at a hearing convened before this board. The county appellees did not appear. Accordingly, we proceed to consider this appeal based upon the notice of appeal, the statutory transcript (“S.T.”), the testimony and evidence adduced at the hearing before this board (“H.R.”), and the briefs submitted by counsel.<sup>1</sup>

The subject property, constructed in 1986, consists of approximately 5.59 acres, and is improved with a building suitable for light industrial, office, and warehouse purposes. The building, zoned for light manufacturing, is approximately 120,828 square feet in size, which includes office space that comprises approximately 6,180 square feet. The building is fully air conditioned and heated, and is improved with parking areas and landscaping. Other improvements include one “drive-in” door and seven “dock high doors with levelers.”

The true and taxable values of the subject property, as determined by the Lake County Auditor (“auditor”) and the BOR, are as follows:

Parcel No. 16-B-033-A-00-001-0	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 264,850	\$ 92,700
BUILDINGS	<u>\$4,076,610</u>	<u>\$1,426,810</u>
TOTAL	\$4,341,460	\$1,519,510

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<sup>1</sup> It appears that certain exhibit numbers and descriptions in the statutory transcript are mislabeled. Specifically, exhibits E through J, listed and described in DTE Form 3, appear to be out of sequential order. When cited, these exhibits will be identified to comport with the exhibit description listed in DTE Form 3.

A total true value of \$3,800,000 was asserted by appellant in its complaint to the BOR, while the BOE, in its counter-complaint, claimed a value of \$4,341,460. At the hearing before the BOR, appellant presented the testimony of Dwight A. Kumler, MAI, a state-certified general appraiser employed by Calabrese, Racek and Markos, Inc. Mr. Kumler testified regarding an appraisal report, prepared as of the subject's January 1, 2005 tax lien date, that opined a value of \$3,800,000 for the subject property. S.T, Ex. E. Before the BOR, Mr. Kumler testified that the building was suited for a single tenant, and he therefore focused on comparable properties that had leases for single tenants or were owner occupied when preparing his appraisal report. S.T., Ex. I. He also testified that, based on the listing history, the building had been available for sale or lease since mid-2004, and that no "substantial" offers had been made. Id. Upon review of the testimony and evidence before it, the BOR voted to maintain the auditor's value.

We begin our review of this matter by noting that "[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. In determining value, we will 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the true value of real property. *First Union Real Estate Equity & Mtg. Investments v. Morrow Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. Under such circumstances, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, where the value of property is estimated through a comparison of the subject to recent sales of comparable properties in the market area, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Appellant presented two witnesses at the hearing before this board, while the appellees elected to not present any evidence or testimony. Appellant first presented Marion Mantel, the controller for appellant. Ms. Mantel testified regarding the rental history of the subject property, stating that the subject had been vacant since 2002. H.R. at 12-13. Ms. Mantel noted that the property was available both for lease

or sale since 2002, and that as of the subject's January 1, 2005 tax lien date, these circumstances had not changed. *Id.* at 14, 16. The BOE's counsel, upon cross-examination, inquired as to the listing price history of the subject property. Ms. Mantel stated that the subject was initially listed at \$4,800,000, but was reduced to \$4,300,000 in 2006, and further reduced to \$3,900,000 in 2007. *Id.* at 17. Following Ms. Mantel's testimony, appellant again presented the testimony of Mr. Kumler.

With regard to the highest and best use of the subject property, Mr. Kumler's appraisal report stated that the subject's highest and best use, as vacant, "would be for land banking until market conditions improve. Such a use adequately fulfills the physically possible, legally permitted, financially feasible, and maximally productive criteria." H.R., Ex. A at 32. As improved, Mr. Kumler found the subject's highest and best use "would be for continued office/warehouse use. There are no known practical, alternative uses that would justify razing the existing improvements for redevelopment." *Id.*

In reviewing the appraisal report's valuation analysis, we note that Mr. Kumler did not utilize a cost approach, electing only to value the subject property based upon the sales comparison and income capitalization approaches to value. Mr. Kumler's report stated that because the subject's improvements are approximately twenty years old, developing a depreciation estimate would be difficult using the cost approach, and that potential purchasers generally base their purchasing decisions upon the "income producing capabilities of the property." H.R., Ex. A at 34.

Mr. Kumler's sales comparison approach began by estimating the value of the subject property's land. Five comparable sales were utilized, all located in the

same city as the subject. The sale dates ranged from March 2000 to May 2004, with unadjusted per-acre sale prices ranging from \$51,007 to \$79,863. The comparables' zoning classifications consisted of light manufacturing, industrial park, or manufacturing. Mr. Kumler provided a description of each comparable sale, noting any adjustments made based upon attributes or conditions that Mr. Kumler deemed to be inferior or superior to the subject property. H.R., Ex. A at 36. After accounting for adjustments, Mr. Kumler estimated the value of the subject property's land to be \$75,000 per acre, for a total land value, rounded, of \$420,000 for the subject property. Id.

In using the sales comparison approach to estimate a value for the subject's improvements, Mr. Kumler chose six comparable sales from both Lake and Cuyahoga counties. H.R., Ex. A at 37-49. The sale dates for the six comparable sales ranged from May of 2001 to April of 2004. These sales had prices of \$29.74 to \$41.74 per square foot. Mr. Kumler's market data analysis section described each comparable sale and the reasoning behind any adjustments made. The report's conclusion stated "each of the forgoing sales has been adjusted for the appropriate elements of comparison, such as time of sale, office ratio, age/condition/appeal, land-to-building ratio, and other pertinent characteristics. After making these adjustments, the subjects' [sic] market value is estimated in a range of unit values from \$30.00 to \$32.50 per square foot GBA." H.R., Ex. A at 52. Mr. Kumler then indicated a value of \$3,800,000, rounded, for the subject property via the sales comparison approach. Id.

The appraisal report next estimated the value of the subject property using the income capitalization approach. Six comparable properties, described as

comparable office/warehouse leases, were used to estimate economic rent. The summary for each comparable listed the lease term, lease dates, annual base rent per square foot, type of lease, building area, percentage office area, building age, and also included brief comments related to each comparable. Annual base rent per square foot ranged from \$2.22 to \$4.75. Following his description of the comparable sales and adjustments, Mr. Kumler stated “[t]he subject, to reiterate, is located in a desirable industrial area with good highway access. The most appealing aspects of the property are its allotment of office finish, and clear ceilings. Therefore, in consideration of these factors, it is believed that the subject is capable of supporting an economic rent equivalent to \$3.75 per square foot of gross building area on a triple net basis. As will be seen on page 60, this will result in a potential gross income of \$453,105.” H.R., Ex. A at 56.

Effective gross income was calculated at \$407,794, once figures for vacancy and collection loss were subtracted. Next, management and administrative expenses and replacement reserves were deducted to arrive at a value of \$376,794 for net operating income. This amount was capitalized at 10.00%, which resulted in a value of \$3,770,000, rounded, via the income approach. H.R., Ex. A at 60.

In the report’s reconciliation and final value conclusion section, Mr. Kumler stated that the sales comparison approach was given considerable weight in determining a final value, while the income approach was given secondary weight. H.R., Ex. A at 61. Mr. Kumler opined a final value, “based mainly upon the [s]ales [c]omparison [a]pproach, as supported by the [i]ncome [a]pproach,” of \$3,800,000. Id. at 62.

As noted above, the BOE and the county appellees did not present any evidence of value for the subject property at the hearing before this board. Instead, the BOE relied on its cross-examination of the witnesses and the auditor's value to criticize appellant's value evidence. After Mr. Kumler's direct examination, in which he testified regarding his comparables and other aspects of his appraisal, counsel for the BOE questioned Mr. Kumler regarding the details of the comparables. In reviewing the transcript, we note that Mr. Kumler demonstrated a thorough knowledge of and familiarity with the comparables used in his report during his testimony before this board. Upon cross-examination, Mr. Kumler effectively answered the questions asked by the BOE's counsel.

A review of Mr. Kumler's report indicates that the value determinations found by using both the sales comparison and income approaches to value are supported by the data in the appraisal and Mr. Kumler's testimony before this board. The report provides the pertinent details regarding each comparable, and includes explanations of any adjustments made. As such, based upon the testimony of appellant's witnesses and the information provided in the report, we find said report to be competent and probative evidence of the subject property's value. *Columbus, supra.*

When this board determines that an appellant has met its burden with regard to the presentation of competent and probative evidence, appellees then have a corresponding burden to present evidence for this board's review to determine whether such evidence is competent and probative in rebutting appellant's evidence.

*Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield* and *Mentor Exempted*, supra.

In the instant matter, the appellees have not presented this board with any evidence of value. No appraisal report was presented, nor was any evidence introduced that supported the auditor's value upon which the appellees rely. We therefore find that the appellees have failed to present the necessary evidence to rebut appellant's value. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948; *Westhaven*, supra.

In summary, we find that appellant has shown, through competent and probative evidence, that the true value of the subject property should be \$3,800,000 for tax year 2005. We further find that the county appellees and the BOE have failed to set forth the competent and probative evidence needed to determine a value different than that opined by appellant's appraiser. *Springfield* and *Mentor Exempted*, supra. Accordingly, it is the decision of the Board of Tax Appeals that the true and taxable value of the subject property, as of January 1, 2005, is as follows:<sup>2</sup>

Parcel No.16-B-033-A-00-001-0	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 420,000	\$ 147,000
BUILDINGS	<u>\$3,380,000</u>	<u>\$1,183,000</u>
TOTAL	\$3,800,000	\$1,330,000

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<sup>2</sup> As we find Mr. Kumler's estimate of the land value of the subject property to be an accurate indicator of value, the land and building values of the subject are allocated as such. See *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454.

We order the Auditor of Lake County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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