

OHIO BOARD OF TAX APPEALS

Board of Education of the Dublin)
City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor, and)
Metro Medical LLC,)
)
Appellees.)

CASE NO. 2006-N-1248
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Bd. of Edn. -	Rich & Gillis Law Group, LLC James R. Gorry 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, Ohio 43215
For the Property Owner -	Sleggs, Danzinger & Gill Co., LPA Todd W. Sleggs 820 West Superior Avenue, Suite 400 Cleveland, Ohio 44113

Entered May 19, 2009

Ms. Margulies, Mr. Eberhart, 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, Board of Education of the Dublin City Schools. Appellant's notice of appeal was filed September 6, 2006, and challenges a decision of

the Franklin County Board of Revision (“BOR”), which, in its decision dated August 17, 2006, determined the value of parcel number 273-001932 for tax year 2005.

Counsel for each party appeared at a hearing convened before this board. Although accorded the opportunity by this board, no parties submitted briefs in this matter. Accordingly, we proceed to consider this appeal based upon the notice of appeal, the statutory transcript (“S.T.”), and the testimony and evidence adduced at the hearing before this board (“H.R.”).

The subject property, constructed in 1986, consists of approximately 2.038 acres, and is improved with a two-story office building. The subject is approximately 18,992 square feet in size, with a total rentable area of 17,664 feet, and has been utilized as both medical and general office space. The property was originally constructed for single occupancy by a hospital. The subject is further improved with parking and landscaping, and has all available public utilities. The auditor’s property record card classifies the subject as commercial property and notes its condition as average.

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

Parcel No. 273-001932	TRUE VALUE	TAXABLE VALUE
LAND	\$ 439,400	\$153,790
BUILDINGS	<u>\$1,360,600</u>	<u>\$476,210</u>
TOTAL	\$1,800,000	\$630,000

A total true value of \$1,100,000 was asserted by the property owner in its complaint to the BOR, while the BOE, in its counter-complaint, claimed a value of \$1,800,000. At the hearing before the BOR, the property owner presented the

testimony of James R. Horner, MAI, a state-certified general appraiser and Brad Kitchen, the managing member of the property owner. Mr. Horner testified regarding an appraisal report, prepared as of the subject's January 1, 2005 tax lien date, that opined a value of \$1,000,000 for the subject property. S.T, Ex. 6.A. During his testimony, Mr. Horner summarized his appraisal report, discussing the values derived using the sales comparison and income approaches to value, and stating that he did not utilize the cost approach because of obsolescence due to the subject property's age and condition. S.T., Ex. 10. Mr. Horner stated that the subject has been thirty-two percent vacant for a number of years because of market conditions, most notably because tenants are moving closer to a location where a new hospital is being constructed. Mr. Horner testified that the subject has had a net operating income of approximately \$60,000 for the last few years prior to the tax lien date, which he considered nominal for an office building of this size. Upon questioning by appellant's counsel, Mr. Horner identified those comparable properties in his report that he believed to be most similar to the subject.

Mr. Kitchen briefly testified regarding the market conditions in the subject's area, which he believed to be declining, and also testified that the subject was in need of a number of repairs. Id. Mr. Horner's report stated that the subject's roof needs replacement, at an approximate cost of \$30,000, and the asphalt needs upgrading and repair at an approximate cost of \$18,000.

Upon review of the testimony and evidence before it, the BOR voted to reduce the auditor's value of the subject property from \$1,800,000 to the final value

determined by Mr. Horner’s appraisal report. The subject’s true and taxable values were adjusted to the following:

Parcel No. 273-001932	TRUE VALUE	TAXABLE VALUE
LAND	\$ 439,400	\$153,400
BUILDINGS	\$ <u>560,600</u>	<u>\$196,210</u>
TOTAL	\$1,000,000	\$349,610

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.

At this board's hearing, the property owner again presented the testimony of Mr. Horner and Mr. Kitchen. Appellant introduced the testimony of Patricia Costello, a state-certified real estate appraiser.

We first address the appraisal report prepared by Ms. Costello. Initially, Ms. Costello's report determined that the highest and best use of the subject property, if vacant, "is for owner use general or medical office development or holding the site until vacancy levels warrant office development." H.R., Ex. A at 13. As improved, Ms. Costello found the subject's highest and best use "is continued use as an office building." *Id.*

The appraisal report next proceeded to estimate the value of the subject property using the income capitalization approach. After summarizing the steps involved in this approach, Ms. Costello provided a chart indicating the subject's rent roll as of the effective date of the appraisal, under a paragraph titled "Potential Gross Rental Income." H.R., Ex. A at 17. Ms. Costello then stated that "lease rates for

general office space appear to be in the range of \$9.50 to \$10.50 per square foot. Medical lease rates are generally higher than general office rates and are more in the range of \$10.95 to \$11.95 per square foot.” H.R., Ex. A at 18. Noting that the subject is used for both medical and office space, Ms. Costello used a blended lease rate of \$10.75 per square foot. No comparables are listed.

Ms. Costello calculated a figure of \$304,704 for potential gross income, subtracting \$114,816 in tenant reimbursement income from potential gross rental income. Using a vacancy rate of 15%, which equated to \$45,706, Ms. Costello then found effective gross income to be \$258,998. Operating expenses were next calculated using a figure of \$6.50 per square foot times the total rentable area of 17,664 square feet. This totaled \$114,816. Subtracting this figure along with a replacement allowance of \$17,664, Ms. Costello calculated a value of \$126,518 for net operating income. With regard to the capitalization rate, Ms. Costello stated “[p]rior to the decline in this market overall rates were in the range of 6.5% to 7.0%. Based upon the added risk involved in speculating about the recovery period, the cost of funds available as of the effective date of the appraisal, and the strength of the subject’s long term appeal and location, an overall rate of 9.5% is considered to reasonable.” H.R., Ex. A at 20. Applying this rate to her net operating income, Ms. Costello determined a value of \$1,330,000, rounded, via the income approach.

Ms. Costello’s sales comparison approach began by noting that “extensive research has been conducted for sales of comparable medical office buildings. Unfortunately, there have been few sales of such facilities in recent years. The sales utilized are considered to represent the most comparable data available for

analysis purposes.” H.R., Ex. A at 21. Ms. Costello stated that the following categories were considered for adjustment purposes: Analysis of comparable properties, property rights conveyed, financing, conditions of sale, market conditions, location, improvement site, age/condition, and quality of construction. Id. at 21-22. Under each of these categories, Ms. Costello noted whether any adjustment was made, and, if so, to which comparable. Five comparable sales were utilized, and Ms. Costello’s report provided property data, sale data, building data, site data, a unit indicator, and comments for each comparable. The sale dates ranged from August of 2003 to December of 2006. Once adjusted per the aforementioned categories, Ms. Costello developed a range of \$68.54 to \$77.80 per square foot. Noting that the most weight was placed on the first comparable since, in her opinion, it needed no adjustment, Ms. Costello concluded to a value of \$75 per square foot. Multiplying this by the total square footage of 18,992 for the subject, Ms. Costello determined a value of \$1,425,000, rounded, for the subject property via the sales comparison approach. H.R., Ex. A at 34.

Ms. Costello’s final conclusion of value for the subject property, as of the January 1, 2005 tax lien date, was \$1,425,000. H.R., Ex. A at 35. The reconciliation portion of Ms. Costello’s report stated that the sales comparison approach is “accorded the greatest weight in this analysis.” Id. With regard to the income approach, Ms. Costello stated “[a]t this point in time, investors are not purchasing properties in this market on their current income producing characteristics. Instead, they are purchasing them on the basis of what they would have to pay for competing properties. Thus, the income capitalization approach, which provides a

value indication within 7% of that of the sales comparison approach's, is utilized in a supportive capacity." Id.

We next review Mr. Horner's appraisal report. We begin with Mr. Horner's analysis of the highest and best use of the subject property. According to Mr. Horner, the highest and best use of the subject's land, if vacant, "would be for the development of an office building or research facility." S.T., Ex. 6.A. at 35. After describing five sales that Mr. Horner believes to represent declining prices during the time period following the late 1990's, Mr. Horner stated it was his opinion that "in many instances, there has been a decrease in value for office buildings of the subject's type and quality. Id. at 36. Mr. Horner then states that "[r]ecognizing the overall marketing conditions but considering the fact that the subject is improved with an approximate 18,000 square foot, multi-tenant building, the Highest and Best Use of the subject is as a multi-tenant office structure oriented primarily to non-medical uses." Id.

Following this analysis, Mr. Horner proceeded to develop a land value using office land sales that have taken place in the same general area as the subject's location. Twenty-five sales are listed in a summary report that includes a brief description of the sale location, grantee, sale price, sale date, size, price per acre, and a column containing general remarks about each property. S.T., 6.A. at 37-38. The sale dates ranged from March of 1998 to August of 2004, with price per acre ranging from \$100,000 to \$521,376, with most sales in the \$150,000 to \$320,000 range. Id. After considering these comparables, Mr. Horner indicated a land value of \$215,600 per acre

for the subject property, which is the auditor's original value. This resulted in a total true value of \$439,400 for the subject's land. Id.

In his sales comparison approach, Mr. Horner utilized six comparables. The sales took place from February of 2004 to September of 2005, with price per square foot amounts ranging from \$43.47 to \$78.70. Total sale prices for the comparables ranged from \$595,000 to \$1,700,000. The comparables' ages ranged from fifteen to forty-four years. Following the presentation of this data, Mr. Horner indicated values for the comparables on a per square foot basis, noting any upward or downward adjustments to the properties. After adjustments, Mr. Horner indicated a range "applicable to the subject from \$49.92 per square foot to \$59.12 per square foot." S.T., Ex. 6.A. at 47. In his final conclusion, Mr. Horner noted that the sales were weighted near the lower range, and "[f]urthermore, the upper range is represented by a sale which was purchased for owner-occupancy by Washington Township. The circumstances of sale may require a downward adjustment." Id. Mr. Horner indicated a value for the subject property at \$50 per square foot, which equated to a final value of \$950,000 via the sales comparison approach for tax lien date January 1, 2005. Id.

Mr. Horner's income capitalization approach began with a description of the subject property's rental rates, which ranged, as of the date of the appraisal report, from \$5.95 per square foot to \$15.79 per square foot. S.T., Ex. 6.A. at 48. Mr. Horner's report goes on to state that "[t]he lower range is represented by a classroom located at the rear of the building while the upper range is represented by a medical suite which included tenant improvements at the time of lease at \$85 per square foot. The cost of improvements was amortized over the lease. The units currently available

for lease are Suites 102, 202, 203 and 205. In our opinion, the Fair Economic Rent of these office suites is \$14.50 per square foot gross, less \$6.50 per square foot for expenses or a net income of \$8 per square foot.” Id.

Mr. Horner goes on to describe five properties in same general area of the subject, noting their rental rate on a gross basis, expenses per square foot, and net rental income per square foot. S.T., Ex. 6.A. at 48. Mr. Horner also noted that other rent comparables were utilized that, while not included in his report, were located in his appraiser’s file memorandum. Id. Mr. Horner included a summary in his income approach that estimated total gross income at \$188,337, with effective income calculated to be \$150,687 after subtracting \$37,650 for vacancy and credit loss. Subtracting \$32,500 for expenses and reserves, Mr. Horner calculated net income to be \$118,187. Utilizing a 10% overall capitalization rate, Mr. Horner estimated the subject’s value to be, rounded, \$1,182,000 at stabilized occupancy. S.T., Ex. 6.A. at 50. After adjusting for tenant income for vacant units, leasing commissions for vacant units, roof replacement, parking lot repair, rent loss, and entrepreneurial overhead and profit, Mr. Horner indicated a final value via the income approach of \$984,000 for tax lien date January 1, 2005.

Mr. Horner’s reconciliation and final value opinion stated that the two approaches utilized formed a close range, and that the income approach would “reflect the typical activities of buyers and sellers for this type of property within the marketplace.” S.T., Ex. 6.A. at 51. Mr. Horner then opined a final market value of the subject property, as of tax lien date January 1, 2005, of \$1,000,000, rounded, attaching a value of \$560,600 to the subject’s improvements. Id.

In reviewing the appraisal reports before us, we first note that Ms. Costello's income capitalization approach is visibly lacking in certain respects. The report contains no comparables from which to estimate rent or expenses, and very little explanation is provided as to how she derived her figures, including how she calculated a capitalization rate. Ms. Costello elected not to use her sale comparables to generate a capitalization rate. She states in her report that "[t]he preferred method of estimating an appropriate overall capitalization rate is derivation from sales." H.R., Ex. A at 20. However, she testified that she could not "find any sales from which to derive an overall rate." *Id.* at 36-37. Ms. Costello acknowledged this lack of supporting data in generating a capitalization rate, in addition to other calculations, in her testimony. H.R. at 32-37. Based on the above, we do not find Ms. Costello's income approach to be a credible indicator of the subject's value.

Turning to her sales comparison approach, we again note that Ms. Costello placed the greatest weight on this approach to value, and, in fact, used the estimate from this approach as her final indication of value. Ms. Costello claimed that her first comparable, a sale taking place in October 2004 for \$975,000, is most similar to the subject, and therefore required no adjustments. However, the photograph of this comparable reflects that it's exterior is completely different in design from that of the subject. H.R., Ex. A at 24. Further, as noted by Mr. Kitchen's testimony, this comparable has higher visibility and more traffic than the subject, which is generally a positive for tenants. H.R. at 140-141. Even with these differences, no adjustments were made by Ms. Costello. The fifth comparable, which sold for \$1,195,000 in December of 2006, appears to be very close in age and size in comparison to the

subject, and was originally built for medical purposes, as the subject was. However, Ms. Costello made 15% in upward adjustments that we do not find to be supported in the record. We also find certain issues with comparables two through four. Comparable two is more than twice as large as the subject, and comparable three is only nine years old, less than half the age of the subject. The relatively small adjustments made for these differences do not appear to be reasonable. Mr. Horner also utilized Ms. Costello's comparable four, for which he adjusted downward by 20% based on its 100% occupancy, and Ms. Costello adjusted upward by 15% because of location and age/condition. Overall, we find several inconsistencies within Ms. Costello's sales comparison approach, and we do not find Ms. Costello's value indicated via the sales comparison approach of \$1,425,000 to be competent, probative evidence of value for the subject property for the tax lien date of January 1, 2005.

We next proceed to examine the property owner's appraisal report, beginning with the income approach. Mr. Horner identified five properties from which he developed an estimate of economic rent of \$8 per square foot, on an absolute net basis. We find this estimate to be supported by the data in his report, but find other issues within his approach that cause us to question his indicated value via this approach. We initially question the total of \$48,000 in roof and parking lot repairs deducted from his "value at stabilized occupancy," which is \$1,182,000, rounded, after deductions for discounts. These types of deductions by appraisers, which assume that the market value of property has a one-to-one relationship with estimated repairs, have previously been determined to not be probative evidence of value by this board. See *150 East Main Ltd. v. Franklin Cty. Bd. of Revision* (Feb. 23, 2007), BTA No. 2005-

V-1633, unreported; *Union Central Life Insurance Co. v. Franklin Cty. Bd. of Revision* (Mar. 12, 2004), BTA No. 2002-V-1689, unreported; *Hts. Medical Building LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 2004), BTA No. 2002-T-1260, unreported; *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Nov. 21, 2003), BTA No. 2002-K-1378, unreported; *Hunterwood Park, Ltd. v. Fairfield Cty. Bd. of Revision* (June 30, 2003), BTA No. 2002-J-2455, unreported.

Additionally, Mr. Horner has deducted as a “discount,” from his aforementioned \$1,182,000 value, tenant income of vacant units totaling \$57,000, leasing commissions for vacant units totaling \$8000, and rent loss of \$25,000 and entrepreneurial overhead and profit of \$60,000. It appears to us that Mr. Horner is taking “below-the-line” deductions for expenses normally incurred by a property owner. In *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, the Supreme Court addressed the applicability of similar deductions. The appraiser in *Hotel Statler* had determined a value for the property for tax year 1991. He then proceeded to deduct directly from the property’s value amounts to account for additional rent loss, leasing commissions, and the cost of needed renovations. This board rejected the approach, and on appeal, the court affirmed:

“The BTA rejected the additional adjustments to value determined by the income approach, stating that there was ‘no theoretical support in either the testimony presented to this Board or in the brief submitted on appellant’s [sic] behalf, that would justify these additional deductions.’ “Appellants have referred to two quotations from *The Appraisal of Real Estate* (American Appraisal Institute, 10 Ed. 1992) in an attempt to provide a theoretical basis for the adjustments to the income value made by Kocinski. A review of these quotations provides no support for the adjustments. ***. There is no suggestion in these

quotations that after the income has been capitalized and a value determined by the income approach, the value should then be adjusted to account for the cost of additional rent loss, renovation expenses, or leasing commissions. Appellants have been unable to refer to any authority which would justify the deductions taken by Kocinski. ***.” Id. at 302-303.

See, also, *Wellington Housing Partners, L.P. v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2006-T-230, unreported; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 1, 2002), BTA No. 1999-T-1378, unreported (denying direct deduction for tenant improvements, capital improvements, lost revenue, additional leasing commissions, and additional entrepreneurial profit based upon building renovations); *Ruben v. Franklin Cty. Bd. of Revision*, (Nov. 8, 1996), BTA No. 1995-P-273, unreported, at 3.

As such, we find Mr. Horner’s direct deductions for the above-mentioned adjustments to be inappropriate. We do, however, find the other aspects of Mr. Horner’s income approach to be persuasive, such as his calculation of effective and net income, and the use of a 10% capitalization rate. Therefore, we find that Mr. Horner’s “value at stabilized occupancy,” rounded to \$1,182,000, to be competent and probative evidence of value, after excluding each adjustment made for “discounts” that totaled \$198,000.

We next review Mr. Horner’s sales comparison approach. Mr. Horner’s comparables appear to be generally similar to the subject property, and appropriate adjustments are made in his report, aside from the comparable utilized by both appraiser’s upon which they concluded opposite adjustments. S.T., Ex. 6.A. at 46-47. However, Mr. Horner noted in his testimony before this board that the “income

approach would be the most important of the two approaches ***.” H.R. at 88-89. We agree that the income approach should be given the most weight in determining a value for the subject property.

Upon review of the evidence and testimony before us, we find that Mr. Horner’s indicated value of \$1,182,000, using the income capitalization approach and excluding certain adjustments as noted above, represents the most accurate indication of value for the subject property. R.C. 5717.03. We again state that we agree with Mr. Horner that the income approach to value represents the most appropriate method of valuing the subject property, given the characteristics of the subject, and find that his testimony before this board supports his income approach value, as limited above.

Based upon all of the above, we find that the property owner has shown, through competent and probative evidence, that the true value of the subject property should be \$1,189,000 for tax year 2005. 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:¹

Parcel No. 273-001932	TRUE VALUE	TAXABLE VALUE
LAND	\$ 439,400	\$153,790
BUILDINGS	\$ <u>742,600</u>	<u>\$259,910</u>
TOTAL	\$1,182,000	\$413,700

¹ As we find Mr. Horner’s estimate of the land value of the subject property, which is identical to the auditor’s original value, 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 Franklin 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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