

OHIO BOARD OF TAX APPEALS

Target Corporation,)	
)	CASE NO. 2006-V-751
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Greene County Board of Revision and the)	Affirmed on Appeal June 3, 2009
Greene County Auditor,)	Ohio Supreme Court No. 2008-1231
)	
Appellees.)	2009-Ohio-2492

APPEARANCES:

For the Appellant Property Owner	-	Siegel, Siegel, Johnson & Jennings Co., LPA Nicholas M.J. Ray 3001 Bethel Road, Suite 208 Columbus, Ohio 43220
For the County Appellees	-	Rich, Crites & Dittmer, LLC James R. Gorry 300 East Broad Street Suite 300 Columbus, Ohio 43215

Entered May 27, 2008

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Target Corporation (“Target”), from a decision of appellee, Greene County Board of Revision (“BOR”). The BOR determined the taxable value of the subject property for tax year 2005.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal,¹ the statutory transcript (“S.T.”) provided to this board by the BOR, and briefs

¹ The statutory transcript certified to this board indicates that a copy of the notice of appeal was received by the BOR on June 21, 2006. A review of the copy of the notice of appeal filed with the BOR indicates that it was delivered by US postal service certified mail, postmarked June 19, 2006. S.T. at Exs. D and E. R.C. 5717.01 expressly requires that a notice of appeal be filed in person or by certified mail with the Board of Tax Appeals

submitted by counsel for appellants and counsel for the county appellees. Both parties waived their opportunity to present testimony and evidence at a hearing scheduled before this board.

This appeal involves the taxable value of real property located in the Beavercreek City Schools taxing district and further identified as parcel number B42-4-6-0-67. The subject is an 11.820-acre parcel improved with a single-occupant, retail-store building of approximately 100,025 square feet of gross leasable area. S.T. at Ex. B at 1. The building was constructed in 1998 and has been occupied by its owner Target.

The real property tax values of the subject parcel for 2005, as originally assigned by the Greene County Auditor (“auditor”), are as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 2,599,860	\$ 909,950
BUILDING	<u>5,588,430</u>	<u>1,955,950</u>
TOTAL	\$ 8,188,290	\$ 2,865,900

After a hearing upon a complaint filed by Target advocating the property value be reduced to \$5,000,000, the BOR reduced the values of the subject, as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 2,599,860	\$ 909,950
BUILDING	<u>5,059,520</u>	<u>1,770,830</u>
TOTAL	\$ 7,659,380	\$ 2,680,780

(footnote continued) and with the county board of revision within thirty days of the decision of the county board of revision, which occurred in this instance on May 24, 2006. When certified mail is used, the postmark of that mailing shall be treated as the date of filing.

Appellant contends that the BOR has overvalued the parcel in question and claims that the total true value of the subject property is \$4,500,000, based on an appraisal of the subject. For the reasons that follow, we agree.

In making our determination herein, we initially note the decisions 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, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence that rebuts an appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

Further, when determining value, it has long been held by the Supreme Court 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; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant case, true value in money is typically calculated for appraisal purposes by applying any of three alternative methods: 1) the market data approach, which compares recent sales of comparable properties, 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.

Given the parties' waiver of hearing before this board, we acknowledge that when a challenge is made to a finding of a board of revision, this board must review the evidence presented to the BOR to determine whether the BOR acted properly in amending or retaining the value of the subject property. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, where the court held, “[w]e find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

Before the BOR, appellant offered the appraisal and testimony of Curtis P. Hannah, a state-certified general real estate appraiser from Integra Reality Resources.² Hannah's report described the subject as a 100,025-square foot “discount storeroom.” S.T., Ex. B at 1. As an overview, Mr. Hannah's report outlines issues regarding the marketability of “big-box” retail stores. A retailer that utilizes the big-box concept will construct a single-use property, tailored to the specific prototype and design of the retailer. Few retailers, according to Hannah, are capable of occupying retail space of this size. Therefore, “even brand new, never occupied stores are sometimes razed for construction of new stores of near identical size.” *Id.* at 17-23.

At the same time, as marketing strategies shift, current users may abandon one big-box property for an even larger space. As an example, Wal-Mart has

² The report is a self-contained appraisal report and was prepared by Robin M. Lorms, MAI, CRE, Mr. Hannah, and Nathaniel D. Briscoe, a registered real estate appraiser assistant. S.T., Ex. B at 74-75, Addendum A.

been developing stores known as “super centers” that combine both retail and grocery operations into one building. As it does so, Wal-Mart vacates its smaller properties, placing them on the market for sale or lease. *Id.* at 17.

In contrast to the growth in available big-box space, the report represents that there is limited market demand for this type of space by potential purchasers. *Id.* at 18-23. Hannah’s report indicated that other retailers capable of operating on such a large scale are typically not interested in another company’s property because of differences in merchandizing plans. *Id.* at 18. “[R]etailers thrive on efficiency knowing that their stores are of identical dimensions for purposes of store design, product placement and restocking. Costs to retrofit existing big-boxes to accommodate the needs of ‘first generation’ retailers are too high for financial feasibility.” *Id.* Hannah points to Target’s purchase of a bankrupt competitor’s new, unused big-box store that was simply razed to rebuild one of its own prototype stores rather than attempting to retrofit the existing structure. *Id.* at 18-19.

Hannah noted that the result of his described phenomena is that “vacant big-box facilities hold little to no value for the national retailers.” Therefore, demand for existing space is limited to “second generation” retailers. *Id.* at 18-20. These users are typically specialty type retailers, whose product demand is not large enough to support a building of the size in question. As a result, “smaller tenants are not willing to pay for the large costs to demise the space and thus the landlord is forced to incur those costs.” Hannah concludes: “In summary, the fee simple market value of these properties is substantially lower than replacement costs, not only due to physical

depreciation but also obsolescence. This obsolescence occurs the day they are completed, thus even brand new big box stores are worth less than their cost to develop.” Id. at 23.

As we begin our review of Hannah’s appraisal, we start with his analysis of the subject’s highest and best use. He indicated that “retail use is the maximally productive use of the property. *** Accordingly, it is concluded to be the highest and best use of the site as though vacant.” Id. at 38. Further, considering the site as improved, Hannah indicated that “[t]he site has been developed with a retail development, which is the highest and best use of the site.” Id. at 39.

Specifically, in considering the valuation of the subject, Hannah completed a land value analysis as well as a cost approach, a sales comparison approach, and an income approach. First, Hannah began his valuation analysis by determining a value for the subject land by looking at six comparable land sales between January 2004 and November 2005. Based on such sales, he developed an unadjusted range of value of \$151,393 to \$299,061 per acre. Based on the most comparable sales, Hannah concluded to a final unit value of \$250,000 per acre for the subject, or \$3,000,000 (rounded). Id. at 45.

Next, the replacement cost new of the subject’s improvements was estimated using Marshall Valuation Service, which included all of the applicable direct costs and some of the indirect costs. Hannah estimated that the subject’s classification falls into the discount store category and concluded to a total replacement cost estimate of \$6,151,650. He then made deductions for age/life depreciation, obsolescence and

accrued depreciation totaling \$4,444,591, which resulted in a depreciated replacement cost of \$1,707,058. To that figure, he added the previously derived land value of \$3,000,000, to arrive at a final value, via the cost approach, of \$4,700,000 (rounded). *Id.* at 48-53.

Using the sales comparison approach, Hannah analyzed four sales and one property listed for sale on a price-per-square-foot-of-gross-leasable-area basis. The four comparable properties sold between March 2003 and August 2005. The sales/for sale comparables had sales/asking prices between \$28.16 and \$60.74 per square foot, unadjusted, for 77,384 to 177,352 square feet of gross leasable area. Hannah adjusted the sales/asking prices for differences, if any, from the subject, including location, age, size, and other retail influences. *Id.* at 56. After making such adjustments for comparability to the subject, Hannah concluded to an adjusted value of \$45 per square foot, or \$4,500,000 (rounded), via the sales comparison approach. *Id.* at 57.

Finally, in completing an income approach, Hannah first estimated market rent by analyzing eight comparable rentals, specifically focusing on discount storerooms that have been developed and vacated by the owner-occupant or leased-fee occupant and later re-leased to a second generation tenant. The six comparables indicated a market rental range of \$1.50 to \$7.00 per square foot.³ *Id.* at 61. Adjusting for inferior and superior locations, Hannah determined that a rental rate of \$4.00 per

³ Although not discussed at the hearing before the BOR, there appears to be typos for the base rental rate per square foot for comparables numbered 5 and 6, which should read \$6.00 and \$1.50 per square foot, net, respectively.

square foot would be most appropriate, resulting in a potential gross rent of \$400,100. To that figure, he added \$238,493 for expense reimbursement income, to arrive at a potential gross income of \$638,593. Vacancy and credit loss of 5 percent was deducted and an effective gross income of \$606,663 resulted. From that amount, Hannah deducted total expenses of \$281,699, based on an analysis of historic expenses at comparable properties, including a replacement for reserves, which rendered a net operating income of \$324,964. The NOI was capitalized at 8.5 percent, based on investor surveys and the band-of-investment method, and Hannah concluded to an overall value indication for the subject, via the income approach, of \$3,800,000 (rounded). *Id.* at 62-71.

In reconciling the foregoing value conclusions, Hannah indicated that the sales comparison approach was given the greatest weight. He viewed the income approach value as a “secondary consideration” and supportive of the sales approach value. He gave the cost approach the least amount of weight due to the significant amount of obsolescence taken. Accordingly, Hannah’s final value for the subject property was \$4,500,000. *Id.* at 72-73.

Hannah’s testimony and appraisal report was the only evidence provided to the BOR. The evidence provided by appellant is uncontroverted.

After a thorough review of the record before us, we cannot find any evidence or rationale which supports the BOR’s decision to value the subject at \$7,659,380.

In reviewing the appraisal evidence before us, this board may accept all, part, or none of an appraiser's opinion of value. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609. Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Within the briefs filed by counsel before this board, the county appellees criticize Hannah's overall approach to the instant appraisal problem by claiming that he is unable to prove the truth of his underlying theory, i.e., that no market demand exists for first generation big-box properties from first generation users. The appellees contend that Hannah's claim that no other first generation user would be interested in purchasing or leasing the subject property is simply unsupported opinion. We disagree and believe that Hannah's report is sufficiently supported with evidence from the market to confirm the theories contained therein. See *Tuller Square Northpointe, LLC v. Delaware Cty. Bd. of Revision* (Aug. 18, 2006), BTA No. 2003-H-1549, unreported; *Meijer Stores L.P. v. Defiance Cty. Bd. of Revision* (Mar. 3, 2006), BTA No. 2003-T-2035, unreported, dismissed on appeal, 110 Ohio St.3d 1475, 2006-Ohio-1475 and 2006-Ohio-4645; *Agree Limited Partnership v. Wood Cty. Bd. of Revision* (Sept. 23, 2005), BTA No. 2003-T-1205, unreported; *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported; *Meijer*

Stores L.P. v. Wood Cty. Bd. of Revision (July 15, 2005), BTA No. 2003-A-1204, unreported (all rejecting identical arguments that criticize Integra Realty Resources' big-box appraisal approach that is similar to the instant appraisal issue).

Hannah's research did not uncover any sales between first generation users, e.g., Meijer, Wal-Mart, Lowe's, or Target. The appellees argue that Hannah's sales comparables are not similar to the condition or "economics" of the subject property. Further, the appellees argue that Hannah has provided no market data concerning the sales of Target stores. The appellees argue that in the absence of relevant market data, the subject should be valued by the cost approach. In the end, the appellees have offered no evidence of any sale or lease between first generation users, much less any cost approach to rebut Hannah's position. As demonstrated by Hannah's survey of the market and sales/leases, we must conclude that second generation users are the most viable potential buyers/renters of big-box space based on the lack of evidence of sales or leases between first generation users.

Looking at Hannah's appraisal, we will first consider his sales approach, as that is the analysis on which he placed the greatest weight in arriving at his final conclusion of value.⁴ First, the appellees argue that the sales comparables that Hannah utilized are abandoned properties not truly comparable to the subject. We disagree. Simply because the sales comparables are abandoned does not render them inapplicable to the analysis of the subject. All of the comparables considered are

⁴ We will disregard Hannah's comparable number 5 in his sales comparison analysis since the property has not been sold. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397 (holding that an offering is not sufficient to establish market prices since the sale was not consummated). Accordingly, we are left with four comparable sales to consider.

similar, big-box, discount storerooms, built within five years of the subject. Hannah clearly stated that he adjusted the sales for differences in location, age and condition and, arguably, he compensated for any differences between the properties.

We also find that the income approach to value utilized by Hannah provides competent support for his opinion of value under the sales approach. Nothing in the record refutes the rent/expense comparables and capitalization rate that were employed in the analysis. We also find that the cost approach provides the least reliable valuation of the subject, considering the large deduction taken for obsolescence.

Accordingly, based on our review of all of appellants' appraisal evidence, we find that the most reliable evidence is presented by the sales comparison approach. We give only minimal weight to the income and cost approaches, finding them to be supportive of the conclusions reached under the sales comparison method. We conclude that appellant has satisfied its burden of persuasion and has come forward with competent and probative evidence that the value for the subject property was \$4,500,000 for tax year 2005. *Cleveland; Springfield; and Mentor Exempted, supra.*

Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield and Mentor Exempted, supra.*

Failure of an appellee to present rebuttal evidence may, based on our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra.

As we have previously stated, the appellees have elected not to provide us with any competing market information that could allow us to come to a different conclusion regarding the subject's value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other evidence on which we may base an opinion of value.

Finally, the appellees argue, by way of analogy, that the court's decision in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979 (to adopt the sales price as the best evidence of value, when the sale price was predicated upon the long-term below-market lease rate for the property) lends support to the position that Mr. Hannah should have predicated his opinion upon the actual lease rate in place for the subject property or should have relied upon build-to-suit leasing terms for so-called "first generation" users. Again, absent the appellees' presenting any evidence to support their theory on how the property should have been appraised, their argument fails to overcome the burden met by appellant's evidence presented to the BOR.

Thus, upon review of appellant's appraisal report, we find that the appellant has offered sufficient, probative evidence of the subject's value. Accordingly, based upon the preponderance of evidence currently before this board,

we have determined the value of the subject property, as of January 1, 2005, as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 2,599,860	\$ 909,950
BUILDING	<u>1,900,140</u>	<u>665,050</u>
TOTAL	\$ 4,500,000	\$ 1,575,000

It is the decision and order of the Board of Tax Appeals that the Greene County Auditor shall list and assess the subject property in conformity with this decision. It is further ordered that this value be carried forward in accordance with the law.

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