

**OHIO BOARD OF TAX APPEALS**

Springfield Local School District )  
Board of Education, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Summit County Board of Revision, )  
Summit County Fiscal Officer, and )  
Wal-Mart Real Estate Business Trust, )  
 )  
Appellees. )

CASE NO. 2006-Z-1616  
(REAL PROPERTY TAX)  
DECISION AND ORDER

APPEARANCES:

For the Appellant  
Bd. of Edn. - Britton, Smith, Peters & Kalail Co., L.P.A.  
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For the County Appellees - Sherri Bevan Walsh  
Summit County Prosecuting Attorney  
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For the Appellee  
Property Owner - Siegel Siegel Johnson & Jennings Co., L.P.A.  
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25700 Science Park Drive, Suite 210  
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Entered May 12, 2009

Ms. Margulies, Mr. Johrendt, 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 Springfield Local School District Board of Education (“BOE”), from a decision of appellee, Summit County Board of

Revision (“BOR”). The BOR determined the taxable value of the subject property owned by appellee property owner, Wal-Mart Real Estate Business Trust (“Wal-Mart”), for tax year 2005.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript provided to this board by the Summit County Fiscal Officer (“fiscal officer”), and briefs submitted by counsel for the appellant BOE and counsel for the appellee property owner. All parties in this appeal 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 Springfield Local School District taxing district and further identified as parcel number 51-09296. The subject is a 24.05-acre parcel improved with a single-occupant, “big-box” retail facility consisting of approximately 120,360 square feet of gross building area plus a partially enclosed garden center. S.T. at Ex. 9 at 3, 32, 35. The building was constructed in 1992, thereby having an actual age of 13 years as of January 1, 2005, the tax lien date at issue herein. S.T. at Ex. 9 at 35. The building is occupied by its owner Wal-Mart and includes a three-bay, drive-through auto service facility. *Id.* Also, a retention pond is located on the subject property that is used for storm water runoff and a reservoir for the sprinkler system. S.T. at Ex. 9 at 3.

The real property tax values of the subject parcel for 2005, as originally assigned by the fiscal officer, are as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,182,230	\$ 413,780
BUILDING	<u>5,118,560</u>	<u>1,791,500</u>
TOTAL	\$ 6,300,790	\$ 2,205,280

After a hearing upon a complaint filed by Wal-Mart advocating the property value be reduced to \$4,950,000,<sup>1</sup> the BOR reduced the values of the subject, as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,182,230	\$ 413,780
BUILDING	<u>3,767,770</u>	<u>1,318,720</u>
TOTAL	\$ 4,950,000	\$ 1,732,500

The appellant BOE contends that the BOR has undervalued the parcel in question and, in its brief, claims that the total true value of the subject property is \$5,800,000. BOE Brief at 2.

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

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<sup>1</sup> Wal-Mart initially sought a value of \$4,000,000 for the subject property in its original complaint filed on March 24, 2006 with the BOR. Thereafter, at the hearing before the BOR, Wal-Mart amended the value it was seeking to \$4,950,000. S.T. at Audio Disc.

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.” In doing so, this board 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.

Before the BOR, Wal-Mart offered the appraisal and testimony of John W. Emig, an Ohio-certified general appraiser and a member of the Appraisal Institute. S.T. at Ex. 9 at 64. In arriving at a conclusion of value for the subject, Mr. Emig utilized the market data approach, also referred to as the sales comparison approach, and the income approach. S.T. at Ex. 9 at 4. Mr. Emig did not utilize the cost approach as it was his view that depreciation and obsolescence would be too difficult to accurately calculate given the age of the subject property. S.T. at Ex. 9 at 40. Additionally, Mr. Emig noted in his appraisal report that the cost approach does not accurately reflect the investment decision-making process of typical buyers and sellers. Id.

The sales comparison approach derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. *The Appraisal of Real Estate* (Thirteenth Edition, 2008), 297; Ohio Adm. Code 5703-25-05(G). Mr. Emig analyzed the sales of eight big-box properties that he found similar to the subject. S.T. at Ex. 9 at 41-48. These sales occurred between May 2001 and September 2005. Id. Six of the eight sales occurred within 20 months of the tax lien date at issue herein. Id. The facilities in seven of the eight comparable sales were constructed between 1989 and 1996. Id. The comparable sales reflect facilities ranging in size from 74,000 square feet to 177,500 square feet,

and sale prices ranging from a minimum of \$28.53 per square foot to a maximum of \$55.56 per square foot. Id. Mr. Emig adjusted the various sale prices for date of sale/market conditions, location, site size, site utility, quality, age, condition and building size. Id. Mr. Emig concluded to a value of \$41.50 per square foot for a total value of \$5,000,000 under the sales comparison approach. Id.

In employing the income approach, Mr. Emig found value under the direct capitalization method. Direct capitalization converts a single year's income expectancy into a value by estimating a net income for the property and dividing it by a market-derived income factor, known as an "overall capitalization rate." The Appraisal of Real Estate (Thirteenth Edition, 2008), 499.

Mr. Emig estimated a market rent for the subject by surveying rental rates collected for twenty big-box comparable rentals.<sup>2</sup> S.T. at Ex. 9 at 49-53. Three of the comparable rentals are big-box retail facilities located in Summit County ranging in size from 109,800 square feet to 130,848 square feet. S.T. at Ex. 9 at 49-50. Tenants in eleven of the comparable rentals include Sam's Club, Home Depot, Lowe's, BJ's Wholesale, and other Wal-Mart stores. S.T. at Ex. 9 at 49-51. Nine of the comparable rentals are "re-leased" properties where the facilities were originally constructed for one tenant but subsequently leased to another tenant. S.T. at Ex. 9 at 49, 52-53. After considering differences between the comparable rentals and the subject property, Mr. Emig concluded that market rent for the subject would be \$5.00 per square foot or \$601,800 per year. S.T. at Ex. 9 at 49.

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<sup>2</sup> We note that two of the twenty comparable rentals reflect an asking price rather than an actual rental rate. S.T. at Ex. 9 at 49, 52. Accordingly, we will not consider these two comparable rentals.

From his potential gross income calculations, Mr. Emig deducted a 10% vacancy and credit loss for the subject property. S.T. at Ex. 9 at 54. This left an estimated effective gross income of \$541,620. Noting that the leases were triple net, Mr. Emig deducted expenses only for management, legal and accounting of 5% and maintenance and reserves of \$.50 per square foot. These deductions resulted in a net operating income of \$454,359. Id.

Mr. Emig then calculated a capitalization rate by analyzing nine recent sales of retail properties deemed similar to the subject in overall investment characteristics. The nine sales indicate a range from 8.07 to 9.9%. Id. Given the subject's average location and physical attributes, Mr. Emig arrived at an overall capitalization rate of 9.25% for the subject. Id. Applying this capitalization rate to the net operating income yielded a value of \$4,900,000 under the income approach. S.T. at Ex. 9 at 54, 57.

Mr. Emig concluded to a value of \$5,000,000 under the sales comparison approach and \$4,900,000 under the income approach. Mr. Emig found both approaches to be "relevant and meaningful." S.T. at Ex. 9 at 58. In reconciling the values found under the two approaches, Mr. Emig concluded to a final value of \$4,950,000 for the subject property as of January 1, 2005. Id.

Emig's testimony and appraisal report were the only evidence provided to the BOR. The BOR determined that the value of the subject property should be the value concluded to in Emig's appraisal, or \$4,950,000. S.T. at Ex. 11.

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 appellant BOE criticizes Emig's appraisal report. With respect to Emig's sales comparison approach and eight comparable sales utilized therein, the BOE argues that all of the buildings were empty at the time of the sale, thus making all of the sales second generation facilities. BOE Brief at 2. In contrast, the BOE argues that the "subject continues to be occupied by the tenant for which it was built, indicating economic viability which more than likely did not exist at the other comparables. Additionally, it is well recognized that empty buildings will typically sell at a discount to occupied buildings. Therefore, sales of properties occupied by first generation users should have been included." Id at 2-3. "By failing to include/consider sales of first generation users, Emig undervalued the subject by artificially limiting its market to only second-generation properties." Id. at 4.

With respect to Emig's income approach, the BOE argues that the 5% management fee is inappropriate and unreasonable since the comparable rentals were

triple net leases. Id. The BOE also argues that Emig's deduction of \$.50 per square foot for maintenance and reserves is too high and instead submits that \$.10 per square foot is more appropriate. Id. Finally, the BOE contends that an 8.5% capitalization rate is more realistic for the subject property than Emig's 9.25% capitalization rate. Id. at 5. By eliminating the 5% management expense, utilizing a \$.10 per square foot deduction for maintenance and reserves, and applying a capitalization rate of 8.5%, the BOE calculates a value of \$5,800,000 under the income approach. Accordingly, the BOE argues that the value of the subject property is \$5,800,000 as of January 1, 2005. Id. We disagree.

We believe that Mr. Emig's appraisal report is sufficiently supported with evidence from the market to confirm the values contained therein. Mr. Emig's research apparently did not uncover any sales between first generation users, e.g., Meijer, Wal-Mart, Lowe's, or Target. The BOE argues that Mr. Emig's sales comparables are not similar to the condition or "economics" of the subject property. The BOE argues that in the absence of relevant sale data, the subject should be valued under Emig's income approach as modified by the BOE in the BOE's brief. In the end, however, the BOE has offered no evidence in support of its modified income approach, much less any evidence of any sales between first generation users.

With respect to Emig's sales comparison approach, the BOE argues that the buildings in the comparable sales were empty at the time of the sale and thus, are not truly comparable to the subject since the subject is occupied. We do not agree. Simply because the sales comparables are not occupied does not render them

inapplicable to the analysis of the subject. All of the comparables considered are similar, big-box, discount storerooms, and six of the eight comparables were built within four years of the subject. Additionally, six of the eight sales occurred within 20 months of the tax lien date at issue herein. Emig conceded certain differences between the comparable sales and the subject and adjusted the sale prices for such differences, which include the date of sale/market conditions, location, site size, site utility, quality, age, condition and building size. By doing so, Emig arguably compensated for the differences between the properties.

We also find that the income approach to value utilized by Emig provides competent support for his opinion of value. We consider eighteen of the twenty comparable rentals to be relevant to the income analysis. The remaining two rentals are asking rates and therefore not relevant. Three of the comparable rentals are big-box retail facilities located in the same county as the subject and are fairly close in size to the subject. The three comparable rentals range in size from 109,800 square feet to 130,848 square feet while the subject is approximately 120,360 square feet. Tenants in eleven of the comparable rentals are first generation tenants and include Sam's Club, Home Depot, Lowe's, BJ's Wholesale, and other Wal-Mart stores. We find that Emig's comparable rentals are comparable to the subject. Furthermore, there is no evidence in the record that refutes the rent/expense comparables and capitalization rate employed by Emig in his income approach.

Citing a market survey, the BOE contends that an overall capitalization rate of 8.5% is more appropriate and without providing any support, the BOE contends

that the 5% management expense should be eliminated. Also, without providing any support, the BOE argues that maintenance and reserves should be \$.10 per square foot. Notwithstanding the BOE challenging certain aspects of Emig's income approach, we find that the evidence in the record supports his income approach.

Based upon our review of the evidence before us, we find that the property owner's appraisal report, which was supported by the testimony of the appraiser before the BOR, constitutes sufficient competent and probative evidence that the value of the subject was \$4,950,000 as of January 1, 2005. We further find that the appellant BOE has failed to satisfy its burden of persuasion and has not come forward with competent and probative evidence that the value for the subject property was \$5,800,000 for tax year 2005. *Cleveland; Springfield; and Mentor Exempted*, supra. As we have previously stated, the appellant BOE has 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 fiscal officer discloses no other evidence on which we may base an opinion of value. In summary, the BOE's arguments fail to overcome the burden met by the property owner's evidence presented to the BOR.

Thus, 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	\$ 1,182,230	\$ 413,780
BUILDING	<u>3,767,770</u>	<u>1,318,720</u>
TOTAL	\$ 4,950,000	\$ 1,732,500

It is the decision and order of the Board of Tax Appeals that the Summit County Fiscal Officer 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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