

WHTR Real Estate L.P.,)	
)	
Appellant,)	Case No. 97-J-50
)	
vs.)	(REAL PROPERTY TAX)
)	
Board of Revision of)	DECISION AND ORDER
Cuyahoga County and)	
Cuyahoga County Auditor,)	
)	
Appellees,)	
)	
and)	
)	
Lakewood Board of Education,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	- Arter & Hadden
	By: Karen Bauernschmidt
	925 Euclid Avenue
	1100 Huntington Bldg.
	Cleveland, Ohio 44115
For the County	- Stephanie Tubbs Jones
Appellees	Cuyahoga County Prosecutor
	By: Gregory B. Rowinski
	Assistant
	1200 Ontario Street
	Cleveland, Ohio 44115
For the Board of	- No Appearance
Education	Lakewood Board of Education
	1470 Warren Road
	Lakewood, Ohio 44107

Entered October 30, 1998

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed herein by WHTR Real Estate L.P. ("Appellant") Appellant has appealed from a decision of the Cuyahoga County Board of Revision which determined the value of the subject real property for tax year 1994. The property is

located in the Lakewood taxing district and is identified on the auditor's records as parcel 312-17-020. The value determined by the auditor and the board of revision is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 118,400	\$ 41,440
Building	\$11,658,510	\$4,080,080
Total	\$11,776,910	\$4,121,520

In the notice of appeal the appellant has alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 118,400	\$ 41,440
Building	\$ 5,095,720	\$1,792,950
Total	\$ 5,214,120	\$1,834,390

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified herein by the board of revision, the evidence adduced at the hearing conducted herein which is contained in the hearing record, ("R.") and the briefs filed by counsel for the parties.

The subject property is a fifteen story steel frame and precast concrete multi-tenant office building, constructed in 1974, located at 14600 Detroit Road in Lakewood, Ohio. (R. 5; Ex. 1, p. 13) The first floor is divided into retail space. (Ex. 1, p. 13) The upper floors comprise both partial floor and full floor office uses. (Ex. 1, p. 13)

The appellant acquired the property from Travelers Insurance Company on September 30, 1994, along with other properties, for a total price of \$44,205,000. (Ex. 1; Sept. 29,

1994 purchase agreement, p. 11) Of this total purchase price the appellant allocated \$5,214,122 to the subject property on its board of revision complaint.

The appellant has conceded that the allocation of the purchase price was arbitrarily done, and therefore submitted the testimony and appraisal report of Richard G. Racek in support of its conclusion of value. Counsel for the board of revision has agreed that the allocated price should not be accepted as indicative of the property's value, but contends that the appraisal is flawed because it does not contain an analytical breakdown of the lump sum price, or contain reasons why an analysis of the lump sum price was impossible. (Appellee's brief p. 6)

In Conalco v. Bd. of Revision (1977), 50 Ohio St.2d 129, the Court stated in its syllabus:

"In valuing real property sold within three days of the tax lien date in an arm's-length transaction, the best evidence of 'true value in money' is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale."

Several factors distinguish the within appeal from Conalco. In Conalco, the appraiser did not consider whether the allocated value reflected the property's true value because he wholly ignored the arm's-length sale of the property. However, the within purchase agreement indicates that the allocated value is merely a value stated by the seller of the property and is not intended for any other use, and particularly is not intended

to be used in any manner by the purchaser. (R. 8; Agreement For Purchase and Sale p. 11) Mr. Racek analyzed the sale, but did not allocate a value because he was appraising the property as of a different date than the closing date of the transaction. (R. 46) He did not ignore the allocated sale price, but considered it in his analysis, and accorded it appropriate weight, taking into consideration the fact that the board of revision had rejected the allocated sales price as probative evidence of the property's value as of January 1, 1994. Therefore the appellant submitted independent appraisal evidence to determine the value of the property as of tax lien date.

Mr. Racek concluded that the property had a value of \$5,255,000 as of January 1, 1994. In his valuation analysis he reviewed the three traditional approaches, but declined to use the cost approach due to the building's large amount of functional and economic obsolescence. (R. 14)¹ He cited several factors that he considered in making this determination, such as the roof and windows which needed to be replaced as of tax lien date. (R. 12, 14) In addition the bathrooms and elevators were not handicap accessible, and the building had no on-site parking. (R. 13)

¹ Ohio Adm. Code 5705-3-03 (D) provides that in the absence of a recent arm's-length sale, "true value in money" may be arrived at by an appraisal which considers any or all of the following recognized valuation approaches: (1) the market approach, in which recent sales of comparable properties are analyzed; (2) the income approach, in which net income from the property is capitalized; and (3) the cost approach, which adds the depreciated cost of the improvements to the land to the value of the land itself.

His market approach examined four sales that occurred in the greater Cleveland area between January, 1992 and December, 1994, making adjustments for physical or economic differences that existed between the properties. (R. 15). The sales indicated an overall sales price range between \$1,125,000 and \$5,000,000. Relying upon these sales, he used an adjusted sale price range from \$16.72 per square foot to \$55.05 per square foot of net rentable area. (Ex. 1, p. 27)

His first sale was a seven story office building with a two level parking garage. He made a minus adjustment for the garage which was offset by a plus adjustment for the difference in age and condition between this building and the subject. (Ex. 1, p. 27; R. 16) His second sale was a seven story office building with a basement (Ex. 1, p. 27), which is physically attached on the first and second floor to the subject property. (R. 17) He made minus adjustments because this building is much newer than the subject, and is in superior condition. (Ex. 1, p. 27) He also made minus adjustments because it was acquired indirectly from a lender that utilized below market financing to attract a purchaser. (Ex. 1, p. 27; R. 19) The third sale comprised a three story multi-tenant office building. (Ex. 1, p. 27; R. 22) He made minus adjustments for size differential, locational difference, and the superior condition of this property. (Ex. 1, p. 28) His fourth sale was a single tenant office building. (Ex. 1, p. 28; R. 23) He made minus adjustments for the building's superior condition, for its

convenient freeway access, and for the interior office finish.
(Ex. 1, p. 28)

After taking into consideration the various adjustments needed for the condition of the improvements, building size, location and overall desirability, he concluded that the appropriate unit value applicable to the subject was in a range between \$22.00 and \$23.00 per square foot of building area. He chose the middle of the range, multiplying the subject's 244,446 square feet by \$22.50 producing a rounded value of \$5,500,000 via the market approach. (Ex. 1, p. 28; R. 25)

His income approach analysis began by estimating the fair economic rent that the property was capable of generating as of tax lien date. (R. 25; Ex. 1, p. 30) The examples used resulted in rentals that ranged from \$9.00 per square foot to \$12.50 per square foot. (Ex. 1, p. 31; R. 25) Because the subject had to rely on off-site parking and had limited fenestration he concluded that \$11 per square foot, or \$2,688,906, was an appropriate gross income estimate for the subject property. (R. 26; Ex. 1, p. 31)

After making a determination of the economic rent for the subject property he surveyed the market to determine a figure for vacancy and credit loss. He examined the vacancy rates in the vicinity of the subject (R. 27), noting that the area was plagued by a recession during the period in question. As a result, he estimated vacancy and credit loss at twenty percent. (Ex. 1, p. 31; R. 28)

He next made a determination of market expenses using the 1995 Institute of Real Estate Management ("IREM") publication of expense data for the Cleveland Metropolitan Area. (Ex. 1, p. 32; R. 29) As support for the IREM report, he analyzed the subject's 1995 cash flow projections. (Ex. 1, p. 32) Based upon these projections and the median cost to operate a suburban multi-tenant office building documented in the IREM report, he estimated that the total operating expenses before real estate taxes, but including a reserve for replacements and tenant improvements was equivalent to \$6.75 per square foot of net rentable area, or the equivalent of \$1,650,000. (R. 29; Ex. 1, p. 32)

He next extracted an overall capitalization rate from the marketplace. He examined the rates indicated from three comparable sales which occurred between February, 1994, and December, 1994. (Ex. 1, p. 33; R. 30) The sales were bracketed by a low of 8.4 percent and a high of 12.52 percent. (R. 30; Ex. 1, p. 33) He added a provision for real estate taxes of 2.62 percent to produce a total composite rate of 13.62 percent. (R. 30; Ex. 1, p. 33) Dividing his net income of \$672,236 by 13.62 percent produced a rounded value of \$4,950,000 via the income approach. (R. 31; Ex. 1, p. 34) He gave equal weight to the conclusions derived via the two valuation approaches in his final conclusion of value. (R. 31; Ex. 1, p. 35)

In considering the record before us, we acknowledge the affirmative burdens which exist in an appeal to this Board from a decision of a county board of revision finding value. In

its decisions in Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St.3d 336, and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, the Supreme Court made it clear that in an appeal filed pursuant to R.C. 5717.01, there exists no presumption that the values found by a county board of revision are correct. Nevertheless, an appellant has the burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St.3d 318, 319.

We further note that the issue in an appeal from a board of revision is the true value of the subject property. Accordingly, this Board will proceed to examine the available record and to determine value based upon the evidence before us. Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St.3d 120. In doing so, 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.

In State, ex rel. Park Investment Co., v. Bd. of Tax Appeals (1964), 175 Ohio St. 410, the Supreme Court set forth the manner by which the value of real estate is to be ascertained:

"The best method of determining value, when such information is available, is an

actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In Re Estate of Sears (1961), 172 Ohio St., 443, 178 N.E.2d 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market." Id. at 412.

The Board finds Mr. Racek's analysis persuasive. Since the appellant has submitted competent evidence of value, the burden has shifted to the other parties to submit evidence rebutting appellant's evidence. Westhaven, Inc. v. Wood Cty. Bd. of Revision (1998), 81 Ohio St.3d 67. The county opted not to submit affirmative evidence of value, relying instead upon cross-examination of appellant's witness. The Board finds that the cross-examination has failed to discredit the appraiser's conclusions. Therefore based upon the preponderance of the evidence the Board finds and determines that the value of the subject property as of January 1, 1994 is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 203,000	\$ 71,050
Building	\$5,022,000	\$1,757,700
Total	\$5,225,000	\$1,828,750

The auditor of Cuyahoga County is hereby ordered to cause his records to reflect the value determined herein for the

subject real property and to assess the same in accordance
therewith as provided by law. ohiosearchkeybta