OHIO BOARD OF TAX APPEALS

Developers Diversified Realty Corporation, et al.,	)	CASE NOS. 98-A-500
Appellants,	)	98-A-501
vs.	)	(REAL PROPERTY TAX)
Ashland County Board of Revision and Ashland County Auditor,	)	DECISION AND ORDER
Appellees.	)	

APPEARANCES:

For the Appellant - Annrita S. Johnson
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For the County Appellees - James R. Gorry
Special Counsel
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Entered March 17, 2000

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

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the above-named appellants, from a decision of the Ashland County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 1997.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcripts certified to this Board by the county board of revision, the record of the hearing before this Board, and the briefs submitted by counsel to the parties.

The subject real property consists of a retail store, K-Mart, located on approximately 9.5 acres of land in the Ashland City School District taxing district, Ashland County, Ohio, and appears on the auditor's records as parcel numbers P44-085-0-0009-00 and P44-082-0-0008-01. The value of the parcels, as determined by the auditor and retained by the board of revision, is as follows:

PARCEL #P44-085-0-0009-00

	TRUE VALUE	TAXABLE VALUE
Land	$ 751,400	$ 262,900
Bldg	2,132,600	746,410
Total	$ 2,884,000	$1,009,310

PARCEL #P44-082-0008-01

	TRUE VALUE	TAXABLE VALUE
Land	$ 396,400	$ 138,740
Bldg	-0-	-0-
Total	$ 396,400	$ 138,740

Appellant contends that the auditor and the board of revision have overvalued the parcel in question and claim the subject's total market value, based upon an appraisal, is $1,750,000.

The subject, considered in "average" to "good" condition, is an 88,032 square foot discount department store. It is located on the southwest side of the city of Ashland, in a "rural" or "blue collar" area, at the end of the only commercial corridor. It was built in 1977, with an addition in 1992, in a "mixed" area of retail, industrial warehousing, light manufacturing, churches, agricultural land, and single family residential housing. Highway access to the subject is good.

Initially, this Board notes 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 which 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 which rebuts 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.

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 can be calculated by applying any of three alternative methods provided for in OAC 5705-3-03: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income from the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

The appellant offered the appraisal and testimony of Robin M. Lorms, MAI, a state certified general real estate appraiser. Mr. Lorms summarized the subject's functional adequacy by stating that "(T)he physical improvement though functional [ly] adequate from retail side of the business operation is not functionally adequate from a delivery of product function." (Ex. 1, p. 21) The site has good access, maximum parking, and good exposure, but lacks dock doors for product delivery. Future dock expansion would be highly unlikely as well due to the location of the subject and the property line.

Mr. Lorms estimated an economic life for the subject of 50 years, assuming good maintenance. He estimated that although chronologically 22 years old, the subject's effective age should be closer to 15 years due to the earlier renovations, leaving a remaining life expectancy of 35 years. (Ex. 1, p. 21-22)

In discussing the subject's Highest and Best Use, Mr. Lorms indicated that "(T)he subject Highest and Best Use if Vacant and Available if for Limited Industrial commercial development consistent with the subject's current zoning classification L-1, which allows retail and warehouse type development at the subject's location." (Ex. 1, p. 23) He went on to conclude that the Highest and Best Use, as Improved, is its current use. (Ex., 1, p. 24)

Within his report, Mr. Lorms utilized two approaches, the income approach and the market approach, to determine the subject's market value. Mr. Lorms did not utilize a cost approach, indicating that such approach is "applicable primarily as a check against values in the market, especially for facilities of the subject's vintage and use. * * * So a cost approach to value, while it would reflect the replacement cost new, it's very difficult to estimate appreciation [sic], that's typically found in the sales market." (R., p. 20)

Using the sales comparison approach, Mr. Lorms reviewed fourteen sales of vintage big box retail and discount department store properties in the central Ohio area, dating from October 1993 through May 1999. He stated that "(T)he subject property offers structural design and functionality very similar to each of the comparable indications. However the data in some cases requires adjustments for dissimilarities." (Ex. 1, p. 58) After narrowing the sales comparables to the three most similar sales, and adjusting them for differences like condition of sale, location, and physical attributes, he arrived at an adjusted sale price range of $17.53 per square foot to $24.53 per square foot. He concluded to a mid-range value of $20.00 per square foot, or $1,750,000 (rounded). (Ex. 1, p. 62, 63)

Under the income approach, Mr. Lorms first reviewed the current lease in place at the subject, which indicated that the tenant is paying $166,000 annually for the original 55,552 square feet, or $2.99 per square foot, for a 25-year lease, expiring in 2002. The tenant does not pay rent on the space added in 1992 since it is owned by the Kmart Corporation. (Ex. 1, p. 26)

In considering the subject property, Mr. Lorm's report states that "(I)n the subject's case, the location, size of storeroom, physical condition, and overall market area retailing dynamics is considered <u>at best average</u>. The subject property is one contiguous large retail storeroom space located in a smaller satellite city of central Ohio. <u>The ability to attract a large discount department store use to the subject's secondary market area would be lengthy</u>. Kroger vacated the neighboring improvement in the mid 1990's. In 1997 the space was re-leased to Quality Fleet and Farm for $2.49/SF net in "As Is" condition. The absorption of the space well exceeded one year." (Ex. 1, p. 26, 27) Mr. Lorms concluded that it was typical for owners of large space located in a secondary market, like the subject, to split it into smaller spaces, and, if the owner of the subject would not be willing to split the existing space, the absorption period would be lengthened and the potential rental rate would be reduced. (Ex. 1, p. 28)

In order to determine the rental rate for the subject, Mr. Lorms reviewed nine leases of large storerooms located in market areas similar to the subject's. The net rental rate ranged from a low of $2.49 per square foot to a high of $5.05 per square foot. After adjusting these rates for differences in location, size of storeroom, condition of improvement, and overall market area-retailing dynamics, the rent ranged from a low of $2.45 to a high of $3.83 per square foot. Mr. Lorms concluded that "<u>the subject's physical and locational attributes warrant a rental rate at the low end of the range say $3.00/SF for the entire 88,032 SF space or $3.50/SF assuming the space were to be split for multiple tenancy</u>." (Ex. 1, p. 38) He treated the gross income estimate on a net basis, assuming the tenant would be responsible for its pro rata share of taxes, common area maintenance, and insurance.

Thus, assuming a multiple tenancy, the rental of $308,112 added to the tenant reimbursements of $105,400 resulted in a gross income potential of $413,512. To that figure, Mr. Lorms applied a vacancy/credit loss rate of 15%, or $62,026, resulting in an effective gross income of $351,486. Deducted from the EGI are expenses, including common area maintenance, insurance, management fees, and reserves for replacement totaling $83,500, and, resulting in a net operating income of $267,986. The NOI was capitalized at 12.1%, based upon comparable sales and the band of investment approach (including a tax additur of 1.6), resulting in a final value, using the income approach, of $2,200,000 (rounded). From that amount, Mr. Lorms deducted $430,000 for three tenant re-configuration costs, for a total value of $1,770,000.

Treating the subject as a single tenancy building, Mr. Lorms completed a second income approach, determining a potential gross income of $369,496, based upon $3.00 per square foot rental and tenant reimbursements of $105,400. From the potential gross income, Mr. Lorms deducted 15% vacancy and credit loss, resulting in an effective gross income of $314,072. He deducted expenses of $134,300, including real estate taxes, common area maintenance, insurance, management fees, miscellaneous expenses, and reserves for replacement. The resultant net operating income, $179,772 was capitalized at 10.5%, for a final value of $1,700,000 (rounded). Based upon these two variations under the income approach, Mr. Lorms concluded to a final value under the income approach of $1,700,000.

In reconciling the results from the two approaches to value that he utilized, Mr. Lorms indicated that he relied upon both of them. He concluded to a value "indicated within both The Market Approach to Value and The Income Approach to Value with a conclusion at the upper end of the range at, $1,750,000 "As Is" effective January 1, 1997." (Ex. 1, p. 64)

The county did not offer any appraisal testimony or other evidence of value. Instead, it chose to rely upon its cross examination of appellant's witness to establish that the appraisal appellant offered did not constitute competent, probative, and credible evidence of value of the subject.

First, in his brief, appellees' counsel tries to use an appraisal report completed by appellant's appraiser's firm for another property to discredit the subject report before us. However, the other report was not offered or received into evidence in this case, and, we shall not consider this argument.

Next, appellees' counsel criticizes the fact that appellant's appraiser was not given requested information by the property owner. While this was unfortunate, it does not automatically call into question the credibility of the appraisal itself. Such problem is not unique, as many appraisals suffer under the same constraints, yet they still prove to be accurate reflections of market value. Counsel also criticized the fact that appellant's appraiser did not request the cost figures for the subject property's expansion and remodeling in 1992. Considering that the tax year in question is 1997, we agree with the appraiser's conclusion that such information was not relevant to his analysis. While it is always helpful to have as much information as possible concerning the history of a property, we do not find that the appraiser's failure to request such information should be considered a flaw in his report.

Questions were also raised regarding the appraiser's reliance upon hearsay in making his valuation determination. It is inevitable, in the appraisal business, that appraisers will rely upon information about the real estate market provided by others. Mr. Lorms' report indicates that he spoke with two real estate developers concerning their perception of lease-up time for large, vacant department stores in small town markets, as well as their impressions about an appropriate capitalization rate for the subject. Mr. Lorms also utilized a study detailing absorption rates and re-leasing of vacated discount department stores in determining his vacancy rate under the income approach. We find that all of the information relied upon was borne out in the lease and market comparables data that Mr. Lorms incorporated in his report as well as other sources (e.g., the band of investment technique was also completed to determine a capitalization rate). Accordingly, we find the information obtained from other individuals and highlighted in Mr. Lorms' report was sufficiently supported by a number of sources to be credible.

Finally, appellees' counsel criticizes both the rent comparables and the sales comparables utilized in appellant's report. With regard to the sales comparables under the market approach, Mr. Lorms did not utilize the price per square foot of what was termed the "best" comparable because he felt there was a problem in doing so, i.e., he felt the buyer paid too much for the property in that sale. Presumably, he adjusted the other two sales he relied upon for the differences in their quality and condition and physical attributes, as listed in his market sales adjustment grid. (Ex. 1, p. 62) While appellees' counsel may not agree with the methodology used, or the adjustments made, we are not convinced by counsel's protestations that appellant's appraiser has utilized inappropriate comparables or treated his adjustments to them improperly. Likewise, with regard to Mr. Lorms' rent comparables, we find that his conclusion to values of $3.00 per square foot and $3.50 per square foot for the subject are supported by his comparables, as listed in his report, as well as the associated explanation given therein.

The only issue raised by appellees' counsel that we find to be valid concerning the valuation issue at hand is the question about the proper dimensions of the subject property. Appellant's appraiser indicated that he was told the subject measured approximately 88,000 square feet, but he could not remember the source of such information. He confirmed that he did not measure the building himself and that he was aware that the county records indicated the building measured 91,852 square feet. Since appellant's appraiser did not confirm the measurement he had been given, and, could not confirm his source for that information, we will rely upon the dimensions set forth in the county's property record cards.

Thus, 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, and amending the appraisal report to reflect the additional square footage, as discussed above[1], the total value of the subject property for tax year 1997 shall be $1,870,000, allocated as follows:

PARCEL #P44-085-0-0009-00

	TRUE VALUE	TAXABLE VALUE
Land	$ 432,700	$ 151,445
Bldg	1,231,600	431,060
Total	$ 1,664,300	$ 582,505

PARCEL #P44-082-0008-01

	TRUE VALUE	TAXABLE VALUE
Land	$ 205,700	$ 71,995
Bldg	-0-	-0-
Total	$ 205,700	$ 71,995

It is the Decision and Order of the Board of Tax Appeals that the Ashland County Auditor shall list and assess the subject property in conformity with this decision.

[1] Mr. Lorms' two income approaches were amended to reflect values of $1,870,000 and $1,800,000 and his market approach was amended to reflect a value of $1,837,000. Concluding as Mr. Lorms did, at the upper end of the range, the subject's final value is determined to be $1,870,000.