

OHIO BOARD OF TAX APPEALS

FIP REALTY CO. LTD., (et. al.),

CASE NO(S). 2014-1120, 2014-1121

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

FRANKLIN COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s) - FIP REALTY CO. LTD.
Represented by:
TIMOTHY J. MCGRATH
STRIP HOPPERS LEITHART MCGRATH & TERLECKY CO.
575 S. THIRD ST.
COLUMBUS, OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOLS
Represented by:
KELLEY A. GORRY
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6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, May 26, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 010-001299-00, 010-014820-00, 010-034853-00, 010-037943-00, 010-058014-00, 010-103958-00, 010-103969-00, 010-104056-00, 010-104075-00, 010-104089-00, 010-104247-00, 010-104336-00 and 010-126686-00, for tax years 2010 and 2011. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717, the record developed at this board's hearing, and any written argument submitted by the parties.

The subject parcels comprise a multi-tenant industrial facility, which includes fourteen improvements spread across approximately 68.5 acres of land. For tax year 2010, the county auditor initially assessed the subject property at a total true value of \$5,981,600. The appellant property owner, FIP Realty Co.

Ltd. ("FIP"), filed a complaint with the BOR, which requested that the subject property be valued at \$3,000,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request. At the hearing before the BOR, both parties were represented by counsel. FIP submitted the testimony of Jeffrey Katz, property manager for FIP, who detailed the decades long environmental issues affecting the subject property and FIP's sporadic efforts to address such concerns. As a result of financial difficulties, Katz testified, FIP initially went into receivership in November 2010, for a single day, and went into receivership again in March 2011. As a result of the receivership, the owner of FIP, Belmar Equities, LLC ("Belmar"), purchased the mortgage secured by the subject property for \$300,000 from Sun America Insurance Company ("Sun America") in December 2011. In reliance upon the price at which the mortgage was transferred, FIP amended its opinion of value of the subject properties to \$300,000. FIP also submitted a number of documents, i.e., income and expense information and information about the environmental issues, in support of its requested decrease in value. Counsel for the BOE objected to the documents on hearsay grounds, and also objected to much of Katz's testimony given that he had no ownership interest in FIP, and therefore could not provide an opinion of value as the owner; was not an appraiser, and therefore could not provide an opinion of value as an expert; and had no firsthand knowledge of the December 2011 transfer. The BOR determined that the transfer of debt in December 2011 was not the transfer of the subject property and further determined that the transfer was not the best indication of value. Having no recent arm's-length sale and no appraisal report performed and attested to by a qualified expert for the tax lien dates at issue, the BOR voted to retain the initially assessed value. Thereafter, FIP appealed to this board.

At this board's hearing, FIP submitted a number of documents and witnesses in an effort to satisfy its burden on appeal. FIP submitted the testimony of Michael J. Sermon, a commercial real estate broker who testified about the condition of the subject property and his efforts to assist FIP in leasing space in the subject property. FIP also submitted the testimony of Nathaniel Wanner, a geologist and project manager for Pandey Environmental ("Pandey"), who testified about the environmental issues affecting the subject properties; Pandey's environmental consulting work with FIP, which commenced in April 2010; the involvement of the Ohio Environmental Protection Agency ("EPA"); and FIP's efforts to remediate the environmental issues. Robert Weiler, an MAI appraiser, also testified on behalf of FIP, specifically regarding his appraisal methods and report, which opined the value of the subject property to be \$895,000 as of the relevant tax lien dates. Katz, who previously testified at the BOR, supplemented the record with additional testimony. The BOE submitted the report and testimony of Thomas Sprout, an MAI appraiser, which opined the value of the subject property to be \$2,300,000 as of January 1, 2010 and \$2,400,000 as of January 1, 2011. Both parties submitted written argument subsequent to the hearing, which expounded their respective positions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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. However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

While an owner is entitled to provide an opinion of his property's value, to be considered probative such an opinion must be supported with reliable tangible evidence of a property's value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347; See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994),

69 Ohio St.3d 572. The weight to be accorded an owner's evidence and corresponding testimony is left to the sound discretion of the board. *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs 2 and 3 of the syllabus.

In this matter, apparent from the record, FIP has abandoned the argument that Belmar's \$300,000 purchase of the mortgage and/or note, secured by the subject property, from Sun America in December 2011 was the best indication of the subject property's value. However, to the extent that FIP has not abandoned such argument, we find that the December 2011 transfer did not involve the transfer of a "tract, lot, or parcel," and had no bearing on the subject property's value. R.C. 5713.03; *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455.

Because there is no recent arm's-length sale of the subject property upon which we may rely, we proceed to consider the parties' appraisal evidence.

As noted above, both FIP and BOE submitted appraisal evidence, which provide opinions of value as of the tax lien dates, were prepared for tax valuation purposes, and attested to by qualified experts. We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

We start our analysis with FIP's appraisal evidence performed by Robert Weiler. Weiler considered two approaches to valuing real property, i.e., the income approach and the sales comparison approach, as of the relevant tax lien dates. He began his analysis with the 14.40 acres of developable vacant land within the subject property. Weiler selected seven comparable vacant land sales, which were sold or were in contract after July 2010. The land sale comparables ranged in price from \$25,000 per acre to \$39,281 per acre. He then adjusted the land sale comparables to account for differences between the land sale comparables and the vacant land portion of the subject properties, i.e., differences in market conditions, location and size. After making adjustments, Weiler concluded that the vacant land portion of the subject property would sell for \$25,000 per acre, which he applied to the 14.40 acres of vacant land situated on the subject property, to arrive at a value of \$360,000.

For his income approach analysis, Weiler selected seven lease comparables from 2012, which ranged from approximately \$1.95 per square foot to \$4.25 per square foot. He then concluded to a market rent of \$2.00 per square foot for the subject properties, which he multiplied by the improvements' gross building area to arrive at a potential gross income of \$1,786,522. Weiler next concluded to a vacancy and collection loss factor of 17.5%, to arrive at an effective gross income ("EGI") of \$1,473,881. Based upon a survey of the market in 2012, he then estimated the operating expenses to be \$893,261, or \$1.00 per square foot, and estimated the reserve for replacement to be \$223,315, or \$0.25 per square foot, which totaled \$1,116,576. Weiler subtracted the expenses from the EGI to conclude to a net operating income ("NOI") of \$357,304. He capitalized the NOI at a rate of 14.7484%, including tax additur, to preliminarily conclude the value of the subject property to be \$2,785,000 "At Market Rates, As Stabilized, and As Clean" based upon the income approach. However, he further reduced the subject property's value based upon the amount that FIP spent to remediate the environmental issues subsequent to the relevant tax lien dates, \$2,215,000, via a discounted cash flow analysis. In so doing, Weiler finally concluded that the "As Is" value of the subject property to be \$570,000 as of January 1, 2010 and January 1, 2011.

For his sales comparison approach, Weiler compared the subject property's features to those of 11 comparable properties, which sold between June 2008 and August 2011. The sale comparables ranged in price from \$1.50 per square foot of gross building area to \$21.15 per square foot. He then adjusted the sale comparables to account for differences in market conditions, location and size. After making adjustments, Weiler concluded that the subject properties would sell for an average \$3.08 per square foot of gross building area, to conclude to a value of \$2,750,000. After adding the value of the 14.40 acres of developable land, \$360,000, Weiler preliminarily concluded the value of the subject property to be \$3,110,000 based upon the sales comparison approach. However, he further reduced the subject property's value by FIP's remediation cost, via discounted cash flow analysis. In so doing, Weiler finally concluded that the "As Is" value of the subject properties to be \$895,000 as of January 1, 2010 and January 1, 2011.

Weiler reconciled the values indicated by the various approaches to value, but placed the most emphasis on the sales comparison approach, and concluded to an overall value of the subject property to be \$895,000 as of January 1, 2010 and January 1, 2011.

We now turn to the BOE's appraisal evidence performed by Sprout, which considered two approaches to valuing real property, i.e., the income approach and the sales comparison approach, as of the relevant tax lien dates. For his income approach analysis, Sprout selected four lease comparables, which ranged from approximately \$.50 per square foot to \$1.70 per square foot. He then adjusted the lease comparables to account for differences in market conditions, location and size. After making adjustments, Sprout concluded to an average market rent of \$1.74 per square foot for the subject property, on a modified gross basis, and derived the subject property's potential gross income to be \$1,550,521 for both tax lien dates. He next concluded to a vacancy and collection loss factor of 16% of potential gross income for tax year 2010 and 14% of potential gross income for tax year 2011 to arrive at an effective gross income ("EGI") of \$1,302,438 and \$1,333,448, respectively. Based upon a survey of the market, he then estimated the expenses to be \$663,607 for tax year 2010 and \$665,157 for tax year 2011, and concluded to a net operating income ("NOI") of \$638,831 and \$668,291, respectively. He applied capitalization rates of 27.68% and 27.75%, respectively, including tax additur, which considered the risk of the environmental issues to arrive at his final conclusion of value, based upon the income approach to value, of \$2,300,000 as of January 1, 2010 and \$2,400,000 as of January 1, 2011.

For his sales comparison approach, Sprout compared the subject property's features to those of six comparable properties, which sold between August 2007 and January 2011. The sale comparables ranged in price from \$1.92 per square foot of gross building area to \$8.73 per square foot. He then adjusted the sale comparables to account for differences in presence of market conditions, location and size. Sprout testified that he adjusted the sale comparables downward to reflect that the comparables were not environmentally contaminated. After making adjustments, Sprout concluded that the subject property would sell for \$2.50 per square foot of gross building area as of January 1, 2010 and \$2.65 per square foot of gross building area as of January 1, 2011. In so doing and in reliance upon the sales comparison approach, Sprout concluded the subject property's value to be \$2,235,000 as of January 1, 2010 and \$2,365,000 as of January 1, 2011.

Sprout reconciled the values indicated by the various approaches to value, but placed the most emphasis on the income approach, and concluded to an overall value of the subject property to be \$2,300,000 as of January 1, 2010 and \$2,400,000 as of January 1, 2011.

Upon review, we find Sprout's appraisal report most accurately reflects the value of the subject property as of the relevant tax lien dates. Evident from the appraisers' testimonies and reports, it is undisputed that the environmental issues negatively impacted the subject properties' value. However, the appraisers differed on the best method of measuring such impact. In *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, the court, in rejecting an appraiser's post-capitalization deduction of rent loss, leasing commissions, and tenant buildout, explained that "[i]f appellants'

appraiser believed adjustments needed to be made in his income approach, he should have made adjustments in his determination of income, expenses, or capitalization rate. The BTA properly disregarded the adjustments made after the value had been calculated by the income approach." *Id.* at 303. Therefore, in this matter, we find that the best method for measuring the impact of the environmental issues was through downward adjustments of sale comparables free of environmental contaminants under the sales comparison approach, which would reflect the superiority of the comparables, and/or through the selection of a higher capitalization rate under the income approach, which would account for the higher risk associated with the environmental issues present on the subject properties. Here, Sprout adjusted the sales comparables downward to account for their "clean" status and selected a higher capitalization rate of 25%. We further find that Sprout appropriately gave the most weight to the income approach given the income-producing characteristics of the subject property as of the tax lien dates.

Moreover, we find Weiler's appraisal report underestimated the subject property's value by deducting the actual cost of environmental remediation. Ohio courts, as well as this board, have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227; *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397; *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. Although FIP argues that Weiler did not make a dollar-for-dollar reduction of the remediation costs because Weiler discounted the costs based upon the time value of money, the record does not support such assertion. Page 103 of Weiler's appraisal report demonstrates that Weiler conducted a discounted cash flow analysis to determine the "DISCOUNTED VALUE OF INCOME STREAM." Initially, we note that a discounted cash analysis for determining value is not included in the valuation methods provided for in Ohio Adm. Code 5705-3-03(D). Instead, the rule, promulgated by the Tax Commissioner, provides for direct capitalization of income (in addition to the sales comparison and cost approaches). This board has previously and considered rejected discounted cash flow analyses, noting that such approaches can result in an understated value. See, e.g., *Webb Corp. v. Lucas Cty. Bd. of Revision* (June 3, 1994), BTA No. 1992-K-1438, unreported, affirmed *Webb Corp. v. Lucas Cty. Bd. of Revision* (1995), 72 Ohio St.3d 36. See, also *James Navratil Dev. Co. v. Medina Cty. Bd. of Revision* (Apr. 15, 2014), BTA No. 2011-2941, unreported. As such, we have concluded that the value expressed by the discounted cash flow analysis derives investment value, not market value for ad valorem tax purposes.

We also find the testimony of the real estate broker, Sermon, to be unpersuasive. We have previously noted that real estate salespeople "have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." *The Appraisal of Real Estate* (13th Ed. 2008), 8-9.

Likewise, we do not find Katz's testimony to be competent and probative evidence of the subject properties' value. In *Worthington City Schools Bd. of Educ. v. Franklin Cty. Bd. of Revision*, 2014-Ohio-3620, the Supreme Court stated that a corporation can convey its owner-opinion of value "so long as an officer or employee associated with and knowledgeable about the management of the property is available to convey the owner opinion." *Id.* at ¶31. See, also, *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621, 627. The record of the BOR's hearing and this board's hearing demonstrates that Katz began managing the subject property at the beginning of 2010 under his property management company. We conclude that Katz was not an owner of the subject property, an employee of the owner of the subject properties or an appraiser. Thus, Katz was not qualified to render an opinion of the subject property's value.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find Sprout's appraisal report, which concluded that the overall value of the subject property to be \$2,300,000 as of January 1, 2010 and \$2,400,000 as of January 1, 2011, to be competent and probative and the best indication of the subject property's value as of the effective tax lien dates. We will utilize the percentages reflected in the county auditor's initial values to allocate value between the several parcels. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2010, were as follows:

PARCEL NUMBER
010-001299-00
TRUE VALUE
\$29,840
TAXABLE VALUE
\$10,440

PARCEL NUMBER
010-014820-00
TRUE VALUE
\$19,460
TAXABLE VALUE
\$6,810

PARCEL NUMBER
010-034853-00
TRUE VALUE
\$17,500
TAXABLE VALUE
\$6,130

PARCEL NUMBER
010-037943-00
TRUE VALUE
\$5,040
TAXABLE VALUE
\$1,760

PARCEL NUMBER
010-058014-00
TRUE VALUE
\$14,380
TAXABLE VALUE
\$5,030

PARCEL NUMBER
010-103958-00
TRUE VALUE

\$12,730
TAXABLE VALUE
\$4,460

PARCEL NUMBER
010-103969-00
TRUE VALUE
\$816,550
TAXABLE VALUE
\$285,790

PARCEL NUMBER
010-104056-00
TRUE VALUE
\$1,362,520
TAXABLE VALUE
\$476,880

PARCEL NUMBER
010-104075-00
TRUE VALUE
\$1,150
TAXABLE VALUE
\$400

PARCEL NUMBER
010-104089-00
TRUE VALUE
\$5,350
TAXABLE VALUE
\$1,870

PARCEL NUMBER
010-104247-00
TRUE VALUE
\$7,080
TAXABLE VALUE
\$2,480

PARCEL NUMBER
010-104336-00
TRUE VALUE
\$3,500
TAXABLE VALUE
\$1,230

PARCEL NUMBER
010-126686-00
TRUE VALUE
\$4,920
TAXABLE VALUE

\$1,720

It is further the order of this board that the true and taxable values of the subject properties, as of January 1, 2011, were as follows:

PARCEL NUMBER

010-001299-00

TRUE VALUE

\$31,140

TAXABLE VALUE

\$10,900

PARCEL NUMBER

010-014820-00

TRUE VALUE

\$20,300

TAXABLE VALUE

\$7,110

PARCEL NUMBER

010-034853-00

TRUE VALUE

\$18,260

TAXABLE VALUE

\$6,390

PARCEL NUMBER

010-037943-00

TRUE VALUE

\$5,260

TAXABLE VALUE

\$1,840

PARCEL NUMBER

010-058014-00

TRUE VALUE

\$15,010

TAXABLE VALUE

\$5,250

PARCEL NUMBER

010-103958-00

TRUE VALUE

\$13,280

TAXABLE VALUE

\$4,650

PARCEL NUMBER

010-103969-00

TRUE VALUE

\$852,050

TAXABLE VALUE
\$298,220

PARCEL NUMBER
010-104056-00
TRUE VALUE
\$1,421,760
TAXABLE VALUE
\$497,620

PARCEL NUMBER
010-104075-00
TRUE VALUE
\$1,200
TAXABLE VALUE
\$420

PARCEL NUMBER
010-104089-00
TRUE VALUE
\$5,580
TAXABLE VALUE
\$1,950



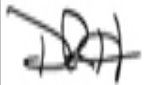
PARCEL NUMBER
010-104247-00
TRUE VALUE
\$7,380
TAXABLE VALUE
\$2,580

PARCEL NUMBER
010-104336-00
TRUE VALUE
\$3,650
TAXABLE VALUE
\$1,280

PARCEL NUMBER
010-126686-00
TRUE VALUE
\$5,140
TAXABLE VALUE
\$1,800

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

BOARD OF TAX APPEALS

RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary