

OPINIONS OF THE SUPREME COURT OF OHIO

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Oakwood Club, Appellant, v. Cuyahoga County Board of Revision et al., Appellees.

[Cite as Oakwood Club v. Cuyahoga Cty. Bd. of Revision (1994), Ohio St.3d .]

Taxation -- Real property valuation -- Board of Tax Appeals' decision will not be disturbed, when.

(No. 93-519 -- Submitted December 20, 1993 -- Decided September 14, 1994.)

Appeal from the Board of Tax Appeals, Nos. 90-M-1446 and 90-M-1459.

The issue in this appeal is the true value of the Oakwood Club, a private country club, which occupies approximately one hundred fifty-six acres of land, ninety-four acres in the city of Cleveland Heights and sixty-two acres in the city of South Euclid. Oakwood's facilities include an eighteen-hole golf course, driving range, swimming pool, eight outdoor tennis courts, an indoor tennis facility with four tennis courts, a clubhouse and several auxiliary buildings.

Oakwood's clubhouse, originally built as a private residence around 1900, has been remodeled since, with major restorations done in 1971 and 1973. The clubhouse has administrative offices, men's and women's locker rooms, various card and meeting rooms, a living room, a barroom, a kitchen and a large dining facility. On the lower level are service areas, squash courts, an indoor golf teaching area, saunas and a tennis lounge. Additional auxiliary buildings are the pro shop, office, drink house, and buildings for maintenance, golf cart storage, and summer day camp. There is also an extensive asphalt parking area.

For tax year 1988, the Cuyahoga County Auditor assessed the true value of the property at \$3,373,950. Upon complaint by Oakwood, the Cuyahoga County Board of Revision agreed with that valuation and Oakwood appealed to the Board of Tax Appeals ("BTA").

The evidence presented at the BTA consisted of the expert appraisal reports and testimony of Richard Van Curen, for appellant Oakwood, and Charles Braman, for appellee board of revision. The appraisers agreed that the income approach to

value was inappropriate and each of them utilized the cost approach and the market comparison approach. Van Curen estimated the true value at \$2,600,000, while Braman said the property was worth \$4,500,000 under the cost approach and \$4,410,000 under the market approach. The BTA determined the true value to be \$4,410,000 and Oakwood appealed.

The cause is now before this court upon an appeal as of right.

Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A., and Thomas L. Dettlebach, for appellant.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and Saundra Curtis-Patrick, Assistant Prosecuting Attorney, for Cuyahoga County Board of Revision and Cuyahoga County Auditor.

Per Curiam. The decision of the BTA is affirmed.

This appeal presents a typical valuation dispute based upon conflicting appraisals. Oakwood contends that the BTA's decision is unreasonable and unlawful because (1) it accepts Braman's testimony, which failed to adjust for improvements made to the subject property subsequent to tax lien date, or for the subsequent sale of excess land from his principal comparable sale, and (2) it did not determine the true value of the subject property but instead determined the "value in use" of the property, contrary to law.

While the appraisers disagreed on several points, they did agree that the highest and best use of the property was as a private country club and that the use of the income approach to value was inappropriate. Both appraisers used the Marshall Evaluation Service, but disagreed regarding costs of replacement and depreciation deductions.

Braman testified about the market approach and the cost approach. He made adjustments based upon the time of sale of comparable properties, location, building size, site improvement and the indoor tennis facility. He structured the appraisal by computing a per-hole value of the selected comparable country club properties and of the subject property. He estimated the adjusted value of the comparables at \$236,500 to \$261,750 per hole and Oakwood's at \$245,000 per hole. On that basis Braman concluded that the true value of the subject property was \$4,410,000. This evidence did not constitute "the forbidden 'current use method'" discussed in *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision* (1984), 12 Ohio St.3d 270, 271, 12 OBR 347, 348, 446 N.E.2d 909, 910.

The BTA's use of the market method of determining value was proper. The BTA was authorized to find, as it did, that the market approach was appropriate and the cost approach was not. See *Cincinnati Milacron Industries, Inc. v. Brown Cty. Bd. of Revision* (1988), 35 Ohio St.3d 32, 517 N.E.2d 896. See, also, *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, 527 N.E.2d 874.

We again endorse paragraphs three and four of the syllabus in *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13, 73 O.O.2d 83, 336 N.E.2d 433:

"3. The Board of Tax Appeals is vested with wide

discretion in determining the weight to be given to evidence and the creditability of witnesses which come before the board.

* * *

"4. The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and this court will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful."

The BTA's acceptance of Braman's appraisal, adjusted as it was for costs of improvements since the tax lien date, and in view of Braman's explanation of why the sale of excess lands does not affect the true value of comparable properties, is not unreasonable or unlawful.

Oakwood's argument on value in use is not persuasive. In *Dinner Bell Meats, Inc.*, supra, 12 Ohio St. 3d at 271-272, 12 OBR 348-349, 446 N.E.2d at 910-911, we said:

"Appellant contends that the appraisal of William Kaplan was based on the forbidden 'current use method,' and, as such, should not have been considered by the board * * *.

* * *

"Initially we note that Section 2, Article XII of the Ohio Constitution mandates that valuations of property cannot be limited to considerations of current use only to the exclusion of all other relevant factors. It does not prohibit altogether any consideration of the present use of a property. A review of the two appraisals before the Board of Tax Appeals reveals that each appraiser viewed the property as being 'special purpose' in nature. * * *

"It therefore appears, that in utilizing the 'cost approach' for a 'special purpose' building, Kaplan simply considered the utility of the properties in conjunction with the highest and best use of the meatpacking facility. The record supports the conclusion that Kaplan's report was a proper 'cost approach' appraisal, not a 'current use' appraisal as proscribed under the Park Investment Co. series of cases [culminating in *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28, 61 O.O.2d. 238, 289 N.E.2d 579]. Accordingly, the appraisal was properly considered by the board."

From the record before us, we find that Oakwood failed to present evidence to establish that the decision of the BTA was unreasonable or unlawful. We affirm the BTA's decision.

Decision affirmed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick and Pfeifer, JJ., concur.

F.E. Sweeney, J., dissents.