[Cite as *Sylvania City Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 2013-Ohio-319.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Board of Education for Sylvania City Schools

Appellee

v.

Lucas County Board of Revision,
Lucas County Auditor

Appellee

HK New Plan Exchange
Property Owner II, LP

Appellant

Court of Appeals No. L-12-1050

Board of Tax Appeals No. 2008-A-2135

DECISION AND JUDGMENT

Decided: February 1, 2013

* * * * *

Stephen Swaim, for appellant.

Michael W. Bragg, for appellee Board of Education for Sylvania City Schools.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, HK New Plan Exchange Property Owner II, LP, appeals the decision of the Ohio Board of Tax Appeals ("BTA"), which modified the tax value of real estate owned by appellant.

A. Facts and Procedural Background

{¶ 2} This case involves a dispute over the appropriate tax value on a 222,450 square-foot strip shopping center located on Monroe Street in Sylvania, Ohio (the "property"). The property is commonly known as the Starlite Plaza.

{¶ 3} On March 28, 2008, appellant filed a complaint against the valuation of the property with the Lucas County Board of Revision ("BOR"), in which it requested a reduction in the tax value of the property from $15,100,000 to $13,310,000 for the 2007 tax year. On May 20, 2008, appellee, the Board of Education for Sylvania Schools, filed a counter-complaint.

{¶ 4} At the hearing before the BOR, appellant amended its complaint to adjust the requested tax value to $11,000,000. In addition, it offered the appraisal and testimony of Martin K. Sabin, a state-certified general appraiser. In the appraisal, Sabin concluded that the property's tax value was $11,000,000 as of January 1, 2007, based on both a sales comparison approach and an income capitalization approach. On October 16, 2008, the BOR agreed with the findings contained in Sabin's appraisal and ruled in favor of appellant. Thus, the BOR ordered the tax value reduced from $15,100,000 to $11,000,000.

{¶ 5} Appellee filed its notice of appeal with the BTA, requesting that the tax value be returned to $15,100,000. After the right to a hearing was waived by both parties, the BTA rendered its decision based on the evidence in the record. The BTA concluded that the appraisal report offered "probative, credible evidence of the [property's] value for the tax year in question, with some adjustment." The BTA examined Sabin's calculations under the income capitalization approach and determined that he took property taxes into consideration twice; once in his expense estimate, and again when he used a 2.4 percent tax additur to calculate the capitalization rate. This "double-dipping" artificially reduced the true value of the property. After correcting the miscalculation, the BTA arrived at a tax value of $13,717,370.

{¶ 6} Appellant disagrees with the BTA's modification of Sabin's appraisal, and timely appeals the BTA's determination of the property's tax value.

B. Assignments of Error

{¶ 7} Appellant assigns the following errors for our review:

> 1. The decision of the Board of Tax Appeals is unreasonable, erroneous, [and] unlawful for the reason that the decision is contrary to the weight of the evidence presented to the Board of Tax Appeals.
>
> 2. The decision of the Board of Tax Appeals is unreasonable, erroneous, unlawful and contrary to the law for the reason that the Board of Tax Appeals improperly failed to consider all of the evidence presented.

3. The Board of Tax Appeals abused its discretion and acted unreasonably, unlawfully and arbitrarily in determining the value of the subject property by disregarding the oral evidence of Mr. Martin Sabin.

4. The Board of Tax Appeals abused its discretion and acted unreasonably, unlawfully and arbitrarily in ignoring the vacancy and collection loss issue when it rewrote the Appraisal of Mr. Martin Sabin.

5. The Board of Tax Appeals abused its discretion and acted unreasonably, unlawfully and arbitrarily in rewriting the Appraisal of Mr. Martin Sabin.

{¶ 8} While appellant sets forth five assignments of error for our review, it only offers one argument in support. Appellant basically takes issue with the BTA's modification of the appraisal to correct Sabin's overcompensation for real estate taxes. In making its argument, appellant notes that Sabin's testimony at the BOR hearing provided an explanation as to how he factored real estate taxes into his calculation. Only Assignment of Error No. 3 is supported by argument and authority. Since appellant does not support the remaining assignments of error with specific arguments or authority, we need not address them. App.R. 16(A)(7).

II. Standard of Review

{¶ 9} We defer to the BTA's determination as to the credibility of witnesses and the weighing of the evidence. *Highlights for Children, Inc. v. Collins*, 50 Ohio St.2d 186, 187-188, 364 N.E.2d 13 (1977). "We must affirm the BTA's findings of fact if they are

supported by reliable and probative evidence, and we afford deference to the BTA's determination of the credibility of witnesses and its weighing of the evidence subject only to an abuse-of-discretion review on appeal." *HealthSouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, 969 N.E.2d 232, ¶ 10, citing R.C. 5717.04 and *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010-Ohio-1040, 926 N.E.2d 302, ¶ 15.

III. Analysis

{¶ 10} Appellant urges this court to reverse the decision of the BTA, and reduce the property's tax value to $11,000,000. When a taxpayer seeks to change the tax value of the property, it bears the burden of proof by competent and probative evidence to demonstrate that the tax value should be different from the amount the auditor assessed. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566, 740 N.E.2d 276 (2001).

{¶ 11} Here, appellant offered "competent and probative evidence" in the form of Sabin's testimony and the appraisal report. Appellee offered no evidence to rebut Sabin's determination of the property's value. After pointing out that it possessed wide latitude in deciding whether to follow the appraisal report, the BTA concluded that the appraisal report represented "probative, credible evidence."

{¶ 12} Appellant agrees with the BTA's reliance on the appraisal report, but takes issue with the following statement contained in the BTA's decision and order:

> Specifically, considering Mr. Sabin's income approach, which he primarily relied upon, we find that real estate taxes were taken into consideration twice, both in his expense estimate and with the application of a tax additur to the capitalization rate. Accordingly, by removing one of the references to the real estate taxes, i.e., by not utilizing the tax additur, a capitalization rate of 10.5% would be applied to the net operating income of $1,440,324, resulting in a value for the subject of $13,717,370 (rounded).

{¶ 13} The BTA was concerned with Sabin's use of real estate taxes as an expense and also as a tax additur to the capitalization rate. Sabin's inclusion of real estate taxes in the expenses is clear. On page 55 of the report, Sabin provided a line-by-line discussion of the property's expenses from 2006.[1] "Fixed Real Estate Taxes" in the amount of $158,008 was included within that list of expenses. According to Sabin's report, the total expenses for 2006 were $490,800, or $2.21 per square foot. Using the expense data he compiled from 2006, Sabin projected the expenses for 2007 and stated: "Based on the subject's expenses in 2006, expenses are projected to be $2.25 per square foot in 2007 or $500,513." Had he removed the real estate taxes, which amounted to roughly one-third of the total expenses for 2006, we would expect the total expenses for 2007 to fall. Instead, Sabin projected an increase in expenses. In using the taxes to increase expenses,

[1] Sabin also defines "expenses" in the report. Notably, the term "real estate taxes" appears nowhere in the definition. A list of examples follows the definition. Once again, taxes are not included in the list of examples.

and also to increase the capitalization rate, Sabin reported a lower property value than that which would otherwise have been produced.

{¶ 14} Appellant argues that the BTA "cherry picked and accepted parts of [Sabin's] Appraisal and Testimony while completely ignoring other parts of his Testimony, specifically that part of his testimony that dealt with real estate taxes." However, appellant offers no explanation as to why Sabin included the real estate taxes in both the expenses category and as a tax additur to the capitalization rate.

{¶ 15} Sabin's testimony establishes that he added a 2.4 percent tax additur onto the capitalization rate because he had reduced the common area maintenance (CAM) reimbursements to account for real estate taxes. At the hearing, Sabin stated:

> I would expect on a facility of this size and quality that the CAM charges would be $3.00 per square foot at market; however we have to take out the dollar per square foot for the * * * real estate taxes because we have to adjust for that later.

Sabin further stated: "[Y]ou have to add on the tax additur to account for the impact of real estate taxes. That gives us a [capitalization] rate of 12.90 percent."

{¶ 16} While Sabin's testimony explains why he subtracted one dollar per square foot from the CAM and added 2.4 percent to the capitalization rate, it does not explain why he also included real estate taxes as an expense, thereby artificially reducing the value of the property. Further, appellant can point to no other evidence in the record to support Sabin's treatment of the real estate taxes.

{¶ 17} Faced with an appraisal report that contained an unexplained mathematical error, the BTA corrected the error and recalculated the property's value as $13,717,370. We conclude that the BTA did not abuse its discretion in doing so. Accordingly, appellant's assignments of error are not well-taken.

IV. Conclusion

{¶ 18} Based on the foregoing, the judgment of the Ohio Board of Tax Appeals is hereby affirmed. Costs are hereby assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE