IN THE SUPREME COURT OF OHIO

Worthington City Schools Board of Education,	:	Case No. 2017-0003
Appellee,	:	
v.	:	Appeal from the Ohio Board of Tax Appeals
The Kroger Company,	:	BTA Case No. 2016-414
Appellant,	:	
and,	:	
Franklin County Board of Revision, Franklin County Auditor and the Ohio Tax Commissioner,	:	
Appellees.	:	

MERIT BRIEF OF APPELLANT, THE KROGER COMPANY

Nicholas M.J. Ray (0068664)
COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Phone: (614) 464-5640
Fax: (614) 719-4769
nmray@vorys.com

Counsel for Appellant
The Kroger Company

Mark Gillis (0066908) Counsel of Record
Karol C. Fox (0041916)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
Phone: (614) 228-5822
Fax: (614) 540-7474
mgillis@richgillislawgroup.com

Counsel for Appellee
Worthington City Schools
Board of Education

William J. Stehle (0077613)
Franklin County Assistant Prosecutor
373 South High Street, 20th Floor
Columbus, OH 43215
Phone: (740) 652-7560
Fax: (740) 653-4708

Counsel for Appellees
Franklin County Board of Revision and
Franklin County Auditor

Michael DeWine (0009181)
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215-3428
Phone: (614) 466-4320

Counsel for Appellee
Ohio Tax Commissioner

Table of Contents

APPENDIX

Table of Authorities

MERIT BRIEF OF APPELLANT, THE KROGER COMPANY

I. INTRODUCTION

The Board of Tax Appeals ("BTA") has misconstrued the methodology employed by a real property appraiser so egregiously that the BTA has committed a fundamental legal error in valuing the property at issue in this appeal. Kroger therefore asks this Court to reverse the BTA's legal error and order that the value of the subject property be $2,390,000 for tax year 2014.

This case involves an unusual property in that the parcel consists of land and a retail store only. The land portion of the parcel is so small that it cannot provide any parking to the store's customers. As a result, the owner has entered into an easement under which its customers may park on an adjacent parcel owned by another entity. The Kroger Company ("Kroger") contested the county's 2014 value for the parcel ("Kroger parcel" or "subject property"), and, as part of its case, Kroger submitted the opinion of an expert appraiser. In formulating his opinion of value, the appraiser made certain adjustments to account for differences between the comparables he used in his report and the Kroger parcel. One of those adjustments was to account for the physical difference between the Kroger parcel that did not have any available land for parking and most retail spaces (including all of the comparables utilized by both appraisers in this case) that do have customer parking as part of the property itself. To effect this physical correction, the appraiser adjusted the Kroger parcel's land value downward based upon a review of the market's typical "land-to-building ratio" for a property of its type and as supported by a land valuation developed as part of the appraisal process.

In reviewing the appraiser's opinion, however, the BTA became muddled. Because of the parking easement, the BTA believed that the appraiser's land-to-building ratio adjustment was an attempt to remove the value of the easement from the parcel, a removal the BTA believed to be inappropriate given that the Kroger parcel benefited from the easement. This was wrong. A retail grocery store property in a suburban setting with no ability to park customers would not be marketable.

At all times, the appraiser was valuing an operating retail store. The adjustment accounted for the difference in physical condition and properly allocated the value between the Kroger parcel and the adjacent parcel. In fact, neither appraiser could provide a comparable transaction that fit such an absurd configuration. As a result, a physical condition adjustment was necessary. By focusing on the easement rather than the physical characteristics of the parcel, the BTA impermissibly denied to Kroger the true value of the property for tax year 2014.

Moreover, even if the BTA's finding that the land-to-building ratio adjustment was related to the easement, and not to the Kroger parcel's physical differences from other properties in the marketplace, the BTA's conclusion remains contrary to Ohio law. By including in the subject property's value the value of a voluntary parking easement, the BTA failed to comply with the doctrine that, for purposes of taxation, real property must be valued as a fee simple absolute without encumbrances imposed by private, voluntary decisions. R.C. 5713.03 and *Muirfield Assn., Inc. v. Franklin Bd. of Edn*., 73 Ohio St.3d 710 (1995).

II. Facts

1. Property Identification.

The subject property is identified in the Franklin County Auditor's records as parcel number 100-0069599-00 and is located at 60 Worthington Square, in Worthington, Ohio. For tax year 2014, the county auditor valued the subject property at $3,000,000. The subject parcel comprises 1.699 acres of land, which is improved with a 56,154 square foot retail building that was constructed in 1974 and renovated in 2008. The subject property is owner-occupied and operated by Kroger as a grocery store. The parcel includes a building, but no parking. Supp. at 38, Hannah, at 33.

2. The Reciprocal Easement.

To remedy the lack of parking, Kroger entered into a voluntary easement agreement with the owner of the adjacent parcel. Under this agreement, Kroger customers are permitted to use the parking area contained on the adjacent parcel:

> A Reciprocal Easement Agreement and Declaration of Covenants dated August 25, 2006, and recorded as Instrument #200608250169750, outlines Kroger's non-exclusive right to utilize the adjacent shared parking lot…The Reciprocal Easement Agreement further indicates that the adjacent owner is responsible for maintenance of the parking lot. According to the master site plan in the Agreement, the parking lot must remain undeveloped apart from the existing asphalt and other site improvements. Supp. at 137, Koon at 3.

"An easement is an interest in real property that transfers use, but not ownership, of a portion of an owner's property." The Appraisal of Real Estate (Appraisal Institute, 14th Ed. 2013), at 74. Generally, easements permit a specific portion of a property to be used for identified purposes, such as parking. Id. By virtue of acquiring the parking easement, the Kroger parcel became known as the "dominant tenement." The adjacent

parcel, being subject to the easement, is known as the "servient tenement." Id. at 75. All parties agree as to existence and effect of the agreement in this case, and that the parking is a necessity for customers to fully access the Kroger store.

3. Board of Revision Proceedings.

Kroger filed a complaint seeking a reduction for tax year 2014, and the Worthington City School District Board of Education ("BOE") filed a counter-complaint seeking to retain the Auditor's value.

On February 8, 2016, the Franklin County Board of Revision ("BOR") held a hearing. At the BOR hearing Kroger presented the testimony and written opinion of value of Mr. Curtis P. Hannah, an Ohio-Certified General Appraiser and a Member of the Appraisal Institute ("MAI"). The BOE presented a ***restricted appraisal*** prepared by Samuel D. Koon, MAI. The Koon appraisal opined to value between $4,900,000 and $5,000,000 but ***did not opine to a final value***. Instead, Mr. Koon limited his opinion to one concluding that a reduction was unwarranted. On February 11, 2016, the BOR issued a decision based upon the evidence presented and granted a reduction to Mr. Hannah's value conclusion of $2,390,000.

a. Kroger's Evidence

The property owner's evidence consists of Mr. Hannah's written appraisal report and the supporting testimony offered before the BOR. Mr. Hannah utilized two of the three traditional approaches to value: (1) the sales comparison approach (also known as the market data approach), and (2) the income approach to value the subject property. See, generally, Ohio Adm. Code 5703-25-07.

i. Mr. Hannah's Land Valuation

Mr. Hannah began the valuation section of his report by analyzing sales of five land sites that he found to be similar to the subject. Four of the five comparable sales were in the Columbus market and one sale was a purchase by Kroger in Cincinnati for a Kroger Marketplace store. The unadjusted sales ranged from $270,291 per acre to $414,938 per acre and occurred between April 2013 and September 2014. Mr. Hannah then made adjustments to these comparables to arrive at a value of $380,000 per acre. Supp. at 66-67, Hannah at 61-62.

ii. Mr. Hannah's Adjustment for Parking or Inferior Land to Building Ratio.

In order to account for the fact that the subject property did not contain a typical parking ratio like the comparable properties he used in his approaches to value, Mr. Hannah further analyzed his land sales to determine an appropriate adjustment to account for the subject's lack of parking. In essence, the lack of parking resulted in a lower than average land-to-building ratio. The term "land-to-building ratio" refers to the proportion of land area to gross building area. The Dictionary of Real Estate Appraisal (5th Ed. 2010), 109. In the case of the subject property, the land-to-building ratio was quite low – lower than typical - because the building took up the vast majority of the parcel. Similarly, the lack of parking meant that the parking ratio, or the proportion of parking spaces to the physical unit, basically did not exist for the store. Id. at 143. Thus, an adjustment had to be made to account for the physical differences, *i.e*., the fact that the subject failed to have parking while all of the properties used in the appraisal had typical land-to-building and parking ratios. ***A buyer of any of the comparable properties would have acquired significantly more land than the***

subject property would convey. An adjustment was therefore absolutely necessary.

As Mr. Hannah explained it, the valuation problem was that the subject's parking was located on another parcel under different ownership. While Kroger had a reciprocal easement to utilize the parking, the Kroger parcel itself did not ***physically*** have a parking area that could be valued or conveyed in a sale.

To determine what this adjustment would be, Mr. Hannah first determined that a land-to-building ratio of 4.5 to 1 was considered an average ratio for properties similar to the subject. (This equates to approximately one acre of land per 10,000 square foot of building.) Mr. Hannah concluded this ratio was appropriate based upon his review of the land-to-building ratios of the comparable sales he identified in his report. Mr. Hannah applied this 4.5 to 1 ratio to the subject property, and, based upon the size of the subject's improvements, he concluded that a site size of 5.801 acres was necessary to bring the subject into conformity with the average ratio. However, because the site size was 1.699 acres, Mr. Hannah determined that an adjustment was required. Because the subject parcel is 4.102 acres smaller than the average site for a retail property containing 56,154 square feet, he multiplied his per acre of land conclusion of $380,000 to arrive at an adjustment of $1,560,000 for the below average parking ratio and land-to-building ratio. Supp. at 85 Hannah, at 80. ***This adjustment accounts for the lesser amount a buyer would pay for the subject property than a comparable property which would convey substantially more land than the subject can convey.***

iii. Mr. Hannah's Sales Comparison Approach.

In performing his sales comparison approach to value, Mr. Hannah analyzed sales of nine retail stores he found to be similar to the subject. The majority of the sales occurred in central Ohio. The sales occurred between September 2010 and November 2015 and ranged in price from a low of $36.13 per square foot to a high of $69.92 per square foot. Supp. at 69-82, Hannah, at 64-77. The sales included both leased fee and fee simple property rights. Mr. Hannah then made adjustments for age, size, location, and property rights, among other factors, to derive a value for the subject property equivalent to $70.00 per square foot, at the high end of the comparable sale indications, prior to adjusting for the parking area. Supp. at 85, Hannah, at 80. He then applied his land-to-building ratio adjustment for the difference in physical characteristics related to the subject property, and concluded to value of $2,370,000 for the subject property under the sales comparison approach. *Id.*

iv. Mr. Hannah's Income Approach.

In employing the income approach, Mr. Hannah found value under the direct capitalization method. To determine rental income, Mr. Hannah estimated market rent for the subject by surveying lease rates at eight properties, which Mr. Hannah considered to be comparable to the subject property. Supp. at 88-100, Hannah, at 83-95. All of the rent comparables were retail properties within the Columbus market. After making adjustments for comparability, this analysis yielded a market rent for the subject of $7.00 per square foot. Supp. at 103, Hannah, at 98. He applied a vacancy and credit loss adjustment along with expenses to derive a net operating income for the subject. This net income was then capitalized, with a tax additur, to arrive at a value

under the income approach of $3,995,247 prior to subtracting the below average land-to-building ratio adjustment (as discussed above). After the land-to-building ratio adjustment, Mr. Hannah arrived at a total value for the subject property via the income approach of $2,440,000. Supp. at 110, Hannah, at 105.

v. Mr. Hannah's final opinion of value.

In reconciling his approaches to value, Mr. Hannah placed greatest weight on the sales comparison approach. He placed secondary weight on the income approach due to the fact that an owner-user would be the most likely purchaser of the subject property. Supp. at 111, Hannah, at 106. Consequently, Mr. Hannah opined a final true value for the subject property of $2,390,000 for the subject property for tax year 2014.

b. The BOE's Evidence.

As noted above, Mr. Koon prepared a restricted use appraisal and presented his appraisal and testimony before the BOR. Mr. Koon testified that he was ***directed to review public records and review the reasonableness of the complainant's requested reduction***. Mr. Koon ***agreed*** that the subject's below market parking ratio, or land-to-building ratio, did require adjustment, but his own testimony contradicted this conclusion as he testified that the value was attributable to the subject parcel. Mr. Koon also testified that his inspection of the property was limited to an exterior inspection. Mr. Koon reviewed the sales comparison and income approaches to value, offering a value range between $4,900,000 and $5,000,000. Supp. at 157, Koon at 23. Nevertheless, ***Mr. Koon did not opine to a final value conclusion***, but stated that

weight was placed upon both approaches to value. He stated that based upon his valuation analysis the auditor had undervalued the property.

Upon review of all the evidence before it, the BOR adopted Mr. Hannah's value of $2,390,000.

4. Board of Tax Appeals Proceedings.

Dissatisfied by the BOR decision, the BOE appealed to the BTA. The parties waived hearing and submitted legal argument to support their respective positions. On December 5, 2016, the BTA issued a decision, in which it found that Kroger had met its burden of proof, with one exception, and that the BOE had failed to provide persuasive evidence of value: "Upon review of the record, including both appraisals we find that Hannah's analysis provides more reliable evidence of the subject true value than that performed by Koon. First, Hannah's analysis provided a more thorough explanation of and support within both approaches to value * * *." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* ("BTA Decision")(Dec. 5, 2016), BTA No. 2016-414, at 4.

However, despite this overall finding, the BTA determined that Mr. Hannah's adjustment for the inferior land-to-building ratio was improper because it removed the value of the beneficial encumbrance from the Kroger parcel. Ignoring Mr. Hannah's land-to-building ratio adjustment, the BTA found value at $3,950,000. ***As a result, the different physical condition of the subject property was totally ignored by the BTA, and the value associated with the adjacent parcel was taxed both to the Kroger parcel and the adjacent parcel. This is a plain and obvious error***.

On appeal to this Court, none of the parties has contested the BTA's reliance on Mr. Hannah's evidence. The issue before this Court relates solely to the BTA's illegal determination to ignore Mr. Hannah's fully supported physical adjustments using the land-to-building ratio.

III. LAW & ARGUMENT

1. **Proposition of Law No. 1: The BTA erred by incorrectly treating Mr. Hannah's land-to-building ratio adjustment as an attempt to remove an interest in land from taxation. Instead, the adjustment was made purely to comply with an appraiser's need to adjust for physical differences.**

a. The BTA misconstrued the land-to-improvement ratio adjustment.

The BTA improperly treated Mr. Hannah's land-to-building ratio adjustment as an outside impact on value, rather than what it really was – an adjustment to account for physical differences between the subject property and the properties used as comparables in the appraisal report. ***At all times, Mr. Hannah was valuing the Kroger parcel as an operating retail property.***

Both appraisers identified comparable properties in their sales comparison and income approaches to value. These comparable properties differed in one significant aspect from the subject property: each of these comparables included enough land for parking. In order to determine value for a property that did not have the same land size, an adjustment was required. All appraisers routinely make corrections for physical differences between the comparable properties and the property the appraiser is valuing. The Appraisal of Real Estate, at 420. See, also, Property Valuation Assessment (I.A.A.O., 3rd Ed. 2010), at 179 ("***No two parcels of land are exactly alike. * * * The adjustment process is an analysis designed to show what the comparable property would have sold for, if these differences were eliminated."***).

Common physical adjustments include size, site access, quality of construction, building materials, age, and condition, among other characteristics.

b. Mr. Hannah was the only appraiser to make an adjustment for this physical difference between the subject property and the comparable properties.

Mr. Hannah first determined that a market land-to-building ratio of 4.5 to 1 was appropriate for the subject property, based upon other similar properties. This equates to approximately one acre of land per 10,000 square foot of building. Mr. Hannah then made an adjustment to account for the smaller land size of the Kroger parcel by calculating that the parcel was 4.102 acres smaller than the average site for a retail property containing 56,154 square feet. Mr. Hannah then multiplied his per acre of land conclusion at $380,000 to arrive at an adjustment of $1,560,000 for the smaller size of the subject property. In other words, Mr. Hannah utilized an adjustment to account for the physical difference in the subject property as compared to properties utilized in his report. In order to account for the ***physical differences*** between the subject property and the comparable properties, Mr. Hannah utilized market data to determine how to adjust for the inferior land-to-building ratio that did not allow for parking on the subject property. ***This was the proper treatment of this factor because it properly took into account the attributes of the subject parcel***. However, the BTA disregarded the adjustment by mischaracterizing it. Because it employed an incorrect analysis, the BTA compounded its error by then finding that the adjustment was not supported. Had the BTA looked at the adjustment for what it was, it would have found that the land-to-building ratio technique used by Mr. Hannah was appropriately supported by the record.

c. The BTA misapplied "cost to cure" cases to a matter involving an appraiser's adjustment to value.

The BTA also improperly equated Mr. Hannah's adjustment for physical attributes to cases involving deductions for costs to cure. See, *e.g., Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997). According to the BTA, Mr. Hannah had to demonstrate that the lack of parking had a negative impact on the value of the subject property but failed to do so. ***This is wrong.*** Mr. Hannah's adjustment was not to account for the impact on value the lack of parking had. Rather, it was made to account for the fact that the comparable properties (like any typical retail property) all had parking on their parcel. ***The adjustment was not to measure impact; the adjustment was to account for a physical difference in the Kroger parcel - a physical difference that is not usually seen in the market place***. The key is that the subject cannot be valued inconsistent either with how it is situated in the market or with its physical characteristics:

> If all comparable properties are identical to the subject property, no adjustments * * * will be required. However, this is rarely the case. After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any difference. The Appraisal of Real Estate, at 388.

See, also, Property Valuation Assessment, at 179:

> No two parcels of land are exactly alike. * * * The adjustment process is an analysis designed to show what the comparable property would have sold for, if these differences were eliminated.

As stated, *supra*, there are several elements of comparison for which adjustments may need to be made. These include physical characteristics, rights conveyed, and economic characteristics, *inter alia*. Appraisal of Real Estate, at 390. ***In***

using these adjustments, Mr. Hannah was not trying to value the impact of the lack of parking on the subject property. ***At all times, he was measuring the full value of the subject as an operating retail property.***

No doubt, if either of the two appraisers had found a comparable transaction involving a property that lacked parking, they would have used it. They did not make such a find. Adjustments are typical in appraisal practice, and the BTA accepts them routinely. Certainly, the BTA has observed that the lack of parking is factor that can be taken into consideration by an appraiser. See, *e.g., Hodery v. Hamilton Cty. Bd. of Revision* (Nov. 24, 1989), BTA No. 1988-H-662, and *SouthGate Gardens Co. v. Cuyahoga Cty. Bd. of Revision* (July 8, 1987), BTA No. 1984-D-224. The BTA, however, called out this particular adjustment, not because it was inappropriate, but because the BTA failed to understand what Mr. Hannah was doing. Consequently, the BTA made a legal error in misclassifying Mr. Hannah's adjustment. Had the BTA understood that Mr. Hannah was adjusting a physical element, rather than making an adjustment for the value of the easement's beneficial interest, the BTA would have accepted Mr. Hannah's $2,390,000 value. This Court must now correct this error.

2. <u>Proposition of Law No. 2:</u> The BTA erred in that it failed to value the subject property's fee simple interest, as if unencumbered.

Even if this Court accepts the BTA's position that Mr. Hannah's adjustment relates to the value imparted to the Kroger parcel by the voluntary encumbrance, the BTA's decision to include the value of that encumbrance is legally erroneous.

a. The General Assembly has prescribed that real property tax is to be assessed only upon the fee simple interest, as if unencumbered.

As applicable to tax year 2014, R.C. 5713.03 provided:

> The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the ***true value of the fee simple estate, as if unencumbered*** but subject to any effects from the exercise of police powers or from other governmental actions * * *.

This statutory mandate is well understood, and the concept expressed by it has been applied in Ohio for decades. For example, in *Woda Ivy Glenn Ltd. v. Fayette Cty. Bd. of Edn*, 121 Ohio St.3d 175, 2009-Ohio-762, this Court affirmed the long-held directive that, for real property tax purposes, the fee simple estate is to be valued as if it were unencumbered, the sole exception being the effect of governmental restrictions. See, also, *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1988), paragraph one of the syllabus ("For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.").

b. The Court also has prescribed the use of the unencumbered fee simple interest for taxation purposes where easements and other covenants exist.

Most germane to the present situation is this Court's decision in *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St.3d 710 (1995). In *Muirfield*, land developers deeded acreage to the local homeowner's association to be used as a common area. The deed contained covenants, restrictions, conditions, and assessment liens. After the county auditor valued the property, the association sought a reduction to "zero" by asserting that the value of the common property was part of the value of each individual lot owner's parcel (each lot owner had a deeded ownership interest in the association). The BOR affirmed the auditor's value. Id. The association submitted an

appraisal to the BTA that valued the individual lots with "easements of enjoyment," arguing that the individual lots absorbed a substantial part of the common area's value by virtue of the rights of the lot owners possessed to use the common area. The BTA agreed and assigned a $2,500 value to the property. Id.

On appeal, this Court reminded the BTA that, for real property tax purposes, the fee simple estate is to be valued as if it were unencumbered. The Court clarified this general rule as being "subject only to the limitations caused by involuntary governmental actions, such as eminent domain, escheat, police power, and taxation." Id., at 711. Since the restrictions on the common area were imposed voluntarily by private agreement, this Court remanded the matter to the BTA to value the property as an unencumbered fee simple estate. Id., at 712.

c. The case now before this Court is the mirror image of the *Muirfield* case in that the common area in the *Muirfield* case was considered to be the "servient" parcel, while the Kroger parcel here is clearly the "dominant" parcel. Regardless, the application of the law – and the outcome – is the same.

The BTA clearly understood the nature of the easement under review. The BTA understood that the ability to park on the adjacent parcel granted to the Kroger parcel a beneficial right that could be used for the enjoyment of Kroger customers and could even be transferred to future owners of the Kroger store. The BTA even clearly understood *Muirfield's* mandate, that for real property tax purposes, the land must be, generally, valued in its fee simple estate. This is where the BTA should have stopped. However, the BTA then stepped into error by holding that *Muirfield* applies only to property that is subject to a restriction, *i.e*., is the servient tenement; it does not apply to a property that enjoys the benefit of a voluntary covenant (the dominant tenement). See

BTA Decision at 3. In application, the BTA taxed the same value to both parcels. This is clear error.

d. By valuing the subject property as if encumbered by a voluntary easement, the BTA failed to follow the General Assembly's mandate and the precedent of this Court.

The BTA's legal conclusion is - quite simply – wrong. R.C. 5713.03 is unambiguous on its face: for real property taxation purposes, the ***true value of the property is to be the fee simple estate, as if unencumbered by any private, voluntary covenants.*** This Court's case law has been equally clear over the years as to the standard that should apply. See *Alliance Towers, Muirfield,* and *Woda Ivy Glenn*. Neither statute nor case law speaks of using the fee simple estate as if unencumbered by "some" voluntary encumbrance. They speak of valuing the property absent of "all" voluntary encumbrances. By definition, this includes both beneficial and restrictive covenants.

Looking back at *Muirfield*, this makes sense. The Court rejected the idea that a portion of the value of the common area was somehow transferred to the individual lots in the subdivision, which held the dominant tenement. In other words, the value of the common area could not be devalued by the existence of the restrictions; and, the value of the lots themselves could not be enriched by rights they held in the common area. Both the common area ***and*** the individual lots had to be valued as if the voluntary covenants did not exist.

Yet, the BTA failed to do this in the present case. The BTA transferred the value of the adjacent parcel onto the Kroger parcel for the sole reason that the encumbrance existed. This was a two-fold error, for not only was the adjacent parcel taxed at its full, unencumbered value (*i.e.*, without any reduction for the servient tenement), but also - at

the same time – the value of the dominant tenement was added to the tax on the Kroger parcel! ***In other words, the problem with the BTA's logic is that it taxes the value created by the parking area twice – once on the dominant tenement and then on the servient tenement.***

Here, Mr. Hannah recognized that the Kroger parcel, containing no parking, required an adjustment to account for the physical differences between the subject property and the comparable set. Mr. Hannah acknowledged that the property had access to parking, only that parking was not on the Kroger store parcel. As Mr. Hannah stressed, ***had there been no access to parking from the easement, the value for the Kroger store would be significantly less than Mr. Hannah's final value because a retail store in a suburban area needs parking for its customers.*** However, it also is improper to value the subject property as if it had more land - ***and more rights -*** for parking than it actually does.

e. The BTA's reliance upon the general definition of real property unlawfully nullifies the statutory definition of real property value for taxation purposes.

Despite the foregoing law, the BTA went another step deeper into the murk of error by stating Ohio's general definition of "real property" permits it to value the subject property as if encumbered by the beneficial interests the parcel receives. R.C. 5701.02 (A) defines real property as:

> "Real property," "realty," and "land" include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, ***and all rights and privileges belonging or appertaining thereto***. [Emphasis added.]

The BTA grasped at the last phrase of the definition, that real property includes "all rights and privileges belonging or appertaining thereto." The BTA reasoned that, because Kroger held beneficial rights to the adjacent parking area, such "rights and privileges" needed to be included in the value of the Kroger parcel. This is purely indefensible. ***While R.C. 5701.02 provides a general definition of what constitutes real property and interests in real property, it does not specify what constitutes real property value for Ohio ad valorem taxation.***

R.C. 5713.03, however, provides a ***specific*** definition of what interests are to be subject to Ohio real property tax. The interests to be valued do not include every possible interest held in real property (such as a leased fee interest, *e.g.*). The interest in real property that is to be valued in Ohio is expressly restricted to "***the true value of the fee simple estate, as if unencumbered*** but subject to any effects from the exercise of police powers or from other governmental actions * * *." R.C. 5713.03.

No one denies that the Kroger parcel had additional rights by virtue of the parking easement. However, under Ohio law, such rights are not part of the interest subject to real property taxation. The BTA's decision not only fails to apply R.C. 5701.02 and 5713.03 *in pari materia,* but also fails to adhere to the proposition that a specific statute takes precedence over a general one. See ***R.C. 1.51*** ("If a general provision conflicts with a special or local provision, they shall be construed, if possible, ***so that effect is given to both***. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision * * *.").

The BTA's reference to *Dublin City Schools Bd., of Edn. v. Franklin Cty. Bd. of Revisio*n, 118 Ohio St.3d 45, 2008-Ohio-1588, is equally unavailing. Not only did the

Court distinguish that sale case from its *Alliance Towers* and *Muirfield* decisions, but also, the Court decided the case prior to the General Assembly's amendment to R.C. 5713.03, which expressly added the requirement to value the fee simple estate as if unencumbered.

3. **<u>Proposition of Law No. 3</u>: The BTA's decision violates Kroger's rights under the Ohio and U.S. Constitutions. The BTA's decision impermissibly requires Appellant to pay extra property tax on property not owned by Appellant.**

As discussed throughout this brief, Mr. Hannah valued the subject parcel as it existed: a 56,154 square foot grocery store located on only 1.699 acres of land. The BTA's decision results in Kroger being responsible for tax upon a property interest, which it neither owns and which is properly taxable to the adjacent parcel. R.C. 5713.03.

The BTA's decision is inconsistent with Ohio Constitutional requirements that real property be assessed by uniform rule. Article XII, Section 2 of the Ohio Constitution provides that "[l]and and improvements thereon shall be taxed by uniform rule according to value…" The result of BTA's decision is that Kroger would be responsible to pay tax upon a property interest that is not taxable to Kroger. At the same time, the BTA's decision results in double taxation, in that no corresponding adjustment to the adjacent parcel has been made to account for the existence of the servient tenement.

IV. Conclusion

The BTA erred in this case by not allowing the proper deduction determined by an expert appraiser. As a result, the BTA failed to value the fee simple interest of the subject property, as if unencumbered. R.C. 5713.03 and *Muirfield, supra*. The value that the BTA did find violates Ohio law, is inconsistent with legal precedent and results

in a value for tax purposes that constitutes an abuse of discretion, and is unreasonable and unlawful. The BTA decision should be reversed and the decision of the BOR reinstated finding value for the subject property at $2,390,000 for tax year 2014.

Respectfully submitted,

/s/Nicholas M.J. Ray
Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Phone: (614) 464-5640
Fax: (614) 719-4769
nmray@vorys.com

Counsel for Appellant
The Kroger Company

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of May 2017, a copy of foregoing was sent via email and regular U.S. mail to:

Mark Gillis
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017

Counsel for the Board of Education

William Stehle
Franklin County Assistant Prosecutor
373 South High Street, 20th Floor
Columbus, OH 43215

Counsel for the Franklin County Board of Revision and Auditor

Michael DeWine
Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, OH 43215

Counsel for Ohio Tax Commissioner

Clarence Mingo
Franklin County Auditor
373 South High Street, 20th Floor
Columbus, OH 43215

Franklin County Board of Revision
373 South High Street, 20th Floor
Columbus, OH 43215

/s/Nicholas M.J. Ray
Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)

Counsel for Appellant
The Kroger Company

ORIGINAL

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Worthington City Schools Board of Education, Appellee, v. The Kroger Company, Appellant, and, Franklin County Board of Revision, Franklin County Auditor and the Ohio Tax Commissioner, Appellees.	Case No. 17-0003 Appeal from the Ohio Board of Tax Appeals BTA Case No. 2016-414

NOTICE OF APPEAL OF THE KROGER COMPANY

Nicholas M.J. Ray (0068664)
COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Phone: (614) 464-5640
Fax: (614) 719-4769
nmray@vorys.com

Counsel for Appellant
The Kroger Company

Mark Gillis (0066908)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
Phone: (614) 228-5822
Fax: (614) 540-7474
mgillis@richgillislawgroup.com

Counsel for Appellee
Worthington City Schools
Board of Education

William J. Stehle (0077613)
Franklin County Assistant Prosecutor
373 South High Street, 20th Floor
Columbus, OH 43215
Phone: (740) 652-7560
Fax: (740) 653-4708

Counsel for Appellees
Franklin County Board of Revision and
Franklin County Auditor

Michael DeWine (0009181)
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215-3428
Phone: (614) 466-4320

Counsel for Appellee
Ohio Tax Commissioner

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Worthington City Schools Board of Education, Appellee, v. The Kroger Company, Appellant, and, Franklin County Board of Revision, Franklin County Auditor and the Ohio Tax Commissioner, Appellees.	:	Case No. _____ Appeal from the Ohio Board of Tax Appeals BTA Case No. 2016-414

NOTICE OF APPEAL OF THE KROGER COMPANY

Appellant, The Kroger Company, hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals ("BTA"), journalized on December 5, 2016 in Case No. 2016-414. A true copy of the BTA's Decision and Order being appealed is attached hereto as "Exhibit A" and is incorporated herein by reference. Appellant complains of the following errors in the BTA's Decision and Order:

1. The BTA's decision is unreasonable, unlawful and erroneous because it failed to properly value the subject property and take into account the land to building ratio of the subject property.

2. The BTA's decision is unreasonable, unlawful and erroneous because it is contrary to this court's decision in *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St.3d 710 (1995).

3. The BTA's decision is unreasonable, unlawful and erroneous in that the BTA failed to value the subject property's fee simple interest, as if unencumbered. R.C. 5713.03. See, also, *Muirfield, supra*. Rather, the BTA erroneously included the value of an encumbrance to the real estate.

4. The BTA's decision is unreasonable, unlawful and erroneous in that the BTA improperly included value from another parcel of property not owned by the Appellant. The BTA erroneously assessed to Appellant's parcel a value properly assigned to a parking lot owned by an unrelated entity. R.C. 5713.03 and *Muirfield, supra.* While Appellant has a parking easement on a parcel owned by another, Appellant did not maintain an exclusive right to use the other parcel, did not possess control over the use or other aspects of the other parcel, and was not responsible for maintenance of the other parcel. Shifting value from the other parcel to Appellant's parcel constitutes a direct violation of R.C. 5713.03 and *Muirfield, supra,* which mandate that, for *ad valorem* purposes, the fee simple interest of the property is to be valued as if unencumbered.

5. The BTA's decision is unreasonable, unlawful and erroneous in that the BTA erroneously applied the definition of "real property" found in R.C. 5701.02. While R.C. 5701.02 defines what constitutes real property in Ohio, it does not ascribe a definition of "true value" for real property taxation purposes. The BTA's decision with regard to R.C. 5701.02 is contrary to the plain meaning of the statute and violates

the provisions of R.C. 5713.03, which mandates that real property be assessed for taxation purposes at its fee simple interest, as if unencumbered.

6. The BTA's decision is unreasonable, unlawful and erroneous in that the BTA erroneously compared the appraiser's adjustment to the valuation of the subject property to account for the encumbrance to cases involving deductions for a cost to cure. Such cases are inapposite, unreflective of the circumstances affecting the subject property, and misrepresentative of the appraiser's methodology and opinion.
7. The BTA's decision is unreasonable, unlawful and erroneous because its decision violates Appellant's rights under the Ohio and U.S. Constitutions. The BTA's decision impermissibly requires Appellant to pay extra property tax on property not owned by Appellant.
8. The BTA's decision is unreasonable, unlawful and erroneous because it is arbitrary, an abuse of discretion, and lacks foundation in law and fact. The BTA's decision is contrary to the facts and circumstances that must be considered when valuing real property for taxation purposes.

Respectfully submitted,

Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Phone: (614) 464-5640
Fax: (614) 719-4769
nmray@vorys.com

Counsel for Appellant
The Kroger Company

PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

This is to certify that the Notice of Appeal of The Kroger Company was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio as evidenced by its date stamp as set forth hereon.

Lauren Johnson

Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Phone: (614) 464-5640
Fax: (614) 719-4769
nmray@vorys.com

Counsel for Appellant
The Kroger Company

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of January 2017, a copy of this Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to:

Mark Gillis
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017

Counsel for the Board of Education

William Stehle
Franklin County Assistant Prosecutor
373 South High Street, 20th Floor
Columbus, OH 43215

Counsel for the Franklin County Board of Revision and Auditor

Michael DeWine
Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, OH 43215

Counsel for Ohio Tax Commissioner

Clarence Mingo
Franklin County Auditor
373 South High Street, 20th Floor
Columbus, OH 43215

Franklin County Board of Revision
373 South High Street, 20th Floor
Columbus, OH 43215

Lauren Johnson

Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)

Counsel for Appellant
The Kroger Company

IN THE SUPREME COURT OF OHIO
(Praecipe)

Worthington City Schools Board of Education, Appellee, v. The Kroger Company, Appellant, and, Franklin County Board of Revision, Franklin County Auditor and the Ohio Tax Commissioner, Appellees.	:	Case No. _____ Appeal from the Ohio Board of Tax Appeals BTA Case No. 2016-414

DEMAND TO CERTIFY TRANSCRIPT OF RECORD OF PROCEEDINGS

To: The Ohio Board of Tax Appeals:

Pursuant to R.C. 5717.04, the Appellant, whom has filed a Notice of Appeal with the Supreme Court of Ohio, hereby makes this written demand upon the Ohio Board of Tax Appeals to certify the records of its proceedings, including any original papers and the statutory transcript of the Board of Revision, in *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* (December 5, 2016), BTA No. 2016-414.

Lauren J. Rugon

Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD
Steven L. Smiseck (0061615)
Lauren M. Johnson (0085887)

Counsel for Appellant
The Kroger Company

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2016-414

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

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

THE KROGER COMPANY
Represented by:
LAUREN M. JOHNSON
VORYS, SATER, SEYMOUR AND PEASE LLP
52 E. GAY STREET
P. O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Monday, December 5, 2016

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

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 100-006599-00, for tax year 2014. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject's total true value was initially assessed at $3,000,000. The appellee property owner, The Kroger Co. ("Kroger"), filed a decrease complaint with the BOR seeking a reduction in value to $2,000,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. The subject property is approximately 1.699 acres improved with a Kroger grocery store. The subject has minimal land

that is not directly beneath the building, and parking for the property is located on an adjacent parcel. A reciprocal easement agreement that was recorded in 2006 outlines Kroger's non-exclusive right to utilize the adjacent lot. Pursuant to the easement agreement, the owner of the adjacent parcel is responsible for the maintenance of the parking lot, which must remain available for Kroger's use at its present parking ratio and undeveloped apart from the existing asphalt and other site improvements. If the total parking area for Kroger and the adjacent shopping center falls below 3.75 spaces per 1,000 square feet, Kroger gains exclusive rights to use the portion of the lot directly in front of the store. Though it is not owned by Kroger, there is no indication that the existing parking is inadequate for its needs.

At the BOR hearing, Kroger presented the testimony and written report of appraiser Curtis P. Hannah, MAI. Hannah indicated that the lack of parking on the subject parcel did not negatively impact the property because the adjacent lot provided sufficient parking for Kroger's customers. Hannah indicated, however, that such a lot is typically included in properties of this type and he subtracted the value attributable to a typical parking lot for his final conclusion of value. In order to estimate the value attributable to a parking lot, Mr. Hannah first derived the value for the land based on five vacant land sales. From this, he concluded that a parking lot at the subject would be valued at $380,000 per usable acre. Based on comparable sales, Hannah determined that an average land-to-building ratio for the subject is 4.5 to 1 (or approximately one acre per 10,000 square feet of building). Considering the size of the building and this ratio, Hannah indicated that the appropriate size of the property is 5.801 acres, 4.102 acres larger than the subject. Hannah estimated that the value of the parking that would ordinarily be present on a property of this type is $1,560,000 (rounded).

Hannah relied on both the sales comparison and income approaches to value, indicating that he relied upon his own measurements to determine the size of the property (56,154 square feet) rather than rely on the auditor (57,644 square feet) or some other source. For his sales comparison approach, Hannah utilized nine sales of single-occupant retail properties ranging from 30,000 to 75,000 square feet. Hannah adjusted these sales after considering the real property rights conveyed, financing terms, conditions of sale, market conditions, location, access/exposure, size, and age/condition. Based on the sales and his adjustments, Hannah determined that they indicated a value of $70 per square foot, or $3,930,780. From this figure, Hannah subtracted $1,560,000 to account for the lack of parking on the subject parcel.

For his income approach, Hannah utilized a rental rate of $7 per square foot, added reimbursable expenses, and subtracted 5% for vacancy and collection loss for an effective gross income ("EGI") of $7.52 per square foot, or $422,503. Hannah subtracted $1.17 per square foot ($65,727 total) for expenses, resulting in a net operating income ("NOI") of $356,776. Hannah applied an 8.75% capitalization rate plus a .18% tax additur, for an indicated value of $3,995,247 ($71.15 per square foot). Hannah again reduced that amount by $1,560,000, for a stabilized value indication of $2,440,000 (rounded). Hannah finally reconciled the two approaches giving primary weight to the sales comparison approach for a final value conclusion of $2,390,000 as of January 1, 2014.

The BOE presented the testimony and written report of Samuel D. Koon, MAI. Koon indicated that he did not consider the lack of direct, on-site parking on the subject parcel due to Kroger's parking rights in the adjacent lot that adequately services the subject and must remain available for its use. In his sales comparison approach, Koon considered sales of eight properties located throughout Ohio that he determined were comparable to the subject. The properties ranged in size from 61,387 square feet to 128,875 square feet. Koon then adjusted the sales for differences such as property rights conveyed, date of sale/market conditions, building area, condition and quality, location, tenant mix, and any other characteristics he deemed pertinent to the valuation. The adjusted sales provided a range in value from approximately $70 per square foot to $120 per square foot of gross building area. Koon considered $85 per square foot the appropriate value indication for the subject property and multiplied it by 57,644 square feet, the net area reported by the auditor, for an indicated value of $4,900,000 (estimated) based on this approach.

Koon also performed the income approach, utilizing a figure of $8.25 per square foot as a rental rate, to which he then applied a 7.5% reduction for vacancy and credit loss. Koon added reimbursed expenses for an EGI of $10.95 per square foot, or $631,211 total. Koon then subtracted $3.79 per square foot for expenses, resulting in a NOI of $412,855. Koon applied an 8.00% capitalization rate and .27% tax additur, for an indicated value of $5,000,000 (rounded). Koon reconciled these values giving equal weight to both approaches, concluding to an indicated value range of $4,900,000 to $5,000,000 for the subject property as of January 1, 2014.

The BOR issued a decision reducing the initially assessed valuation to $2,390,000, which led to the present appeal. The parties waived the opportunity to appear before this board, instead relying on written argument, with both parties pointing to perceived flaws with the opposing appraiser's analysis.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he 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. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In the present appeal, both Kroger and the BOE rely appraisal evidence. As we have noted on previous occasions, the appraisal of real property is not an exact science, but is, instead, an opinion, the reliability of which depends upon basic competence, skill, and ability demonstrated by the appraiser. See, e.g., *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Furthermore, the Supreme Court has held that this board exercises its discretion as the finder of fact in evaluating the credibility of witnesses. See *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶25.

At the outset, we find that Hannah's deduction for the lack of parking on the subject property was improper. Typically, this board and the court have discussed the proper treatment of an easement in the valuation of real property from the perspective of the servient parcel. See, e.g., *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St. 3d 710 (1995). In *Muirfield*, the court held that for real property tax purposes, the effect of a voluntary encumbrance, such as a private easement, should not be considered in the valuation of a property. See, also, R.C. 5713.03 (providing, in relevant part, "[t]he county auditor *** shall determine *** the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions," of real property). The directive to avoid the effects of an easement does not, however, apply to the dominant parcel. In relevant part, R.C. 5701.02(A) provides: "'Real property,' 'realty,' and 'land' include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and *all rights and privileges belonging or appertaining thereto*." Emphasis added. Thus, while R.C. 5713.03 prohibits consideration of the effect of a voluntary encumbrance on a servient parcel, R.C. 5701.02 directs that the value of the dominant parcel should reflect all rights and privileges, which includes the benefits of an easement. See, e.g., *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 9, 2007), BTA No. 2005-B-638, unreported, *aff'd*, 118 Ohio St.3d 45, 2008-Ohio-1588 (rejecting the contention that a sale was not a reliable indication of value because the purchase price included an easement to park on an adjacent parcel because that easement constitutes a right and privilege belonging to the dominant estate and is considered part of the real property). We therefore find that the rights of the subject property in the parking easement is appropriately included in its value.

Even if the benefit of an easement may be excluded from the value of the dominant parcel, there is not sufficient support for Hannah's deduction in the instant appeal. Hannah's deduction for the lack of parking on the subject property is similar to a blanket deduction for a cost to cure that is made separate from the other adjustments in the sales comparison approach and after capitalization of NOI in the income

approach. Such deductions may be appropriate under certain circumstances. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 324, 2015-Ohio-3633. Compare *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997) (affirming this board's rejection of post-capitalization adjustments made to an income approach to account for rent loss, leasing commissions, and additional renovations because these factors should have been considered in either the NOI or capitalization rate, as well as a deduction for asbestos removal because no showing had been made that it affected the property's value). In *Columbus City Schools*, supra, the court affirmed this board and held that a deduction was appropriate where the cost to cure specific defects "has a definite, immediate, and quantifiable effect on property value," such as replacement of a leaky roof and nonfunctional heating and cooling equipment. Id. at ¶40. In the present case, Hannah has not shown that the location of the subject's parking on a separate parcel has an impact on the subject's value, let alone an immediate need to cure. To the contrary, Hannah stated to the BOR that the existing parking was not a negative condition, and there is no indication that Kroger's ability to utilize the adjacent parking was in jeopardy. Accordingly, we find that Hannah's wholesale deduction following his determination of value using each approach was inappropriate.

Once we remove Hannah's parking deduction, both appraisers utilized similar methodologies in their valuations of the subject property. Upon review of the record, including both appraisals, we find that Hannah's analysis provides more reliable evidence of the subject's true value than that performed by Koon. First, Hannah provided a more thorough explanation of and support within both approaches to value. Hannah described his search parameters and gave more thorough details about the comparable properties used in both his sales comparison and income approaches to value. Hannah also gave more specific discussion about the adjustments made to those properties and how the differences affected the properties' values. Hannah further provided more explanation of the expenses utilized in his income approach and the data reviewed to use each amount.

Second, we find that Hannah's capitalization rate was more appropriate than that used by Koon. Hannah considered comparable sales, national investor surveys, and the band of investment method to conclude that 8.75% was the appropriate capitalization rate. Koon looked at comparable sales and a national survey to conclude to 8.00%. Both appraisers provided support for their respective capitalization rates, but Hannah's rate better reflects the risk present in the subject property. As noted, a blanket deduction to reflect the lack of parking on the subject property was inappropriate because the reciprocal easement provided a legal right to adequate parking directly in front of the subject property on the adjacent parcel. The fact that the parking lot is not owned by the owner of the subject property, however, does increase the risk associated with the property, even if that increase is limited. As noted by the court in *Hotel Statler*, supra, a higher risk should be reflected in an appraiser's capitalization rate. Id. at 302, quoting The Appraisal of Real Estate 410 (10th Ed.1992). Thus, we find that Hannah's 8.75% capitalization rate better reflected the risk associated with the lack of fee simple ownership of the adjacent parking.

Accordingly, we find that the total true value for the subject property for tax year 2014 is best reflected by the appraisal performed by Hannah, with the above described adjustment. As such, we add the $1,560,000 deducted from each approach to Hannah's final reconciled value ($2,390,000), for a new total of $3,950,000.

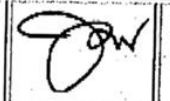
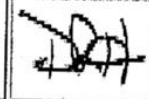
It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

TRUE VALUE

$3,950,000

TAXABLE VALUE

$1,382,500

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

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-414
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

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

THE KROGER COMPANY
Represented by:
LAUREN M. JOHNSON
VORYS, SATER, SEYMOUR AND PEASE LLP
52 E. GAY STREET
P. O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Monday, December 5, 2016

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

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 100-006599-00, for tax year 2014. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject's total true value was initially assessed at $3,000,000. The appellee property owner, The Kroger Co. ("Kroger"), filed a decrease complaint with the BOR seeking a reduction in value to $2,000,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. The subject property is approximately 1.699 acres improved with a Kroger grocery store. The subject has minimal land

that is not directly beneath the building, and parking for the property is located on an adjacent parcel. A reciprocal easement agreement that was recorded in 2006 outlines Kroger's non-exclusive right to utilize the adjacent lot. Pursuant to the easement agreement, the owner of the adjacent parcel is responsible for the maintenance of the parking lot, which must remain available for Kroger's use at its present parking ratio and undeveloped apart from the existing asphalt and other site improvements. If the total parking area for Kroger and the adjacent shopping center falls below 3.75 spaces per 1,000 square feet, Kroger gains exclusive rights to use the portion of the lot directly in front of the store. Though it is not owned by Kroger, there is no indication that the existing parking is inadequate for its needs.

At the BOR hearing, Kroger presented the testimony and written report of appraiser Curtis P. Hannah, MAI. Hannah indicated that the lack of parking on the subject parcel did not negatively impact the property because the adjacent lot provided sufficient parking for Kroger's customers. Hannah indicated, however, that such a lot is typically included in properties of this type and he subtracted the value attributable to a typical parking lot for his final conclusion of value. In order to estimate the value attributable to a parking lot, Mr. Hannah first derived the value for the land based on five vacant land sales. From this, he concluded that a parking lot at the subject would be valued at $380,000 per usable acre. Based on comparable sales, Hannah determined that an average land-to-building ratio for the subject is 4.5 to 1 (or approximately one acre per 10,000 square feet of building). Considering the size of the building and this ratio, Hannah indicated that the appropriate size of the property is 5.801 acres, 4.102 acres larger than the subject. Hannah estimated that the value of the parking that would ordinarily be present on a property of this type is $1,560,000 (rounded).

Hannah relied on both the sales comparison and income approaches to value, indicating that he relied upon his own measurements to determine the size of the property (56,154 square feet) rather than rely on the auditor (57,644 square feet) or some other source. For his sales comparison approach, Hannah utilized nine sales of single-occupant retail properties ranging from 30,000 to 75,000 square feet. Hannah adjusted these sales after considering the real property rights conveyed, financing terms, conditions of sale, market conditions, location, access/exposure, size, and age/condition. Based on the sales and his adjustments, Hannah determined that they indicated a value of $70 per square foot, or $3,930,780. From this figure, Hannah subtracted $1,560,000 to account for the lack of parking on the subject parcel.

For his income approach, Hannah utilized a rental rate of $7 per square foot, added reimbursable expenses, and subtracted 5% for vacancy and collection loss for an effective gross income ("EGI") of $7.52 per square foot, or $422,503. Hannah subtracted $1.17 per square foot ($65,727 total) for expenses, resulting in a net operating income ("NOI") of $356,776. Hannah applied an 8.75% capitalization rate plus a .18% tax additur, for an indicated value of $3,995,247 ($71.15 per square foot). Hannah again reduced that amount by $1,560,000, for a stabilized value indication of $2,440,000 (rounded). Hannah finally reconciled the two approaches giving primary weight to the sales comparison approach for a final value conclusion of $2,390,000 as of January 1, 2014.

The BOE presented the testimony and written report of Samuel D. Koon, MAI. Koon indicated that he did not consider the lack of direct, on-site parking on the subject parcel due to Kroger's parking rights in the adjacent lot that adequately services the subject and must remain available for its use. In his sales comparison approach, Koon considered sales of eight properties located throughout Ohio that he determined were comparable to the subject. The properties ranged in size from 61,387 square feet to 128,875 square feet. Koon then adjusted the sales for differences such as property rights conveyed, date of sale/market conditions, building area, condition and quality, location, tenant mix, and any other characteristics he deemed pertinent to the valuation. The adjusted sales provided a range in value from approximately $70 per square foot to $120 per square foot of gross building area. Koon considered $85 per square foot the appropriate value indication for the subject property and multiplied it by 57,644 square feet, the net area reported by the auditor, for an indicated value of $4,900,000 (estimated) based on this approach.

Koon also performed the income approach, utilizing a figure of $8.25 per square foot as a rental rate, to which he then applied a 7.5% reduction for vacancy and credit loss. Koon added reimbursed expenses for an EGI of $10.95 per square foot, or $631,211 total. Koon then subtracted $3.79 per square foot for expenses, resulting in a NOI of $412,855. Koon applied an 8.00% capitalization rate and .27% tax additur, for an indicated value of $5,000,000 (rounded). Koon reconciled these values giving equal weight to both approaches, concluding to an indicated value range of $4,900,000 to $5,000,000 for the subject property as of January 1, 2014.

The BOR issued a decision reducing the initially assessed valuation to $2,390,000, which led to the present appeal. The parties waived the opportunity to appear before this board, instead relying on written argument, with both parties pointing to perceived flaws with the opposing appraiser's analysis.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he 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. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In the present appeal, both Kroger and the BOE rely appraisal evidence. As we have noted on previous occasions, the appraisal of real property is not an exact science, but is, instead, an opinion, the reliability of which depends upon basic competence, skill, and ability demonstrated by the appraiser. See, e.g., *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Furthermore, the Supreme Court has held that this board exercises its discretion as the finder of fact in evaluating the credibility of witnesses. See *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶25.

At the outset, we find that Hannah's deduction for the lack of parking on the subject property was improper. Typically, this board and the court have discussed the proper treatment of an easement in the valuation of real property from the perspective of the servient parcel. See, e.g., *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St. 3d 710 (1995). In *Muirfield*, the court held that for real property tax purposes, the effect of a voluntary encumbrance, such as a private easement, should not be considered in the valuation of a property. See, also, R.C. 5713.03 (providing, in relevant part, "[t]he county auditor *** shall determine *** the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions," of real property). The directive to avoid the effects of an easement does not, however, apply to the dominant parcel. In relevant part, R.C. 5701.02(A) provides: "'Real property,' 'realty,' and 'land' include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and *all rights and privileges belonging or appertaining thereto*." Emphasis added. Thus, while R.C. 5713.03 prohibits consideration of the effect of a voluntary encumbrance on a servient parcel, R.C. 5701.02 directs that the value of the dominant parcel should reflect all rights and privileges, which includes the benefits of an easement. See, e.g., *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 9, 2007), BTA No. 2005-B-638, unreported, *aff'd*, 118 Ohio St.3d 45, 2008-Ohio-1588 (rejecting the contention that a sale was not a reliable indication of value because the purchase price included an easement to park on an adjacent parcel because that easement constitutes a right and privilege belonging to the dominant estate and is considered part of the real property). We therefore find that the rights of the subject property in the parking easement is appropriately included in its value.

Even if the benefit of an easement may be excluded from the value of the dominant parcel, there is not sufficient support for Hannah's deduction in the instant appeal. Hannah's deduction for the lack of parking on the subject property is similar to a blanket deduction for a cost to cure that is made separate from the other adjustments in the sales comparison approach and after capitalization of NOI in the income

approach. Such deductions may be appropriate under certain circumstances. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 324, 2015-Ohio-3633. Compare *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997) (affirming this board's rejection of post-capitalization adjustments made to an income approach to account for rent loss, leasing commissions, and additional renovations because these factors should have been considered in either the NOI or capitalization rate, as well as a deduction for asbestos removal because no showing had been made that it affected the property's value). In *Columbus City Schools*, supra, the court affirmed this board and held that a deduction was appropriate where the cost to cure specific defects "has a definite, immediate, and quantifiable effect on property value," such as replacement of a leaky roof and nonfunctional heating and cooling equipment. Id. at ¶40. In the present case, Hannah has not shown that the location of the subject's parking on a separate parcel has an impact on the subject's value, let alone an immediate need to cure. To the contrary, Hannah stated to the BOR that the existing parking was not a negative condition, and there is no indication that Kroger's ability to utilize the adjacent parking was in jeopardy. Accordingly, we find that Hannah's wholesale deduction following his determination of value using each approach was inappropriate.

Once we remove Hannah's parking deduction, both appraisers utilized similar methodologies in their valuations of the subject property. Upon review of the record, including both appraisals, we find that Hannah's analysis provides more reliable evidence of the subject's true value than that performed by Koon. First, Hannah provided a more thorough explanation of and support within both approaches to value. Hannah described his search parameters and gave more thorough details about the comparable properties used in both his sales comparison and income approaches to value. Hannah also gave more specific discussion about the adjustments made to those properties and how the differences affected the properties' values. Hannah further provided more explanation of the expenses utilized in his income approach and the data reviewed to use each amount.

Second, we find that Hannah's capitalization rate was more appropriate than that used by Koon. Hannah considered comparable sales, national investor surveys, and the band of investment method to conclude that 8.75% was the appropriate capitalization rate. Koon looked at comparable sales and a national survey to conclude to 8.00%. Both appraisers provided support for their respective capitalization rates, but Hannah's rate better reflects the risk present in the subject property. As noted, a blanket deduction to reflect the lack of parking on the subject property was inappropriate because the reciprocal easement provided a legal right to adequate parking directly in front of the subject property on the adjacent parcel. The fact that the parking lot is not owned by the owner of the subject property, however, does increase the risk associated with the property, even if that increase is limited. As noted by the court in *Hotel Statler*, supra, a higher risk should be reflected in an appraiser's capitalization rate. Id. at 302, quoting The Appraisal of Real Estate 410 (10th Ed.1992). Thus, we find that Hannah's 8.75% capitalization rate better reflected the risk associated with the lack of fee simple ownership of the adjacent parking.

Accordingly, we find that the total true value for the subject property for tax year 2014 is best reflected by the appraisal performed by Hannah, with the above described adjustment. As such, we add the $1,560,000 deducted from each approach to Hannah's final reconciled value ($2,390,000), for a new total of $3,950,000.

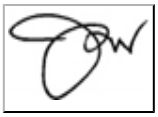
It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

TRUE VALUE

$3,950,000

TAXABLE VALUE

$1,382,500

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

1.51 Special or local provision prevails as exception to general provision.

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Effective Date: 01-03-1972 .

5701.02 Real property definitions.

As used in Title LVII [57] of the Revised Code:

(A) "Real property," "realty," and "land" include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto. "Real property" does not include a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code or a mobile home, travel trailer, or park trailer, each as defined in section 4501.01 of the Revised Code, that is not a manufactured or mobile home building as defined in division (B)(2) of this section.

(B)

(1) "Building" means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter. "Building" includes a manufactured or mobile home building as defined in division (B)(2) of this section.

(2) "Manufactured or mobile home building" means a mobile home as defined in division (O) of section 4501.01 of the Revised Code or a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code, if the home meets both of the following conditions:

(a) The home is affixed to a permanent foundation as defined in division (C)(5) of section 3781.06 of the Revised Code and is located on land owned by the owner of the home.

(b) The certificate of title for the home has been inactivated by the clerk of the court of common pleas that issued it pursuant to section 4505.11 of the Revised Code.

(C) "Fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

(D) "Improvement" means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure.

(E) "Structure" means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. "Structure" includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.

Effective Date: 04-09-2001 .

5701.03 Personal property and business fixture defined.

As used in Title LVII [57] of the Revised Code:

(A) "Personal property" includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. "Personal property" also includes every share, portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat, used or designed to be used in business either exclusively or partially in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat is within the jurisdiction of this state or elsewhere. "Personal property" does not include money as defined in section 5701.04 of the Revised Code, motor vehicles registered by the owner thereof, electricity, or, for purposes of any tax levied on personal property, patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business, except to the extent that the value of the electricity, patterns, jigs, dies, or drawings is included in the valuation of inventory produced for sale.

(B) "Business fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

Effective Date: 10-05-1999 .

5713.03 County auditor to determine taxable value of real property.

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Amended by 129th General AssemblyFile No.186, HB 510, §1, eff. 3/27/2013.

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-27-1983 .

Related Legislative Provision: *See 129th General AssemblyFile No.186, HB 510, §3 .*

See 129th General AssemblyFile No.127, HB 487, §757.51.

5703-25-07 Appraisals.

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the tax commissioner directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5703-25-11 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5703-25-12 of the Administrative Code.

(D) In arriving at the estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach - The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the m-arket approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach - The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5703-25-05 of the Administrative Code, and adding the result to the basic interest and capitalization rate, Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3) The cost approach - The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the

only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtained by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making the appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the tax commissioner for the approval on an individual basis.

R.C. 119.032 review dates: 07/25/2014 and 07/25/2019
Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 5713.01, 5715.01
Prior Effective Dates: 12-28-73; 11-1-77; 9-18-03

Prior History: (Eff 12-28-73; 11-1-77; 9-18-03
Rule promulgated under: RC 5703.14
Rule authorized by: RC 5703.05
Rule amplifies: RC 5713.01, 5715.01
Replaces: 5705-3-03
R.C. 119.032 review dates: 09/18/2008)

XII.02 Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(Adopted November 6, 1990).

(Amended, effective July 1, 1975; HJR No.59.)
