

HIGH PROPERTY TAX VALUES IN OHIO

The Buckeye State's questionable methods deliver alarmingly high values.

By Steve Nowak

A recent decision from an Ohio appeals court highlights a developing and troubling pattern in the state's property tax valuation appeals. In a number of cases, an appraiser's misuse of the highest and best use concept has led to extreme overvaluations. Given its potential to grossly inflate tax liabilities, property owners and well-known tenants need to be aware of this alarming trend and how to best respond.



Steve Nowak
Siegel Jennings

In the recently decided case, a property used as a McDonald's restaurant in Northeast Ohio received widely varied appraisals. The county assessor, in the ordinary course of setting values, assessed the value at \$1.3 million. Then a Member of the Appraisal Institute (MAI) appraiser hired by the property owner calculated a value of \$715,000. Another MAI appraiser, this one hired by the county assessor, set the value at \$1.9 million. The average of the two MAI appraisals equals \$1.3 million, closely mirroring the county's initial value.

Despite the property owner having met its burden of proof at the first hearing level, the county board of revision rejected the property owner's evidence without analysis or explanation. The owner then appealed to the Ohio Board of Tax Appeals (BTA).

In its decision on the appeal, the BTA focused on each appraiser's highest and best use analysis. The county's appraiser determined the highest and best use is the existing improvements occupied by a national fast food restaurant as they contribute beyond the value of the site "as if vacant." The property owner's appraiser determined the highest and best use for the property in its current state was as a restaurant.

With the county appraiser's narrowly defined highest and best use, the county's sale and rent examples of comparable properties focused heavily on nationally branded fast food restaurants (i.e. Burger King, Arby's, KFC and Taco Bell). The BTA determined that the county's appraisal evidence was more credible because it considered the county's comparables more closely matched the subject property.

By analyzing primarily national brands, the county's appraiser concluded a \$1.9 million value. Finding the use of the national fast food comparable data convincing, the BTA

increased the assessment from the county's initial \$1.3 million to the county appraiser's \$1.9 million conclusion.

On appeal from the BTA, the Ninth District Court of Appeals deferred to the BTA's finding that the county's appraiser was more credible, noting "the determination of [the credibility of evidence and witnesses]...is primarily within the province of the taxing authorities."

Questionable comparables

Standard appraisal practices demand that an appraiser's conclusion to such a narrow highest and best use must be supported with well-researched data and careful analysis. Comparable data using leased-fee or lease-encumbered sales provides no credible evidence of the use for which similar real property is being acquired. Similarly, build-to-suit leases used as comparable rentals provide no evidence of the use for which a property available for lease on a competitive and open market will be used. However, this is exactly the type of data and research the county's appraiser relied upon.

A complete and accurate analysis of highest and best use requires "[a]n understanding of market behavior developed through market analysis," according to the Appraisal Institute's industry standard, *The Appraisal of Real Estate*, 14th Edition. The Appraisal Institute defines highest and best use as "the reasonably probable use of property that results in the highest value."

By contrast, the Appraisal Institute states the "most profitable use" relates to investment value, which differs from market value. The Appraisal of Real Estate defines investment value as "the value of a certain property to a particular investor given the investor's investment criteria."

In the McDonald's case, however, the county appraiser's highest and best use analysis lacks any analysis of what it would cost a national fast food chain to build a new restaurant, nor does it acknowledge that the costs of remodeling the existing improvements need to be considered.

If real estate is to be valued fairly and uniformly as Ohio law requires, then boards of revision, the BTA and appellate courts must take seriously the open market value concept clarified for Ohio in a pivotal 1964 case, *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*. In that case, the court held that "the value or true value in money of any property is the amount for which that property would sell on the open market by a willing seller to

a willing buyer. In essence, the value of property is the amount of money for which it may be exchanged, i.e., the sales price."

Taxpayers beware

This McDonald's case is not the only instance where an overly narrow and unsupported highest and best use appraisal analysis resulted in an overvaluation. To defend against these narrow highest and best use appraisals, the property owner must employ an effective defense strategy. That strategy includes the critical step of a thorough cross examination of the opposing ap-

praiser's report and analysis.

In addition, the property owner should anticipate this type of evidence coming from the other side. The property owner's appraiser must make the effort to provide a comprehensive market analysis and a thorough highest and best use analysis to identify the truly most probable user of the real property. ■

Steve Nowak is an associate in the law firm of Siegel Jennings Co. LPA, the Ohio and Western Pennsylvania member of American Property Tax Counsel, the national affiliation of property tax attorneys.



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