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**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE EQUALIZATION
APPEALS OF YELLOW EQUIPMENT &
TERMINALS, INC. / YELLOW
TRANSPORTATION, INC./ YRC, INC.
FOR THE YEARS 2007 & 2008 IN
JOHNSON COUNTY, KANSAS

Docket Nos. 2007-5812-EQ
& 2008-5829-EQ

ORDER

Now the above-captioned matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The Court conducted a hearing in these matters on February 21-23, 2011. The Taxpayer appeared by counsel of record, Linda Terrill. Johnson County appeared by Kathryn Myers, assistant county counselor.

After considering all of the evidence and arguments presented, the Court finds and concludes as follows:

The Court has jurisdiction of the subject matter and the parties, as equalization appeals have been properly and timely filed pursuant to K.S.A. 79-1609. The subject matter of these appeals is real estate and improvements commonly known as 10990 Roe Avenue, Overland Park, Johnson County, Kansas, also known as Parcel ID# 046-072-09-0-30-02-002.00-0. The subject property is the Taxpayer's corporate headquarters. The tax years at issue are 2007 and 2008.

On December 28, 2010, the County filed a Motion to Exclude the admission of any testimony and documentation relating the 2009 transfer of the subject property. At the commencement of the hearing, the parties resolved the motion by agreement stating that there would be no references or discussion of the 2009 transfer because the tax years at issue in these matters are 2007 and 2008.

The subject property is an office building located at the intersection of I-435 and Roe Avenue in Overland Park, Kansas. Taxpayer occupies almost all of the building, but there are a couple small tenants. For 2007 and 2008, the county originally valued the subject property at \$26,771,600 and \$26,997,000, respectively, relying upon the income approach. At hearing, the county recommends values of \$24,129,000 for 2007 and \$24,203,000 for 2008.

Kyle Blanz, an employee of the county appraiser's office, testified on behalf of the county. Blanz holds a registered mass appraiser (RMA) designation in Kansas and has been employed by the county appraiser for over ten years. Blanz reviewed the county's computer assisted mass appraisal (CAMA) documents for the subject property, reviewed market data, reviewed the subject's expense data provided prior to hearing, and inspected the subject property in preparation for hearing. Blanz explained that the CAMA cost approach and income approach were performed for each tax year, but no sales comparison approach was performed due to the limitations of the CAMA system.

The 2007 and 2008 CAMA cost approach estimates of value were \$35,629,280 and \$51,147,010, respectively. Blanz testified that the county did not rely upon the cost approach because it becomes less reliable as depreciation becomes a greater challenge to quantify and because investors do not typically rely upon the cost approach. After review of the market and in his appraisal judgment, Blanz made adjustments in property characteristics and descriptions which resulted in modifications within the income approach. Specifically, Blanz changed the net leasable area (NLA) from 297,119 square feet to 310,655 square feet and changed the investment grade from "B" to "C+." His opinion of the NLA was from an architect's calculation, and he lowered the investment grade because the property is becoming older and more dated.

Based on his judgment, Blanz then made the following revisions (on a square foot basis) in the income approach: the below grade rent from \$14.00 to \$13.50, the above grade rent from \$17.00 to \$18.00, and expenses from \$5.25 to \$6.80. Further, revision of the investment grade resulted in a change in the capitalization rate from 8.25% to 9.00%. Blanz asserted that these revisions were within the applicable county market models, and although the property is aging, the excellent location and visibility of the subject property justify the \$18.00 rental rate. The revised income approaches result in values of \$24,129,000 for 2007 and \$24,203,000 for 2008. The slight difference in value is attributable to a difference in the effective tax rate for the two years.

Bernie Shaner, state certified general appraiser and MAI, also testified on behalf of the county. Shaner Appraisals, Inc. was retained by the county appraiser to appraise the fee simple interest of the subject property as of January 1, 2007. Kathy Lambrecht, real estate analyst with Shaner Appraisal, Inc., and Bernie Shaner inspected and appraised the subject property. Shaner described the property as a 21.53 acres site with a ten-story office building and adjacent three-story office building, constructed in 1972 and 1987, containing approximately 333,708 square feet of gross building area and 297,125 square feet of net rentable area.

Shaner performed a highest and best use analysis and concluded that the highest and best use of the property as improved is for continued use as a single-tenant office building. The cost, sales comparison, and income approaches were all performed and considered in estimating the market value of the subject property. Shaner's cost approach estimated a value of \$35,380,000, but he did not rely upon the cost approach because the cost to rebuild this property would not be a major factor in an owner's or investor's decision to buy this particular property.

Shaner did rely in part on the sales comparison approach. In developing his sales comparison approach, Shaner's two most important criteria were identifying comparable sales similar in size and which were single-tenant properties. Shaner identified five sales in the Kansas City metropolitan area of single-tenant properties with large square footage. Admittedly, one sale was substantially smaller, and one sale was a sale-leaseback transaction. Adjustments were made to the sale prices for time to the valuation date, location, quality/design, age/condition, tenancy/ and access/visibility. The range of adjusted sale prices per square foot was \$54.79 to \$113.21. Shaner's final value conclusion by the sales comparison approach was \$26,700,000, or \$80 per square foot.

Shaner testified that although the subject building could be leased, its design was more appropriate for owner occupancy. Shaner explained that a property's fee simple interest is defined in market terms, not in terms of a particular lease. He said that if a property is leased at above-market terms then the value of the leased fee interest is greater than the value of the fee simple interest; and, conversely, if a property is leased at below-market terms, the value of the leased fee interest is less than the value of the fee simple interest. In Shaner's income approach, Shaner concluded a rental rate of \$18.00 based upon market rental data and listings. Because actual expenses were unavailable, Shaner relied upon IREM's published expense data for suburban office buildings in the Kansas City metropolitan area and used \$7.95 per square foot for operating expenses. He estimated stabilized vacancy and collection to be 8% upon review of the Kansas City market and the local submarket. With respect to the capitalization rate, Shaner noted that the property has good access and visibility and is located in a strong submarket; however, its large size reduces the potential pool of users in the marketplace. He described the property as a "B" investment class property weighing its excellent location and good features and design with its age. After reviewing actual capitalization rates from several sales from 2004 through 2006 and investor surveys, Shaner determined a capitalization rate of 9.0%. The income approach indicated a value of \$24,210,000. Shaner opined that both the income approach and sales comparison approach deserved consideration and concluded a value, essentially in the middle, of \$25,500,000 as of January 1, 2007.

Chris Williams, managing director of C.B. Richard Ellis in Kansas City, appraised the subject property for lending purposes at the direction of JP Morgan Chase Bank as of May 16, 2008. At the client's request, Williams' appraisal was subject to the hypothetical condition that the subject property was vacant. In the "extraordinary assumptions and hypothetical conditions" and "special appraisal instructions" sections of the appraisal, Williams clearly stated that the property is currently 100% owner occupied, but at the client's request, he applied the hypothetical condition that the property was vacant. The concluded value was based upon that hypothetical condition. The appraisal clearly noted that "brokers indicated there would not be a discount when valuing on a fee simple basis since the majority of these facilities are owner occupied." Taxpayer Exhibit #1, at 21. With respect to real estate taxes, Williams' appraisal concluded that "the subject's current assessment is well supported by both its historical trend and by the comparable properties shown." *Id.* at 35.

As the property was assumed to be below a stabilized occupancy position (vacant), Williams stated that the income approach required a deduction for lease-up to stabilization. Williams' analysis concluded that a prospective buyer would be looking at 24 months to find tenants to occupy the building and there would be costs for tenant improvements (TI). A stabilized occupancy of 89% was estimated. William's lease-up discount analysis over an absorption period of 24 months estimated an adjustment of \$15,480,000, which was ultimately deducted from each of the three approaches to value. William's cost approach estimated a value of \$31,722,724; his sales comparison approach estimated a value of \$31,700,000; and his income approach estimated a value of \$31,720,000. After deducting his lease-up discount from all three approaches, Williams' market value conclusion was \$16,200,000.

David Lenhoff testified on behalf of the taxpayer regarding his two appraisal reviews. As illustrated by his qualifications, Lenhoff is active in the appraisal profession and its governing standards board activities. He is an appraisal expert with respect to the Uniform Standards of Professional Appraisal Practice (USPAP). However, Lenhoff admitted that he is not an expert with respect to Kansas law. With respect to the "Kyle Blanz appraisals," Lenhoff opined that the appraisals were single-property appraisals and should conform to USPAP Standards 1 and 2, not Standard 6 regarding mass appraisals. Further, Lenhoff detailed specific issues related to the marketability analysis and highest and best use, cost approach, sales comparison, and income capitalization. Lenhoff concluded that the conclusions cannot be considered a reliable indication of the real property interest appraised. He opined that they erroneously value the property as if leased at market rents, which is inconsistent with the rights appraised. Furthermore, he stated that the

development of the value conclusions is fatally flawed by the errors of omission and commission cited.

With respect to the Shaner and Lambrecht appraisal, Lenhoff stated that the report was not complete and the data was not adequate to support the conclusions. He asserted that the highest and best use conclusion was not supported and specifically noted deficiencies within each valuation approach. Lenhoff contended that the appraisal conclusion cannot be considered a reliable indication of the real property interest appraised because it represents the value of the property as if leased at market rents.

Taxpayer argued that the county's documentary evidence (which Taxpayer refers to as the "Blanz appraisals") and the Shaner and Lambrecht appraisal do not comply with certain ethical, competency, and reporting requirements prescribed under USPAP, and as such, the conclusions cannot be considered a reliable indication of the real property interest appraised. Specifically, Taxpayer contended that the fee interest requires valuing the property *as if vacant and available to be leased at market*. For its opinion of value, Taxpayer relied upon the Williams appraisal estimating a market value of \$16,200,000.

Law Governing Ad Valorem Tax Valuations

All real and personal property in Kansas is subject to taxation on a uniform and equal basis unless specifically exempted. Kan. Const. art. XI, § 1(a); K.S.A. 79-101. It is the duty of the Legislature to provide for a uniform and equal rate of assessment and taxation. *See id.* Pursuant to its constitutional dictate, the Legislature has enacted a statutory scheme to ensure property is appraised for ad valorem tax purposes in a uniform and equal manner. Central to this statutory scheme is the requirement that property be appraised at fair market value as of January 1 of each taxable year. *See* K.S.A. 79-1455.

Fair market value is defined as the amount in terms of money that a well-informed seller is justified in accepting for property in an open and competitive market. *See* K.S.A. 79-503a. In determining fair market value the appraiser must consider various factors enumerated in K.S.A. 79-503a(a) to (k).

The ad valorem tax appraisal process also shall conform to generally accepted appraisal procedures adaptable to mass appraisal and consistent with the definition of fair market value, unless otherwise specified by law. *See* K.S.A. 79-505. Appraisals produced by the computer assisted mass appraisal (CAMA) system prescribed or approved by the director of property valuation shall be deemed to be

written appraisals that fulfill the statutory requirements. See K.S.A. 79-504; *In re Yellow Freight System, Inc.*, 36 Kan.App.2d 210, 213, 137 P.3d 1051 (2006).

The director of the property valuation division (PVD) for the State of Kansas is required to adopt rules and regulations prescribing appropriate standards for performing appraisals in accordance with generally accepted appraisal standards, as evidenced by the standards promulgated by the Appraisal Standards Board. See K.S.A. 79-505. The Appraisal Standards Board publishes USPAP.

In November 1992, the PVD director adopted Directive #92-006, requiring county appraisers to perform all appraisal functions in conformity with Standard 6 of the 1992 USPAP. Standard 6 governs the development and reporting of mass appraisals. Computer assisted mass appraisal is the method of appraisal generally used throughout Kansas, and it is the method approved by the PVD director for ad valorem tax purposes.

This Court recognizes the importance of USPAP compliance to the legitimacy of the ad valorem tax system in Kansas. Each year counties throughout the state issue ad valorem tax assessments on every taxable parcel within their jurisdictions based on fair market value estimates. The vast majority of assessments are accepted by property owners without appeal. In order to maintain public trust and confidence in the system, it is essential for a property owner to know that the assessment he receives each year is backed by appraisal work that conforms to recognized professional standards. That purpose is served by USPAP, as well as by other legal protections such as statutory penalties for tax officials who fail to discharge their duties lawfully and state oversight requirements under the Kansas Real Estate Ratio Study Act (K.S.A. 79-1485 to K.S.A. 79-1493).

It is the duty of each taxing unit, as well as the state director of PVD, to regulate and oversee the professional practice of county appraisers and to ensure substantial compliance with state appraisal laws. This Court—which is strictly a quasi-judicial body—has no such oversight or regulatory authority.

It is the role of this Court to provide an impartial venue for the resolution of tax disputes. The Court hears the parties' arguments and weighs all of the evidence in accordance with the Kansas Administrative Procedures Act (KAPA) and the code of civil procedure. See K.A.R. 94-5-1. The Court must render decisions based on substantial competent evidence in light of the record as a whole and must decide cases solely on the evidence presented. See K.S.A. 77-621(c); K.S.A. 77-526(d). The presentation of evidence in proceedings before this Court need not adhere strictly to the Kansas rules of evidence. See K.S.A. 77-524(a). The objective is to provide the parties with a reasonable opportunity to be heard.

We also note that this Court is a quasi-judicial administrative body and may therefore rely upon its own expertise in assessing the evidence before it. *See Hart v. Board of Healing Arts of State*, 27 Kan.App.2d 213, 217-18, 2 P.3d 797 (2000). As our sister tax court of Minnesota has explained, “The quality of the work, the adherence to relevant meaningful industry standards, the witness’s comportment and persuasiveness on the stand, their candor and ability to explain their analysis are among the significant factors in determining credibility.” *Johnson Matthey Advanced Circuits v. Cty. of Wright*, 2003 WL 21246379 at 9 (Minn. Tax, May 22, 2003).

Of course, in considering the credibility of evidence in each case, we are mindful of the standards of appraisal practice embodied in USPAP. We recognize that when valuation evidence so deviates from USPAP that it becomes materially detrimental to a party’s overall opinion of value, the evidence may be unreliable as a matter of law. *See In re Amoco Production*, 33 Kan.App.2d. 329, 337, 102 P.3d 1176 (2004); *see also Board of Saline Cty. Comm’rs v. Jensen*, 32 Kan.App.2d 730, 88 P.3d 242, *rev. denied* 278 Kan. 843 (2004) (holding that a valuation premised on an appraisal approach expressly prohibited by USPAP is erroneous as a matter of law).

K.S.A. 79-102 defines “real property” and “real estate” to “include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, *rights and privileges appertaining thereto.*” (Emphasis added.) Because real property is defined to include all rights and privileges appertaining thereto, it is the “fee simple interest” that is valued for purposes of ad valorem taxation purposes in the State of Kansas. The “fee simple interest” denotes “absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by governmental powers of taxation, eminent domain, police power, and escheat.” *The Appraisal of Real Estate*, Appraisal Institute, at 69 (12th ed. 2001).

In Kansas, the fair market value of real property for ad valorem taxation purposes is based upon the highest and best use of the property. PVD Directive #99-038. “Highest and best use” is the reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The highest and best use must meet four criteria: legal permissibility, physical possibility, financial feasibility, and maximum productivity. *The Appraisal of Real Estate*, Appraisal Institute, at 305 (12th ed. 2001); *Yellow Freight System, Inc., et al. v. Johnson County Board of Co. Comm’rs*, 36 Kan.App.2d 210, 217, 137 P.3d 1051, *rev. denied* (2006).

Analysis

A key component of any appraisal is the definition of the appraisal assignment. See 1992 USPAP Standard Rule 1-2. The underlying principles of valuing the *unencumbered fee simple estate* of real property at its *highest and best use* are fundamental for purposes of ad valorem taxation in the State of Kansas. The valuation of the subject property's fee simple estate must take into account all rights and interests associated with the property as if merged into a single estate. The "bundle of rights" concept compares real property ownership to a "bundle of sticks" with each stick representing a separate right or interest inherent in the ownership. In theory, the parties in this case agree that it is the fee simple interest that is to be appraised for purposes of ad valorem taxation. The disagreement arises in practice – in performing the generally accepted valuation methodologies (i.e. the cost approach, the sales comparison approach, and the income capitalization approach).

In addition to challenging the USPAP compliance of the county's appraisal evidence, Taxpayer contends that: (1) based upon Lenhoff's appraisal reviews and testimony, that the fee interest requires valuing the property *as if vacant and available to be leased at market*, and (2) the Williams appraisal is the best evidence of fair market value of the fee simple interest of subject property. We respectfully disagree.

The first question to be addressed is "what is the highest and best use of the subject property." Lenhoff touched on the subject by explaining that in his opinion the highest and best use analysis of an office building should not stop at a conclusion of "office use," but should also consider owner occupancy versus tenant occupancy (leased income-producing property). According to Lenhoff, the answer to this question is key because it may affect depreciation in the cost approach, adjustments in the sales comparison approach, and the application of a lease-up adjustment in the income approach. Determining whether the highest and best use is single-tenant (or owner-occupied) or multi-tenant is a critical element because the valuation conclusion can be different depending upon this determination.

The county concluded that the current use is considered the highest and best use as it meets the definition for highest and best use and Taxpayer has not asserted that the current use is not the property's highest and best use. Shaner concluded that the existing use as a single-tenant office building was the highest and best use. Williams concluded that the highest and best use of the property is consistent with the existing use, as an office development.

Upon review of all the analyses, the Court finds that the highest and best use of the subject property is its existing use as a single-tenant, or owner-occupied, office building. While Lenhoff suggested that a multi-tenant office use should be considered, there is insufficient evidence to conclude that multi-tenant office use is in fact the highest and best use, or the maximally productive use, of the subject property in this case. We note that Lenhoff did not provide an independent highest and best use analysis of the subject property because he only performed an appraisal review.

The next question is how does the concept of the unencumbered fee interest factor into each of the three appraisal methodologies given that the highest and best use of the subject property is its existing use as a single-tenant, or owner-occupied, office building.

The cost approach is based on the principle of substitution which provides that an informed buyer will pay no more for a property than the cost to acquire a similar site and construct improvements of like desirability and utility. The cost approach estimates market value by estimating the replacement cost (or reproduction cost) of the improvements, subtracting depreciation (physical, functional and external estimated by varying methods), and then adding the land value. *The Appraisal of Real Estate*, Appraisal Institute, at 379 (13th ed. 2008). By its very nature, “the cost approach produces an opinion of value of the fee simple interest in the real estate.” *Id.* at 378. It values all of the interests and rights in the property. For ad valorem taxation purposes valuing the fee simple interest of the subject property at its highest and best use, we find that Williams’ application of a “lease-up discount” is not appropriate in the cost approach. Admittedly, however, the cost approach may not be the best indicator of market value under the facts presented due to the property’s age and difficulty in estimating depreciation.

The sales comparison approach estimates value by comparing similar properties that have recently sold with the subject property and making adjustments to the sale prices based upon relevant, market-derived elements of comparison. *Id.* at 297. “When data is available, this is the most straightforward and simple way to explain and support an opinion of market value. ... Typically, the sales comparison approach provides the most credible indication of value for owner-occupied commercial and industrial properties, i.e., properties that are not purchased primarily for their income-producing characteristics.” *Id.* at 300. The concepts of highest and best use and fee simple are fundamental in the approach. For example, in the analysis of comparable sales, identification and analysis of comparable properties with the same highest and best use as the subject property is important. In this case, sales of owner-occupied comparable properties would not require adjustment for the unencumbered fee simple interest, unless there were

extraordinary terms of sale that needed to be considered, such as a sale-leaseback. Sales of comparable properties encumbered by leases involve rights other than the fee simple and may require additional analysis and adjustment, and these sales may be less reliable as an indicator of value because of their complexity. *Id.* at 300-301.

We do not believe it is appropriate to include an income approach “lease-up discount” to the sales comparison approach in the manner performed by Williams. If there were market evidence to suggest an adjustment was necessary to a particular sale price to account for differences in highest and best use between the comparable sale and the subject property, then the adjustment should be made to the sale price within the sales comparison approach based upon market evidence.

The income capitalization approach to value is the third appraisal methodology. In this approach, an appraiser analyzes a property’s capacity to generate future revenue and capitalizes the income into an indication of value. *Id.* at 445. The conclusions of the income capitalization approach are usually given more emphasis or weight by buyers of income-producing properties. *Id.* at 300. Because income-producing property is usually leased, thereby creating legal estates of the lessor’s interest (the leased fee) and the lessee’s interest (the leasehold), the very nature of the income approach creates an issue relating to the interests to be appraised. *Id.* at 447. Current contract rents defined by existing leases on a property are used in a leased fee analysis, while market rent is utilized in the income approach for a fee simple valuation. *Id.* at 453 and 473.

Deriving an estimate of fair market value for purposes of ad valorem taxation through the income approach by using stabilized market incomes, market expenses and a market capitalization rate is accepted appraisal practice and accepted by the appellate courts of Kansas. If an income-producing property were actually experiencing a below stabilized vacancy position, then the reasons for the vacancy would need to be examined to determine whether an adjustment to the occupancy or a rent loss adjustment were appropriate. *See In re Brocato*, No. 102,565 (published pursuant to Kansas supreme court rule on December 7, 2011). This stabilized market method is used to provide uniform and equal appraisal for purposes of ad valorem taxation within this state.

Arguably, “[i]n appraising the value of a fee simple interest in a newly completed, 100% owner-occupied property, it may be appropriate to make a deduction in the forecast time for the market to achieve 100% use and occupancy of the building. (This is analogous to the lease-up time needed to achieve stabilized occupancy in tenanted properties.)” *Id.* at 473. However, we find that one must be mindful of the purpose of the appraisal or the appraisal assignment. Appraisals are

a complex endeavor and are used for many different purposes. Williams was making his appraisal under the extraordinary assumption that the property was vacant pursuant to the instruction of his client, JP Morgan Chase Bank. He did not conclude by independent analysis that the highest and best use of the subject property was as an income-producing property. In this case, for purposes of ad valorem taxation, in order for a lease-up deduction to be most appropriate in the income approach, one must first conclude that the highest and best use of the property is a tenanted property. We have already found that there is insufficient evidence to support such a conclusion with respect to the subject property.

This Court understands that it may be proper appraisal practice to include a lease-up discount in addition to a stabilized vacancy allowance in cases where the property is experiencing a below stabilized vacancy position. This is not such a case, however, as the evidence here indicates the subject property's highest and best use is its actual use as a fully owner-occupied facility. Applying a lease-up discount in this tax appeal would require a suspension of reality and an acceptance of conditions not borne out by the evidence. While Williams appropriately applied a lease-up discount in the income approach in appraising this fully occupied property based upon extraordinary assumptions and hypothetical conditions prescribed by his client, Chase Bank, no such extraordinary assumptions or hypothetical conditions are called for under Kansas property tax law.

In the present case, the county presented part of its valuation evidence through Blanz, a qualified mass appraisal expert with demonstrated knowledge of the subject property as well as the subject market area. Blanz personally inspected the subject property and reviewed the work of the field appraiser assigned to the property. Blanz confirmed that the county considered all of the relevant factors listed in K.S.A. 79-503a in arriving at its valuation.

In addition to his testimony, Blanz sponsored a computer-assisted mass appraisal (CAMA) report with supporting documentation. The county's documentary evidence consisted of various items such as the property record card, photographs, maps, geographic data, property characteristic information, a reconciliation statement, and mass appraisal market information. The county documents also included an analysis of highest and best use concluding that the current use is considered the highest and best use as it meets the definition for highest and best use and Taxpayer has not asserted that the current use is not the property's highest and best use.

Blanz clearly communicated the elements and conclusions supporting the county's valuation and definitively set out the scope of the county's appraisal work. The county's evidence makes clear that its scope of work was a mass appraisal

assignment and that its valuation is based on data developed using standard methods applied through computer-assisted mass appraisal models. We find nothing misleading in the county's evidence with regard to scope of work. Inclusion of supporting documents and explanatory testimony assists the Court in its final analysis, and such evidence is not prohibited by Kansas law. *See In re Yellow Freight System, Inc.*, 36 Kan.App.2d 210, 215, 137 P.3d 1051, 1055 (2006). While Lenhoff challenged the USPAP compliance of the report, Lenhoff was not familiar with Kansas law regarding county appraisal reports for purposes of ad valorem taxation. Although not perfect in terms of USPAP, the county's computer assisted mass appraisal reports meet minimum standards of reliability under Kansas law for purposes of ad valorem taxation. Nothing in the record suggests that the county's value is premised on an appraisal approach expressly prohibited by USPAP. Nor is there any evidence of USPAP deviations that could be construed as materially detrimental to the county's overall opinion of value.

Since the subject property is essentially owner-occupied, the sales comparison approach is likely to provide the most reliable estimate of value for purposes of ad valorem taxation of the fee simple estate. The subject property is suitable for continued owner occupancy, and sales in the market support a conclusion that buyers continue to purchase similar properties for owner occupancy. While the county's CAMA system does not perform a sales comparison approach, Shaner's sales comparison approach estimated a market value of \$26,700,000 as of January 1, 2007. Further, William's sales comparison approach estimated a value of \$31,700,000 as of May 16, 2008 (prior to the "below the line" lease-up discount applied per special instructions by his bank client).

After giving consideration to all of the appraisals (the county's CAMA appraisals, Shaner's appraisal, and Williams' appraisal) and weighing the evidence, including the respective flaws in each appraisal, the Court finds that the county's recommended values of \$24,129,000 for 2007 and \$24,203,000 for 2008 are most appropriate. The Court finds that the county's presentation—including its CAMA-generated mass appraisal reports, supplemental documents, Shaner's fee appraisal, and testimony from competent valuation experts—provides substantial competent evidential support for its recommended valuation. In light of the substantial evidence presented by the county and Williams' improper application of a lease-up discount in the cost and sales comparison approaches, Taxpayer's appraisal evidence is not persuasive. We acknowledge that Williams' extraordinary assumption is a valid assumption for some business purposes and we can see how some prospective buyers or lenders may be interested in an appraisal based upon such an assumption. However, we decline to adopt his methodology for purposes of ad valorem taxation. William's cost approach and sales comparison approach values determined before his "below the line" lease-up discount, which we found to

be inappropriate, are actually higher than the county's recommended values. Accordingly, the county's recommended values of \$24,129,000 for tax year 2007 and \$24,203,000 for tax year 2008 are adopted as best reflecting the fair market values of the subject property based upon the evidence presented.

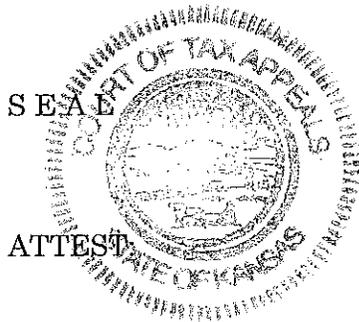
IT IS THEREFORE ORDERED that these are the findings and conclusions of the Court.

IT IS FURTHER ORDERED that the appropriate officials shall correct the county's records to comply with this Order, re-compute the taxes owed by the taxpayer and issue a refund for any overpayment.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 2010 Supp. 77-529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Court of Tax Appeals, Docking State Office Building, Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED

THE KANSAS COURT OF TAX APPEALS



Bruce F. Larkin
BRUCE F. LARKIN, CHIEF JUDGE

J. Fred Kubik
J. FRED KUBIK, JUDGE

Trevor C. Wohlford
TREVOR C. WOHLFORD, JUDGE

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2007-5812-EQ and 2008-5829-EQ, and any attachments thereto, was placed in the United States Mail, on this 11th day of January, 2012, addressed to:

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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka,
Kansas.


Joelene R. Allen, Secretary