

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

IN THE MATTER OF THE
EQUALIZATION APPEAL OF
GREGGPIERCY, INC. FOR THE
YEAR 2013 IN JOHNSON COUNTY,
KANSAS

Docket No. 2013-3053-EQ

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in this matter on October 8, 2014. GreggPiercy, Inc., Taxpayer, appeared by Brenda Kitchen, Attorney. Johnson County, Kansas (the "County") was represented by Kathryn D. Myers, Assistant County Counselor. Taxpayer Exhibit #1 and County Exhibit #1 were admitted into evidence.

A *Summary Decision* issued on this matter on October 21, 2014 and, on November 3, 2014, the Taxpayer filed a request for a full and complete opinion.

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

Jurisdiction

The Board has jurisdiction of the subject matter and the parties, as an equalization appeal has been properly and timely filed pursuant to K.S.A. 2013 Supp. 79-1609.

Subject Property

The subject property consists of a commercial building and surrounding land located at 12400 Blue Valley Parkway, Overland Park, Kansas currently operating as Travel Clean Tunnel car wash. The property is identified by the County as Parcel ID # 046-074-19-0-40-09-002.00-0. The property consists of a 14,514 square foot car wash building constructed in 2007 situated on a 2.75 acre parcel of land. The subject property has an appraised value of \$3,432,180 for the 2013 tax year.

Hearing Evidence

Perry Bailey, BOTA Specialist, appeared as a witness for the County and testified regarding the County's appraisal of the subject property. The Parties stipulated to Bailey's expert qualifications. The County appraised the subject property utilizing the cost approach. Bailey submitted that the sales and income approaches were not utilized as there were no recent sales of car washes in the area and most, if not all, car washes are owner-occupied properties. Bailey testified that the subject property is located in a good location on Blue Valley Parkway in a high density area with high visibility. The County assigned the property a Marshall and Swift (M&S) class of C and rank of excellent minus. Bailey, further, determined that the property is of normal physical condition. The County did not determine that the subject property suffered from any functional or economic obsolescence. Lastly, Bailey submitted that the subject property was not superadequate as Johnson County patrons expect a greater than typical car wash. After the County informal hearing, Bailey inspected the property and, as a result, made various data corrections that reduced the subject property's original noticed appraised value of \$3,480,590 to \$3,432,180.

Troy Smith, Appraiser, appeared as a witness for the Taxpayer and testified regarding his valuation of the property. The Parties stipulated to Smith's expert qualifications. Smith appraised the property relying on the income approach and concluded a total real property value of \$2,250,000. Smith determined the property was overbuilt as it did not generate sufficient sales income to justify its construction cost.

Smith's income approach reviewed the subject property historical income and expenses for the past three calendar years. Smith reviewed the subject property's prices for car washes and compared them to the prices for car washes at other tunnel car washes located in the Kansas City metropolitan area. From this data, Smith concluded the subject property's car wash rates were comparable and reasonable. Taxpayer Exhibit # 1, p. 21. Smith, further, estimated the cost of goods sold based on the property's historical income information and, based thereon, concluded the subject's income and cost of goods sold to be consistent with the market. *Id.* at p. 22. Smith's review of the subject property's 2010 through 2012 calendar year actual income and expenses projected a net operating income (NOI) of \$355,728 for the subject property as of January 1, 2013. Smith capitalized this NOI utilizing a 13.01% overall capitalization rate (10% base rate plus a 3.01% effective tax rate) for an overall value indication of \$2,750,000. Smith deducted \$500,000 for personal property (Furniture, Fixtures, and Equipment) to yield an opinion of value for the real property of \$2,250,000.

Applicable Law and Court Conclusions

Each parcel of non-agricultural real property in Kansas is appraised at its fair market value. See K.S.A. 79-501. The term "fair market value" is defined as that "amount in terms of money that a well-informed buyer is justified in paying and a well-informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." See K.S.A. 2013 Supp. 79-503a.

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." Because real property is defined to include all rights and privileges appertaining thereto, it is the "fee simple interest" that is valued for 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 111 (13th ed. 2008).

Pursuant to K.S.A. 2013 Supp. 79-1609 as well as the parties' agreement at hearing, the County has the duty to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of its valuation determination.

The County valued the subject property relying exclusively on the cost approach. The cost approach is based on the theory that the market value of an improved parcel can be estimated as the sum of the land value and the depreciated value of the improvements' construction costs. *Property Appraisal and Assessment Administration* 205 (J.K. Eckert, Ph.D. ed. 1990). The Board finds the appraisal adjustments and determinations made by the County in compiling its cost approach and choosing its replacement cost new and depreciation parameters justified and warranted given the record evidence regarding the subject property.

It was undisputed amongst the Parties that Johnson County car washes are generally owner-occupied and rarely sell. As such, and as testified to by County Appraiser Bailey, comparable sales and income data was difficult to gather for valuation of the subject property. The Smith appraisal relied exclusively on the income approach, yet provided no rental income or rental expense data from either the subject or comparable properties. The sole comparable market data in Smith's appraisal were listings of the prices for car wash services available at the subject and three comparable car washes located in the Johnson County. Taxpayer Exhibit # 1, p. 21. The Board finds this data relevant to the business operating at the subject property and of little, if any, probative value of the rental income generating

capabilities of the subject real property itself.

In the income approach, the appraiser estimates the income stream that would be produced by the property in the highest and best use under typical management. The property, not current management, is being valued; therefore, it is proper to assume that the potential investors would use the property for its most profitable legal use; and the buyer would employ typical rather than extraordinary management. *Property Appraisal and Assessment Administration* 84 (J.K. Eckert, Ph.D. ed. 1990).

The Board finds that the interest initially valued by the Smith appraisal was that of the *going concern* or the *business enterprise value*, which is the market value of the real property, personal property, and the intangible assets of the business. *The Appraisal of Real Estate*, Appraisal Institute 29 (13th ed. 2008). "For certain types of properties, (e.g., hotels and motels, restaurants, bowling alleys, manufacturing enterprises, athletic clubs, landfills), the physical real estate assets are integral parts of an ongoing business." *Id.* The Board finds the subject property is a type of property where the real property and business operating therein are integrally related. "It may be difficult to separate the market value of the land and the building from the total value of the business, but such a division of the realty and non-realty components of value may be required by the intended user of the appraisal." *Id.* at 30. Further, such a division of realty and non-realty components is required for a determination of the real property market value pursuant to Kansas law. See K.S.A. 79-102 and K.S.A. 2013 Supp. 79-503a.

The Board also finds Smith provided no substantial credible market data for the derivation of his expenses or capitalization rate. Moreover, after Smith determined a final value for the going concern, he deducted \$500,000 to account for personal property value, yet the Smith appraisal did not explain or provide data indicating how this amount was compiled.

Based on the foregoing, the Board finds that the County's valuation to be a more reliable indicator of the subject property's market value than the valuation methodology presented by the Taxpayer. Based on the evidence presented at the hearing, duly weighing such evidence, the Board determines that the appraised value of the subject property for tax year 2013 is \$3,432,180.00.

IT IS THEREFORE ORDERED that the appraised value of the subject property for 2013 is \$3,432,180.

IT IS THEREFORE ORDERED that, for the reasons stated above, the appraised value of the subject property for tax year 2013 is \$3,432,180.

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.

This order is a full and complete opinion pursuant to K.S.A. 74-2426(a), and amendments thereto.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. *See* K.S.A. 74-2426(b), and amendments thereto. 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 Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. *See* K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. *See* K.S.A. 74-2433(f), and amendments thereto.

Unless an aggrieved party files a timely petition for reconsideration as set forth herein, this order will be appealable by that party only by timely appeal to the district court or the court of appeals as set forth above.

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS



Ronald C. Mason
RONALD C. MASON, BOARD MEMBER

James D. Cooper
JAMES D. COOPER, BOARD MEMBER

Arlen Siegfried
ARLEN SIEGFREID, MEMBER PRO TEM

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2013-3053-EQ and any attachments thereto, was placed in the United States Mail, on this 22nd day of January, 2015, addressed to:

GreggPiercyInc
13130 Walmer St
Leawood, KS 66209-3619

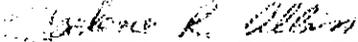
Brenda Kitchen, Attorney
Untersee and Associates
3100 Broadway Ste 1209
Kansas City, MO 64111

Paul Welcome, Johnson County Appraiser
Johnson County Appraiser's Office
11811 S Sunset Dr, Ste 2100
Olathe, KS 66061-7060

Kathryn Myers, Johnson County Asst County Counselor
Johnson County Admin Bldg
111 S Cherry, Ste 3200
Olathe, KS 66061-3451

Thomas G Franzen, Johnson County Treasurer
Johnson County Admin Bldg
111 S Cherry, Suite 1500
Olathe, KS 66061-3486

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



Joelene R. Allen, Secretary