

[Cite as *Wingates, L.L.C. v. South-Western City Schools Bd. of Edn.*, 2011-Ohio-2372.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Wingates, LLC,	:	
Appellant/Cross-Appellee,	:	
v.	:	
South-Western City Schools Board of Education,	:	No. 10AP-846 (BTA No. 2007-M-192)
Appellee/Cross-Appellant,	:	(REGULAR CALENDAR)
and	:	
Franklin County Board of Revision and Franklin County Auditor,	:	
Appellees.	:	

D E C I S I O N

Rendered on May 17, 2011

*Gallagher & Kavinsky, L.P.A., Terence L. Gallagher, and
Scott B. Birrer, for Wingates, LLC.*

*Rich & Gillis Law Group, LLC, and Karol C. Fox, for South-
Western City Schools Board of Education.*

APPEAL from the Ohio Board of Tax Appeals.

SADLER, J.

{¶1} Appellant/cross-appellee, Wingates, LLC ("Wingates" or "appellant"), filed this appeal seeking reversal of a judgment by the Ohio Board of Tax Appeals ("BTA")

determining the value of certain real property located in Franklin County. Appellee/cross-appellant, South-Western City Schools Board of Education ("the school district"), filed a conditional cross-appeal. For the reasons that follow, we affirm.

{¶2} This case involves the value for tax year 2005 placed on 18 parcels of real estate located within the school district, which collectively comprised an apartment complex consisting of a total of 1,712 units called the Wingates Village Apartments ("the property"). The Franklin County Auditor had placed a total value on the property of \$35,290,000.

{¶3} Wingates filed complaints with the Franklin County Board of Revision ("BOR") challenging that value. The district filed cross-complaints, and the BOR held a consolidated hearing to consider the proper value of the property.

{¶4} At the hearing before the BOR, Wingates offered testimony from Sam Koon, an appraiser who had prepared a report setting forth his opinion regarding the value of the property. The BOR accepted Koon's opinion as to the property's value and reduced the value for tax purposes to \$24,960,000. Nevertheless, Wingates filed an appeal with the BTA arguing that a further reduction in the value of the property should be granted.

{¶5} At the BTA hearing, the BTA was presented with differing opinions regarding the proper value of the property. Wingates offered testimony from James Powers, who had prepared a report setting forth his opinion regarding the value of the property after the BOR hearing. In response, the district called Koon as a witness to testify about the report upon which the BOR relied in reaching its determination regarding value. The Powers and Koon reports contained conclusions that differed from

each other in three key respects: (1) the highest and best use of the property, (2) the value of the property using the income capitalization approach to valuation, and (3) the value of the property using the sales comparison approach to valuation.

{¶6} Under the income capitalization approach, a comparison was made to comparable apartment complexes within the local market and the rents that could be generated based on expected occupancy rates. Powers and Koon agreed that the occupancy rate for the overall rental market for the area was approximately 90 percent, but that the occupancy rate for the property at issue was much lower because a large number of units in the complex had fallen into disrepair and were uninhabitable.

{¶7} Under the sales comparison approach, each of the appraisers considered recent sales of apartment complexes in the market area. Two of the comparable property sales used in the Koon report were two separate transactions covering the property itself: Wingates' purchase of 1,280 of the units in October 2003 for a purchase price of \$13,645,500; and Wingates' purchase of the remaining 432 units in May 2005 for a purchase price of \$4,300,000.

{¶8} The difference of opinion between the Powers and Koon opinions regarding valuation essentially stemmed from their disagreement regarding the highest and best use of the property. Powers testified that in his opinion, the highest and best use would entail reducing the number of units in the apartment complex from 1,712 to 478, with the unused buildings being demolished. Koon testified that he believed the highest and best use of the property would entail continuing to operate the complex with the full number of existing units, with efforts being taken to repair vacant units to increase occupancy.

{¶9} The difference in the number of units being considered resulted in significant differences in the values arrived at by each of the appraisers. Under the income capitalization approach, Koon arrived at a figure of \$37,839,352, adjusted downward by \$5,335,000 in estimated cost of repairs needed and by an additional \$7,021,607 in rents that would be lost while stabilizing the property, for a total after rounding of \$25,500,000. Under the sales comparison approach, Koon arrived at a figure of \$31,672,000, again adjusted downward for the estimated costs of repair and lost rent during stabilization, for a total after rounding of \$19,300,000. Koon stated in his report and testimony that he believed the income capitalization approach provided the better indication of the true value of the property because that was the approach that would be considered by a typical purchaser of the property. Thus, Koon concluded that the appropriate value of the property would be \$25,500,000, further adjusted downward to account for the value of furniture, fixtures, and equipment, for a total value of \$24,960,000, which had been the total assigned to the property after the BOR hearing.

{¶10} Under the income capitalization approach, Powers arrived at a value of \$13,000,000 based on the 478 units that Powers considered to be the highest and best use of the property. Powers adjusted this value downward by \$1,000,000 for repairs, but did not include a downward adjustment for lost rents based on the assumption that some of the units would be demolished. Powers then considered the value of the vacant property created by demolition of the unused units, minus the cost of demolition, and found that value to be \$1,600,000. Under the sales comparison approach, Powers did not use the two sales to Wingates of the subject property and arrived at a total value

after consideration of the demolition costs of \$10,400,000. Ultimately, Powers used the income capitalization approach and concluded that the appropriate value for the property was \$12,000,000 for the 478 units, plus \$1,600,000 for the vacant property created, minus an additional amount for furniture, fixtures, and equipment, for a total value after rounding of \$13,500,000.

{¶11} After the hearing, the BTA issued an order setting the value of the property at \$24,960,000. The BTA concluded that the Powers report had "little evidentiary weight" because it was "based upon a fictional apartment complex with only 478 units." (Order, 9-10.) The BTA further concluded that, because the Powers report did not include any opinion on the value of the property as improved at the time of the tax lien date, the report was not sufficient to carry Wingates' burden of establishing the value it sought to have placed on the property. The BTA specifically concluded that the sales purchase prices of the property when acquired by Wingates were not an appropriate basis for determining the value because the properties were distressed at the time of the sales. The BTA then accepted the value placed on the property, as set forth in the Koon report and as determined by the BOR, setting the total value at \$24,960,000.

{¶12} Wingates then filed this appeal, setting forth three assignments of error:

Assignment of Error No. 1. The Board of Tax Appeals ("BTA") failed to give proper weight and consideration to the testimony of, and the professional appraisal prepared by, James A. Powers, MAI, ("Powers") of U.S. Realty Consultants, Inc., which was introduced at the BTA hearing in support of Appellant's proposed value of the Property.

Assignment of Error No. 2. The BTA incorrectly relied on, and gave deferential evidentiary weight to the appraisal

prepared by Sam Koon, MAI ("Koon") of Samuel D. Koon and Associates ("Koon Appraisal") in its determination of a value for the Property.

Assignment of Error No. 3. The BTA unreasonably found that Appellant failed to meet the burden necessary to prove Appellant's proposed value of the Property.

{¶13} The school district filed a conditional cross-appeal, asserting as its assignment of error:

IF THE BOARD OF TAX APPEALS [IMPROPERLY] RELIED UPON THE APPRAISAL PREPARED BY SAM KOON, THEN THE BTA ERRED IN FAILING TO REINSTATE THE ORIGINAL VALUE PLACED UPON THE [PROPERTY] BY APPELLEE FRANKLIN COUNTY AUDITOR.

{¶14} Appellant's assignments of error are interrelated and will therefore be addressed together. By those assignments, appellant essentially argues that the BTA erred when it accepted the value set forth by Koon in his report over the value set forth by Powers in his report, thus concluding that appellant had failed to carry its burden of establishing that the value of the property as determined by the BOR should be decreased.

{¶15} Courts reviewing a BTA decision must consider whether the decision was "reasonable and lawful." *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, ¶14. Courts will reverse a BTA decision that is based upon an incorrect legal conclusion. *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 2001-Ohio-1335. However, the BTA is responsible for determining factual issues, so appellate courts must affirm factual determinations that are supported by reliable and probative evidence. *Satullo*.

{¶16} In making factual determinations, the BTA has wide discretion in weighing the evidence and determining the credibility to be placed on the testimony of witnesses. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641. Thus, an appellate court will not reverse the BTA's determination regarding weight given to the testimony of witnesses unless the court finds that there has been an abuse of discretion. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6.

{¶17} Appellate courts must be particularly deferential when the BTA has weighed the probative value of two competing appraisals, and has found one to be more probative than the other because "[t]his decision rests within the core of the BTA's competence as fact-finder and deserves the highest degree of deference from [the appellate] court." *Meijer Stores, Ltd. v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, ¶18.

{¶18} In this case, appellant argues that the BTA erred when it gave little evidentiary weight to the Powers appraisal, instead relying on the Koon appraisal. Appellant's argument essentially contends that the Powers appraisal represented a better assessment of the highest and best use of the property, particularly given the high vacancy rates within the complex, and argues that the Koon appraisal unreasonably declined to consider these high vacancy rates in determining the value of the property.

{¶19} However, we cannot say that the BTA abused its discretion in giving greater weight to the Koon appraisal. The Koon appraisal did take into account the vacancy rates within the complex, adjusting the value downward to reflect rents lost

while stabilizing the complex and returning some of the units to a habitable condition. In addition, while appellant points to what it claims are errors within the Koon appraisal, even assuming that there are such errors, "[t]he presence of minor inconsistencies and slight inaccuracies in the BTA's decision is not sufficient to render it unreasonable or unlawful." *Strongsville Bd. of Edn.* at ¶23.

{¶20} Furthermore, while we may disagree somewhat with the BTA's reference to the Powers report as being based on a "fictional" apartment complex, we cannot say that the BTA abused its discretion in concluding that the Koon report more accurately reflected the highest and best use of the property. Although we cannot say that consideration of a property's highest and best use can never involve development that is less than that which exists at the time the property is being valued, we also cannot say that the BTA abused its discretion when it determined that, in this case, the highest and best use of the property was the property as it was developed at the time of the valuation.

{¶21} Accordingly, appellant's three assignments of error are overruled. In addition, because we find that the BTA did not err in accepting the Koon appraisal, the school district's conditional cross-assignment of error is dismissed as moot. Having overruled appellant's assignments of error and having dismissed as moot the school district's conditional cross-assignment of error, we affirm the judgment of the Ohio Board of Tax Appeals.

Judgment affirmed.

BRYANT, P.J., and DORRIAN, J., concur.
