

BEFORE THE IDAHO BOARD OF TAX APPEALS

DDR NAMPA, LLC,	)	
	)	
Appellant,	)	APPEAL NO. 15-A-1100
	)	
v.	)	FINAL DECISION
	)	AND ORDER
CANYON COUNTY,	)	
	)	
Respondent.	)	
_____	)	

**COMMERCIAL PROPERTY APPEAL**

This appeal is taken from a decision of the Canyon County Board of Equalization denying the protest of valuation for taxing purposes of property described by Parcel No. 304980000. The appeal concerns the 2015 tax year.

This matter came on for hearing November 9, 2015 in Caldwell, Idaho before Board Member Leland Heinrich. Attorney Robert Burns appeared at hearing for Appellant. Chief Deputy Assessor Joseph Cox represented Respondent.

Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision.

**The issue on appeal concerns the market value of an improved commercial parcel.**

**The decision of the Canyon County Board of Equalization is modified.**

FINDINGS OF FACT

The assessed land value is \$2,231,340, and the improvements' value is \$7,851,500, totaling \$10,082,840. Appellant contends the correct total value is \$8,040,000.

The subject property is 15.57 acre parcel located in Nampa, Idaho. Specifically, subject represents one (1) of approximately thirteen (13) parcels comprising the Nampa Gateway Center shopping center. The parcel is improved with a 52,478 square foot owner-occupied movie theater constructed in 2010. The entire parcel, with the exception of a roughly 1.3 acre portion

in the northeast corner, is paved to provide parking for subject's theater, as well as the broader shopping center.

Appellant offered a retrospective fee appraisal report with an effective valuation date of January 1, 2015. The appraisal examined each parcel in the shopping center separately. The appraisal detailed some of the history leading to the development of the shopping center. The property was acquired in 2005. Due to the difficult and rocky terrain, Appellant spent roughly two (2) years blasting the site before construction of the improvements could commence. During this same time, a competing shopping center located a few miles down the freeway called the Treasure Valley Marketplace, had begun to develop and attract major anchor tenants. The rapid development of Treasure Valley Marketplace, as well as, two (2) other retail centers increased the competition in terms of attracting anchor and junior anchor tenants. As a result, Appellant was compelled to make significant concessions in order to attract the three (3) largest tenants in the shopping center; including paying roughly \$14 million to construct one (1) tenant's store. While Appellant was successful in securing a couple large anchor tenants, the shopping center has never performed to expectations, and even the anchor stores have underachieved by their standards. In all, the appraisal considered the shopping center troubled and over-assessed.

Focusing on the subject parcel, the appraisal valued subject as a stand-alone movie theater property. The appraisal explained movie theaters require more parking than a typical retail use, however, noted subject had more parking than needed. Based on industry data, the appraisal reported a land-to-building (LTB) ratio between 7.5 and 10 was typical in the marketplace. Subject, on the other hand, has a LTB ratio of 12.93. To address the high LTB ratio, the appraisal broke subject down into three (3) separate areas. The main appraisal unit

was allocated the ten (10) southerly acres, which reduced the LTB ratio to approximately 8.3. Next, the appraisal carved out the undeveloped 1.3 acres in the northeast corner and created a hypothetical parcel, referred to as Parcel C. Parcel C was considered a pad site which could be sold separately from the rest of the subject parcel. The remaining acreage, situated in the northern portion of the parcel directly west of Parcel C, was regarded as excess acreage in the appraisal. This “excess” acreage is paved and provides parking for Macy’s, which is one (1) of the large anchor tenants in the shopping center. Macy’s ground lease covers only the footprint of the building and does not include any parking. The lease, however, does require Appellant to provide parking for Macy’s.

After establishing the three (3) “parcels”, the appraisal examined each separately in estimating the respective values. For the main theater parcel, the appraisal relied primarily on the income approach, however, the sales comparison approach was also used as a test of reasonableness of the value conclusion. The income approach considered seven (7) theater rental properties mostly situated in the western United States. The compared properties were somewhat varied in terms of size, age, LTB ratio, and lease rates. After making adjustments to the rent comparables for differences compared to subject, the appraisal determined a market lease rate for subject of \$12 per square foot. The capitalization rate was developed through information concerning six (6) movie theater sales across the country. The sales suggested capitalization rates between roughly 7.2% and 9.48%. The appraisal utilized a 7.5% capitalization rate for subject, resulting in a total value of \$7,374,000.

In valuing Parcel C, the appraisal focused on recent proximate sales of pad sites. Ten (10) such sales were compared to Parcel C. The sales occurred between 2010 and 2012, with

prices ranging from \$3.25 to \$13.50 per square foot. A time adjustment was applied to the sales, as was a large adjustment for Parcel C's poor visibility from the nearby interstate. An upward adjustment was also made to account for a small paved portion located on Parcel C. The analysis yielded a value estimate of \$605,000 for Parcel C.

The appraisal did not place a value on subject's remaining acreage immediately east of Macy's because it was considered excess. It was argued the excess acreage would not contribute any value to a purchaser of the theater because the extra parking is not needed to service the theater. It was further suggested a new owner of the theater would have difficulty generating revenue from the parking because Macy's was not legally obligated to lease parking space from the theater. In short, the appraisal considered the excess land more of a burden than a benefit. As such, zero value was allocated to the excess parking.

Respondent's analysis of subject shared some similarities with Appellant's fee appraisal, however, there were a couple notable differences. Respondent explained the process by which subject, and the larger shopping center were assessed. Respondent valued the entire shopping center as a single property and then allocated values to the various parcels based on their respective contributory values. Like Appellant's appraisal, Respondent regarded subject's acreage as excessive for use as a movie theater. As a result, Respondent divided subject into four (4) separate appraisal units. Roughly 8.52 acres was carved out for the movie theater, 1.5 acres for the northeast corner (Parcel C), 3.04 acres for Macy's parking, and 2.39 acres of paved parking along the southern border, which provides cross-over parking for some of the smaller tenants in the shopping center. Respondent developed an income approach which yielded a value of \$7,749,200 for the theater portion. Using a flat rate of \$9 per square foot, Respondent

calculated a value of \$588,060 for Parcel C, \$1,176,120 for Macy's parking, and \$1,007,543 for the southern section of subject.

Appellant agreed with Respondent's values for the theater and Parcel C, however, challenged the values of the Macy's parking and the southern section. Appellant argued it was improper to assign the value of Macy's parking to subject. In Appellant's view, the Macy's parking area adds no value to a potential buyer of subject because the theater does not need the extra parking. Respondent acknowledged the parking does not directly support the theater operation, however, contended a future buyer could lease the parking to Macy's, thereby generating income from that portion of the property. Respondent agreed the value of the parking is to Macy's, however argued because the parking is situated on subject, the value must be assigned to subject. Appellant contended a new buyer would have no legal leverage to force Macy's to lease the space for parking so it would be premature to assess the parking as if it were leased. Respondent countered Macy's would be highly motivated to lease the parking because it represents roughly one-half ( $\frac{1}{2}$ ) of the paved parking immediately surrounding the store, and would be necessary to accommodate shoppers. Further, Respondent remarked without parking, the Macy's building would be land-locked and virtually worthless because customers would not be able to legally access the store.

Similar arguments were raised concerning the southern portion of subject. Respondent contended the section was excess parking to the theater and instead considered it primary parking for the area which houses the smaller tenants. Appellant explained carving out the southern section away from the theater would yield a LBT ratio of approximately 7, which was noted to be less than industry norm of 7.5 to 10. In Appellant's view, the theater would be under-

served if the southern portion were parceled out as advocated by Respondent.

### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2015 in this case. Market value is defined in Idaho Code § 63-201, as,

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Market value is estimated according to recognized appraisal methods and techniques. The three (3) generally recognized approaches to value include the sales comparison approach, the cost approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The parties both relied primarily on the income approach in developing their respective value positions.

While the input factors varied somewhat, the parties' analyses yielded surprisingly similar values with respect to the main theater and Parcel C. Appellant agreed to accept Respondent's values for each of these components, with \$7,749,000 attributable to the theater and \$588,000 to Parcel C. Where the parties disagree is with the Macy's parking and the parking along the southern section of subject. We turn first to Macy's parking.

The parties agree Macy's is the beneficiary of subject's excess northerly parking.

Appellant argued because the theater does not benefit from the parking, there is no contributory value. Appellant opined a purchaser of subject would not pay extra for Macy's parking because the types of use would be restricted and further, a buyer would have no legal leverage to force Macy's to lease the parking area. In Appellant's view, it would be improper to assign the full value of Macy's parking to subject.

The Board appreciates Appellant's position regarding Macy's parking, however, we disagree there is no value to subject. Appellant's argument that a buyer of subject would not be able to force Macy's to lease the parking space, while perhaps technically correct, is somewhat disingenuous because it ignores the reality Macy's requires sufficient parking for its customers in order to operate. Macy's would be highly motivated to secure the parking accommodations, and a buyer of subject would be keenly aware of Macy's need for parking. True, Macy's could try to find parking elsewhere in the shopping center, but subject's parking is ideally situated directly outside Macy's east entrance. Also, the buyer of subject would be motivated to lease the parking to Macy's because, as one of the primary anchor tenants, Macy's attracts a lot of customers to the shopping center. The increased traffic caused by Macy's customers is beneficial to the theater, so it would not be logical for the theater owner to refuse Macy's the parking it needs. Given the reality of the situation presented here, it is difficult for the Board to accept the position Macy's and the owner of the theater would not be interested in a lease arrangement for the parking. Accordingly, the Board finds Respondent properly assigned the value of Macy's parking to subject.

We turn now to the southern portion of subject. Respondent maintained the southern parking primarily benefitted the small shops, rather than the movie theater. Appellant, on the

other hand, contended the theater needed the southern parking to operate efficiently. According to industry data a theater has a typical LBT ratio of 7.5 to 10. Removing the southern section from the theater, results in a LBT ratio of about 7, which is lower than the bottom of the indicated range. Admittedly, customers of the small shops might use some of the theater's parking, however, the primary use is by theater customers. Respondent, while understandably concerned about parking for the smaller shops, did not demonstrate a sufficient basis for reducing subject's LBT ratio below industry norms and assessing the southern parking separately. Further, whether the small shops have adequate parking is not subject's concern, nor should it impact subject's valuation. We find the southern parking should be included in the valuation of the theater, which value is inherently captured in Respondent's income approach.

Idaho Code § 63-511 places the burden on Appellant to demonstrate subject's valuation is erroneous by a preponderance of the evidence. In this case, the Board finds the burden of proof satisfied, with respect to the values of the theater and Parcel C. As such, the Board will set the value of the theater portion at \$7,749,000 and the value of the Parcel C portion at \$588,000. The Board found Respondent's assessment treatment of the Macy's parking reasonable and well supported. Therefore, the Board will assign a value of \$1,176,000 to that portion of subject.

The decision of the Canyon County Board of Equalization is modified according to terms detailed above.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Canyon County Board of Equalization concerning the subject parcel be, and the same hereby

is, MODIFIED to reflect a decrease in total value to \$9,513,000.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 63-1305, any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

Idaho Code § 63-3813 provides that under certain circumstances the above ordered value for the current tax year shall not be increased in the subsequent assessment year.

DATED this 29<sup>th</sup> day of April, 2016.