BEFORE THE IDAHO BOARD OF TAX APPEALS

EIGHTH & MAIN LLC, Appellant, v. ADA COUNTY, Respondent.	)))))))))))	APPEAL NOS. 15-A-1155 thru 15-A-1166 FINAL DECISION AND ORDER

COMMERCIAL PROPERTY APPEALS

These appeals are taken from decisions of the Ada County Board of Equalization (BOE) denying protests of valuation for taxing purposes of property described by Parcel Nos. on Attachment A. The appeals concern the 2015 tax year.

The matters came on for consolidated hearing November 18, 2015 in Boise, Idaho. Board Member Leland Heinrich presided. Attorney Terri Pickens Manweiler appeared at hearing for Appellant. Chief Deputy Assessor Tim Tallman represented Respondent.

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

The issue on appeal concerns the market values of twelve (12) commercial condominiums.

The decisions of the Ada County Board of Equalization are affirmed in part and modified in part.

FINDINGS OF FACT

Respondent's assessed values and Appellant's value positions are detailed on Attachment A.

The subject properties consist of twelve (12) condominium units spread over different floors of the same building, hereafter referred to as the Eighth and Main Building. Multiple suites are present in some units. For perspective, the total building area is near 393,000 square feet.

Most unit sizes are about 19,800 square feet.

The Eighth and Main Building was completed in 2014. It is a high quality, seventeen (17) floor office tower located at the center of the Boise downtown core. The new building is variably described as representing the "upper tier" or the "100% location" for its market. In describing subjects further, two (2) are basement storage units. The other units are finished out to varying degrees (tenant improvements) and are generally used for retail or office space purposes. Subjects, which are most but not all units in the building, are managed collectively for leased-occupancy. A portion of some spaces were in shell condition on the 2015 assessment date.

A sale of three (3) Eighth and Main Building units occurred on February 14, 2014. These units sold collectively for $8,495,028. The total rentable area of these units was 30,692 square feet, indicating an average price rate of $277 per square foot. In addition to the sold units, the Eighth and Main Building has another seven (7) units (parcels) not appealed. Three (3) of these non appealed units are used for parking (181 garage parking spaces leased separately).

On October 3, 2014, an appraisal was done on the Eighth and Main Building for financing purposes. Less the three (3) sold units, the "as is" leased fee market valuation was for $62,070,000. The lease-up discount in determining this appraised value was $2,430,000. The financing appraisal reported the development cost for entire building, inclusive of land and site work, was near $70,000,000.

Appellant presented ten (10) appraisals in support of its claimed values. The January 1, 2015 appraisals, each very similar in nature, were performed by a local MAI. The two (2) basement storage units were not appraised. As in Respondent's appraisals, Appellant's appraisals did not perform cost approaches but did consider income and sales comparison approaches to value. In each instance, Appellant's appraiser gave primary weight to the income approach and a secondary consideration was given to the sales comparison approach, the final values often falling somewhere between the two (2) indicators.

Appellant's appraisals measured subjects' market values in fee simple on an "As Is" basis. The "As Is" premise meant units which were not fully leased or nearly fully leased were specially discounted for "lease up" costs and risk to a perspective buyer. For instance, in the income approach these extra "vacancy" deductions were made in addition to allowing for typical market vacancy. Appellant presented detailed appraisal reports for each of the appraised subject units.

Respondent also valued subjects separately as individual marketable units considering both income and sales comparison approaches. There were differences in how the parties approached the income and market approaches. Respondent also considered a number of whole-building measurements and reasonableness tests when comparing its assessments and Appellant's value claims. Respondent presented January 1, 2015 market value appraisals for each of the twelve (12) subjects. Final values coincided closely with the results of the income approaches.

In valuing subjects in fee simple, Respondent found where above-lease allowance tenant improvements existed, these contributed significant value to a unit's overall market value. Appellant's appraisals were distinguishable on this point, generally only recognizing so-called tenant improvements to a value point commensurate with a typical market scenario. At times tenant improvements in the subject units exceeded Appellant's market typical measurement by wide margin of two (2) or three (3) times. Respondent's appraisals reflected different values for units with differing tenant improvements. They further contained no extra deductions where a unit was leased-up to a lesser degree than was typical in the market for property similar to that unit.

There was an abundance of capitalization rate evidence in the record. Ultimately Appellant's appraiser concluded and generally used an overall capitalization rate of 8.718%, which rate included the effective property tax rate. Respondent's appraiser used an overall capitalization rate of 7%, which likewise included the effective property tax rate.

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 for assessment purposes is estimated according to recognized appraisal methods and techniques. Major consideration is given to a property's actual and functional use. For assessment purposes, a property's full market value is estimated in a fee simple interest (see IDAPA 35.01.03.217.01.a). In such a valuation, there are three (3) recognized approaches to value, the sales comparison approach, the income approach, and the cost approach. The State Constitution provides for an equality in the burden (method) of property taxation, to the end result that like properties are similarly assessed.

In accordance with Idaho Code § 63-511, the burden is with Appellant to establish Respondent's valuation is erroneous by a preponderance of the evidence. A preponderance of the evidence means evidence which, when weighed against the evidence opposed to it, has the more convincing force and the greater probability of truth. *Big Butte Ranch v. Grashmick*, 91 Idaho 6, 9, 415 P.2d 48, 51 (1966).

The assessment and appraisal of property requires a consideration of many factual and legal factors. However the estimation of market value is primarily a factual matter and can be quite complex. Preliminary determinations lead up to an ultimate opinion or estimate of market value. With the exception of the basement storage units, the Board found both parties submitted supported opinions of market value for the subjects. Both parties' appraisers started with a consideration of all three (3) approaches to value, ultimately processing value indicators from the income and sales comparison approaches. Both parties argued the income approach gave the best evidence of market value for subjects. We concur, in finding on the evidence before us the income approach is the best means for estimating subjects' market values. The Board also gave a relatively minor consideration to the price rate suggested by the three-unit sale in subjects' building.

In weighing the evidence, Appellant's appraisals were often viewed as more thorough and supported, although we found some issues existed. Respondent's appraisals, as well as the financing appraisal, gave a more pronounced consideration to subject's "top tier" place in the market which was found by the Board to be a chief value factor. Respondent's position that above-allowance tenant improvements added value, was more persuasively received. A number of the tenants in the Eighth and Main Building were interested in space finish that exceeded the landlord's base allowance. We did not find good evidence to support the premise that a new or typical future tenant would only want and pay for lessor improvements. However quantifying the value contributions for extra tenant improvements was difficult in the income approaches.

The Board found another underlying premise in Appellant's appraisals was not appropriate when appraising market value for property tax assessment purposes. Discounts were made for units not leased-up to a typical market occupancy level. The associated calculations by design clearly arrived at different "market value" on otherwise similar (almost identical) property. In ultimately relying on Appellant's estimates of net operating income, the Board found it necessary to change elements of the "lease-up" discount. The fact that a property is unsold or sold, un-leased or leased (whether it be above or below market rent levels), does not in itself change that property's fair market value for assessment purposes, apart from a statutory exemption playing a role.

The proper vacancy factor to use in the income approach was a central issue in an Idaho manufactured home park case. *The Senator, Inc. v. Ada County*, 138 Idaho 566, 67 P.3d 45 (2003). In this case the proper assessment standard for determining vacancy was articulated. The park's rental space was associated with a high actual vacancy. The Court found the property's market value was properly appraised using a market vacancy measurement which was comparatively low. Actual rent or vacancy is properly used when it is found to be in line with the broader market.

For the two (2) basement storage units the weighing of evidence was a simple process. Appraisals of these units were not included in Appellant's case and the burden of proof was not met where Respondent did offer supported valuations.

As noted above, the Board found the best way, and the correct way, to estimate the remaining subjects' market values was purely through the income approach. After hearing both parties' testimony on the sales comparison approach, it was not considered reliable or suitable for the task at hand. In looking to the income approach, the Board relied on Appellant's appraiser's net operating income estimates, however there was a problem here with the consideration of the varying tenant improvements. When it came to the significant determination of a property market capitalization rate, the Board departed from Appellant's determination in favor of factoring in additional information and expert opinion offered by Respondent's appraisal consideration and the appraisal done earlier for financing purposes. The Board determined the overall capitalization rate, inclusive of the effective tax rate, should be 8.218%. The Board left the market vacancy rate at 10%, the rate primarily referenced by both parties' appraisers.

The Board also disagreed with Appellant's consideration of *actual* vacancy. Appellant in some instances reduced a subject's market-rent income approach for a "lease up" adjustment. This was done under an "as is" valuation premise which is not uncommon in private sector appraisals. Pursuing these particular adjustments (value reductions) effectively values one (1) property less than its physical and functional equivalent merely due to different degrees of *actual* occupancy. We found the proper consideration for vacancy in market-rent assessment appraisals is achieved by using a market vacancy factor, and nothing more or less. *The Senator Inc. v. Ada County*, 138 Idaho 566, 67 P.3d 45 (2003). For assessment purposes, like property must have a like valuation to achieve uniform tax assessments. Therefore this decision consistently used market rent, market occupancy, market expenses and a matched market capitalization rate.

We further found tenant improvements made to the subject units, above and beyond the base allowances reflected in Appellant's market rents, more likely than not contributed positively and significantly to a unit's market value. Where this property was present, the Board found the best alternative here was to add value to the capitalized income indicator. These adjustments were based on tenant improvement cost evidence offered by Respondent. Where a limited amount of subject property space was in shell condition (no tenant improvements) and the basic income approach was based on finished space, the Board made a deduction for the typical market tenant improvement allowance. Final value conclusions by the income approach were then rounded to the nearest thousand.

For the reasons expressed, the value decisions of the Ada County Board of Equalization are affirmed in part and modified in part. The Board's final values are presented in the final order.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the value decisions of the Ada County Board of Equalization concerning the subject parcels be, and the same hereby are, AFFIRMED for Parcel Nos. R2243380020 and R2243380030, Appeal Nos. 15-A-1155 and 15-A-1156 respectively (storage units), and modified on the remaining parcels to reflect reductions indicated by the following final values.

	Appeal No.	Parcel No.	Final Value	Comment
1.	15-A-1155	R2243380020	$385,600	affirmed
2.	15-A-1156	R2243380030	$963,000	affirmed
3.	15-A-1157	R2243380070	$5,536,000	modified

4.	15-A-1158	R2243380110	$4,932,000	modified
5.	15-A-1159	R2243380130	$3,956,000	modified
6.	15-A-1160	R2243380140	$3,233,000	modified
7.	15-A-1161	R2243380160	$3,809,000	modified
8.	15-A-1162	R2243380170	$4,131,000	modified
9.	15-A-1163	R2243380180	$3,956,000	modified
10.	15-A-1164	R2243380190	$3,823,000	modified
11.	15-A-1165	R2243380200	$4,128,000	modified
12.	15-A-1166	R2243380210	$4,128,000	modified

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 under certain circumstances some of the above ordered values for the current tax year shall not be increased in the subsequent assessment year.

DATED this 26th day of April, 2016.