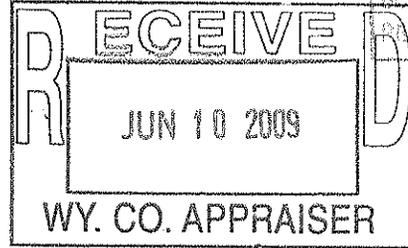


06/16/09

CAMA	_____
LANDS	_____
CAMA	_____
LANDS	_____
BORD	_____
DBASE	_____
BOND LIST	_____

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



IN THE MATTER OF THE PROTEST
OF WYANDOTTE BUILDING
CORPORATION FOR THE YEAR
2005 IN WYANDOTTE COUNTY,
KANSAS

Docket No. 2006-9078-PR

ORDER

Now the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The Court conducted a hearing in this matter on March 27, 2009. Lawrence J. Logback, Attorney, represented the Taxpayer. Ryan Carpenter, Assistant County Counselor, represented the Unified Government of Wyandotte County and Kansas City, Kansas (herein 'County.')

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 a tax protest has been properly and timely filed pursuant to K.S.A. 2008 Supp. 79-2005. The tax year in issue is 2005. The subject matter of this tax protest is as follows:

Real estate and improvements known as
Parcel ID # 105-223101, Wyandotte County, Kansas.

I.

The subject property is a multi-tenant medical office building located at 1150 No. 75th Place in Kansas City, Kansas that has a 2005 appraised value of \$1,596,920. The subject property is a two (2) story building constructed in 2000 containing approximately 12,126 square feet of gross building area situated on a 1.24 acre parcel.

In tax year 2001, the Taxpayer entered into a tax abatement program offered by the County wherein the subject property's value for tax years 2001 through 2006 was \$1,567,995 based on its construction cost. In said tax abatement program, the subject property received a 100% tax abatement in 2001 and the abatement percentage was reduced by 20% each additional year until the property was taxed at its full assessed value in tax year 2006. In November, 2004, the Taxpayer opted out of the abatement program after concluding that there would be a substantial tax savings if the property were assessed and taxed based on its appraised value

given that the County had appraised the subject property at \$894,900 for tax year 2004. After the Taxpayer opted out of the tax abatement program, the County increased the subject property's 2005 appraised value to \$1,596,920.

For 2005, two (2) medical office spaces in the subject property - a 5,500 square foot space and a 3,086 square foot space - were leased for \$18.00 per square feet with the lessees reimbursing the landlord their pro rata share of real estate taxes, insurance, utilities, maintenance, and janitorial costs. Some, yet not all, of the Taxpayer's principal shareholders are principals in one of the medical organizations that leases medical office space in the subject property. Twenty percent (20%) of the subject property's leasable area was vacant in 2005. This vacant area has been leased subsequent to calendar year 2005 at \$16.00 per square foot.

II.

Kevin Bradshaw, Wyandotte County commercial real estate supervisor, appeared as a witness for the County and testified regarding the County's 2005 valuation of the subject property. Bradshaw has 25 years experience as an appraiser and is licensed in the State of Kansas as a certified general appraiser. Bradshaw has the Certified Assessment Evaluator (CAE) designation from the International Association of Assessing Officers, and the Residential Mass Appraiser (RMA) designation from the State of Kansas, Division of Property Valuation.

The County performed CAMA (Computer Assisted Mass Appraisal) system cost and income approaches, and chose to rely on the cost approach for its 2005 valuation of the subject property. The County's cost approach indicated a value of \$1,596,920. In support its cost approach, the County performed a 2005 cost index study and a 2005 depreciation analysis. Subsequent to the Taxpayer's appeal of the subject property's 2005 appraised value, the County inspected the subject property, made various data collection corrections, and reduced the subject property's 2005 appraised value to \$1,470,150. The County recommended that the subject property's 2005 appraised value be reduced accordingly

The County's CAMA system income approach indicated a value of \$536,300. In support of its income approach, the County performed a 2005 office building study and a 2005 capitalization rate study. The County did not rely on its income approach as it determined that it did not have reliable medical office market data to accurately compile the income approach parameters. For its tax year 2005 County valuation, the County sent out income and expense questionnaires to the owners of the 46 medical office buildings in the County; however, the County only received rental information on two (2) properties. Further, Bradshaw submitted that most of

the medical office buildings in the County were constructed prior to 1980 and, therefore, were not comparable to the subject property. The County had only one (1) office type property sale during the relevant valuation period. This property was previously a single tenant retail building located in downtown Kansas City, Kansas that had been renovated into an office building. Said sale indicated an 11.00% capitalization rate. Bradshaw acknowledged that the income approach was a preferred method for valuation of income producing properties when there was reliable data available to compile said approach.

John W. Schmidt, Appraiser, appeared as a witness for the County. Schmidt has 30 years experience as an appraiser, and is licensed as an appraiser in Kansas and Missouri. Schmidt is a member of the Appraisal Institute with the MAI designation. Schmidt compiled a fee appraisal that indicated a value of \$1,515,000 for the subject property as of January 1, 2005. Schmidt's appraisal contained cost, income, and sales approaches, and Schmidt placed most weight on his sales approach.

Schmidt performed two (2) cost approaches. In his first cost approach, Schmidt utilized the Marshall Valuation Service handbook to determine the subject building's replacement cost new. Schmidt then applied a 10% total accrued depreciation, and added \$82,299 for the contributory value of other site improvements and \$115,000 for the land to determine a total value of \$1,390,000. In his second cost approach, Schmidt utilized the subject property's actual 2000 construction costs adjusted for time to determine the replacement cost new of the subject improvements. Schmidt then applied a 10% total accrued depreciation and a land value of \$115,000 to determine a value of \$1,635,000. Schmidt placed most reliance on his cost approach that determines its replacement cost new utilizing the subject property's actual construction costs as he was not allowed access to the interior of the subject property and could not determine the added costs built into the subject property.

In compiling both his income and sales approaches, Schmidt concluded that there was little market data for medical office buildings in Wyandotte County. Therefore, Schmidt generally utilized market data from outside Wyandotte County with his adjustments for location. As one of the subject property's owners was also its largest tenant, Schmidt gave little weight to the subject property's actual income and expenses. Schmidt reviewed market rental and expense rates to ensure that the subject property's actual rents were at market level. Schmidt's rental comparables consisted of seven (7) medical office properties located in Johnson County, Kansas with full service lease rates of \$29.05 to \$33.00 per square foot, and one (1) medical office property located in Wyandotte County that had a net lease rate of \$20.45 per square foot. Utilizing these rental comparables, Schmidt determined a market rental rate of \$30 per square foot for medical office space.

Schmidt then applied a 15% negative adjustment for building age/quality and location to yield a rental rate of \$25.50 per square foot for the subject property.

For his vacancy rate, Schmidt relied on a 2004 Cohen-Esry report that indicated Kansas City, Kansas had vacancy rates of 10.08% for Class B office space and 4.38% for Class C office space. Based on these parameters, Schmidt determined a 10% vacancy rate for the subject property. Schmidt analyzed the operating expenses of other office buildings to determine total operating expenses that equated to 50.6% of effective gross income. For his capitalization rate determination, Schmidt presented a listing of sales of comparable office properties that indicated a capitalization rate range of 7.37% to 9.25%. Schmidt's capitalization rate comparables were sales of office properties from Johnson County, Kansas and the Kansas City, Missouri metropolitan area with two sales from Omaha, Nebraska. Schmidt contended that there was more buyer demand for medical office buildings as they have higher rental and occupancy rates than non-medical office buildings. Schmidt argued that these factors resulted in medical office buildings generally having lower capitalization rates than non-medical office buildings. However, Schmidt chose a capitalization rate of 9.0% which was at the high end of his range to account for the location and demographics of the County

For his sales approach, Schmidt analyzed seven comparable sales. Six (6) of these comparables were located in Johnson County, Kansas and one (1) was located in the subject County in Edwardsville, Kansas. Schmidt adjusted for location by deducting his estimate for land value for each of the sales comparables. Schmidt adjusted the remaining per square foot improvement values for age and applied a 15% upward adjustment to any non-medical office space. Schmidt then applied his average per square foot improvement value to the subject property's building area, and added the subject land value to determine a total value of \$1,515,000 for the subject property. Schmidt gave greatest emphasis to his sales approach estimate of value and, based thereon, concluded that the County's present 2005 appraised value for the subject property was reasonable.

III.

The Taxpayer's main contention was that the County erred in not valuing the subject property by the income approach. Dr. Michael Tamer, a principal shareholder of the Taxpayer, testified that Wyandotte County is a medically undeserved area that has large volume of indigent and Medicaid patients. Tamer submitted that it would not have constructed the subject property in Wyandotte County without income guarantees from a local medical center and the County's tax abatement program.

Walter Clements, appeared as a witness for the Taxpayer. Clements is a real estate broker and developer, and the Director of Real Estate at University of Missouri-Kansas City. Clements is not a licensed real estate appraiser in Kansas or any other state, and has no appraisal designations. Clements indicated that he had 38 years of experience in real estate.

Clements questioned various portions of Schmidt's appraisal. Clements specifically disputed Schmidt's capitalization rate determination; Schmidt's selection and adjustment of lease and sales comparables; and, Schmidt's lack of consideration for external obsolescence. Clements presented a demographic study indicating that there were significantly more jobs and higher household income in the areas of Schmidt's various comparables in contrast to the subject area.

Clements argued that the income approach is the best indicator of value for a multi-tenant income producing property. Clements compiled an income approach that indicated a value of \$640,000. For his rental rate, Clements referenced a County document titled "2005 Medical Office Income and Expense Study" which listed six (6) Wyandotte County medical office properties, one (1) being the subject property, having rental rates in the \$10.42 per square foot to \$23.00 per square foot range with a median rental rate of \$19.50 per square foot. Clements' income approach utilized a \$19.50 per square foot rental rate, a 10% vacancy rate, and total operating expenses of \$137,896 to yield a net operating income of \$70,352. Schmidt capitalized this net operating income at 11% capitalization rate to indicate a value of \$640,000.

IV.

The Taxpayer asserted that the County erred in not relying on an income approach to determine its estimate of value for the subject property. The Kansas Court of Appeals has found, pursuant to a 1989 Senate Concurrent resolution, that the preferred method of property valuation in Kansas is the income approach. *See Application of Affiliated Property Services, Inc.*, 19 Kan. App. 2d 247, 870 P.2d 1343 (1993). However, the Court further finds that a proper opinion of value based on either of the three recognized approaches to value must be supported by substantial credible evidence. *See K.S.A. 77-621(c)*.

Property valuation in Kansas is governed by K.S.A. 79-501 *et seq.* Kansas statute requires that the appraisal process utilized in the valuation of all real and tangible personal property for ad valorem tax purposes shall conform to generally accepted appraisal procedures which are adaptable to mass appraisal and consistent with the definition of fair market value, unless otherwise specified by law. *See K.S.A. 2008 Supp. 79-503a.*

The State of Kansas, Director of Property Valuation is required to adopt rules and regulations prescribing appropriate standards for performing appraisals that are 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 the Uniform Standards of Professional Appraisal Practice (USPAP). In November 1992, the Director of Property Valuation adopted Directive #92-006, requiring County appraisers to perform all appraisal functions in conformity with Standards Rules 2 and 6 of the 1992 USPAP.

USPAP Appraisal Standards Rule 6 is directed toward the substantive aspects of developing and communicating competent analyses, opinions, and conclusions for mass appraisals. USPAP Standards Rule 6-4 (a) provides as follows

In developing a mass appraisal, an appraiser must observe the following specific appraisal guidelines when applicable:

- (a) collect, verify, analyze, and reconcile such data as are necessary and appropriate to:
 - (i) estimate cost new of the improvements;
 - (ii) estimate accrued depreciation;
 - (iii) estimate value by sales of comparable properties;
 - (iv) estimate value by capitalization of income.
i.e. rentals, expenses, interest rates,
capitalization rates and vacancy data.

Comment: This rule requires appraisers engaged in mass appraisal to take reasonable steps to ensure that the quantity and quality of the factual data that are collected are sufficient to produce credible appraisals. . . .

Appraisal Standards Board, *Uniform Standards of Professional Appraisal Practice*, Standards Rule 6-4(a), p. 32 (1992).

Further, Appraisal Standards Rule 6-6(a), discusses reconciliation of a mass appraisal and requires that the appraiser consider and reconcile the quality and quantity of data available and analyzed within the approach used and the applicability or suitability of the approaches used. *Id.*, p. 34.

Kevin Bradshaw, Wyandotte County commercial real estate supervisor, testified at length regarding the County's difficulty gathering income and expense

data to properly compile income approach parameters. Appraiser Schmidt similarly found little Wyandotte County medical office building market data and chose to use market data from outside the County for his appraisal of the subject property. The Court finds that the County properly gathered, developed, and reported the market data it relied upon to compile its income approach. However, and in accordance with USPAP Standards Rules 6-4(a) and 6-6(a), the County determined that this income data was not sufficient to enable the County to compile a credible income approach. Based on the record evidence, the Court finds the County's decision to not rely on an income approach lacking proper evidentiary support was proper and in accordance with the reconciliation process required by USPAP.

V.

Each parcel of non-agricultural real property in Kansas is to be 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. 2008 Supp. 79-503a.

The subject property is leased commercial use property and the Taxpayer has provided the County with three years income and expense statements. Pursuant to K.S.A. 2008 Supp. 79-2005, and in accordance with the Parties joint prehearing order, the County has the duty to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. Further, no presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

The County has presented its CAMA system cost approach and the Schmidt appraisal in support of the County's 2005 appraised value recommendation. The Taxpayer relied on an income approach to value which examined the County's appraisal data, yet chose a lower rental rate and higher capitalization rate. The Court finds that the County cost approach and the Schmidt appraisal satisfy the County's statutory burden of production and are the best indicators of value presented. In regard to the County's cost approach, the County used the subject property's actual construction costs adjusted for time to determine its replacement cost new. Further, the County compiled a cost index study and a depreciation analysis to support its cost approach parameters. In regard to Schmidt's income and sales approaches, the Court is persuaded that there was clearly a lack of market data for Wyandotte County medical office buildings. However, the Court finds that Schmidt gathered and analyzed comparable properties located outside of Wyandotte County and performed appropriate adjustments for location.

The Court finds that there was a pronounced disparity in the appraisal competence of the Parties' witnesses. Both County witnesses were experienced Kansas licensed appraisers and experts in the field of real estate appraisal. Schmidt compiled an opinion of value in accordance with recognized appraisal rules and standards. In contrast, Clements was neither a licensed real estate appraiser nor an expert in the field of real estate appraisal. Clements' testimony and resume indicated experience as a real estate broker and developer, yet there was no evidence of formal appraisal experience, training, or education. Further, Clements' opinion of value relied exclusively on data that Clements did not collect, gather, or verify. For example, Clements' market rental rate determination for the subject property was derived from a document that the County authored, yet chose not to rely upon to value the subject property. Said document indicated that the entire subject property had a rental rate of \$10.42 per square foot for 2003; however, it was undisputed that the subject property was leased for \$18.00 per square foot commencing in 2001. Overall, Clements has not persuaded the Court that his reliance on and adjustments to the County's and Schmidt's work product were appropriate. For the foregoing reasons, given the record evidence, the Court concludes that the valuation evidence presented by the County is more persuasive than that presented by the Taxpayer.

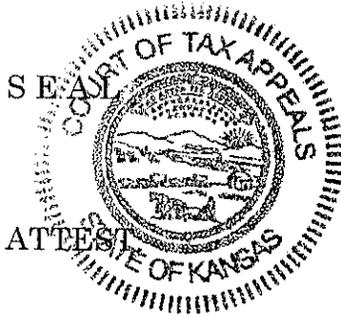
IT IS THEREFORE ORDERED that, for the reasons stated above, the appraised value of the subject property for tax year 2005 is \$1,470,150.

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. 2008 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

Rebecca W. Crotty
REBECCA W. CROTTY, JUDGE

Fred Kubik
FRED KUBIK, 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 No. 2006-9078-PR and any attachments thereto, was placed in the United States Mail, on this 9th day of June, 2009, addressed to:

Dr. Michael Tamer
Wyandotte Building Corporation
5310 Park St
Shawnee, KS 66216

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Holbrook & Osborn, P.A.
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Wyandotte County Courthouse
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Kansas City KS 66101

Charles Henry, Wyandotte County Treasurer
Wyandotte County Courthouse
710 N 7th St Ste 240
Kansas City KS 66101

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


Joelene R. Allen, Secretary