

ORIGINAL

IN THE SUPREME COURT OF OHIO

RITE AID OF OHIO, INC., et al.,

:
:

Case No. 2014-0828

Appellees

:

Appeal from the Ohio Board of Tax Appeals
Case No. 2011-1760

v.

:

WASHINGTON COUNTY AUDITOR
and WASHINGTON COUNTY BOARD
OF REVISION

:

Appellants

:

APPELLEE'S REPLY MEMORANDUM TO MOTION FOR RECONSIDERATION

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The Special Purpose Doctrine is not applicable in the present case.

In the County's Motion for Reconsideration they asked for the Ohio Supreme Court to Reconsider their Decision and remand this case to the Ohio Board of Tax Appeals due to the Special Purpose Doctrine set forth in the *Lowe's* decision, *Lowes Home Centers, Inc. v. Washington Cty. Bd. of Revision*, Slip Op. 2016-Ohio-372 , ¶ 23

In the applicable case the Ohio Supreme Court dealt with the issue of the subject property and it's being real estate for which the "Special Purpose Doctrine" clearly did not apply, unlike in *Lowe's*. The Court specifically stated "there is no finding that the property qualifies for use valuation under the special-purpose doctrine" *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, Slip Op. 2016Ohio-371, ¶ 41. In this regards it is important to note that the subject property was a small retail property that was approximately 11 years old as of tax lien date, not a NEWER or LARGER property such as existed in the *Meijers*, *Target*, or *Lowes* cases *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447; *Target Corp. v. Greene Cty. Bd. of Revision* 122 Ohio St3d 142; *Lowes Home Centers, Inc. v. Washington Cty. Bd. of Revision*, Slip Op. 2016-Ohio-372.

In addition to the Court noted that the Appellee's (herein) appraiser, Mr. Hatcher, "testified against the applicability of the special-purpose doctrine here, and the record supports his assertion. It follows that the BTA was justified in rejecting the Blosser appraisal." *Rite Aid* ¶ 37.

The County's Appraiser utilized incorrect appraisal methodology

In addition the County's Appraisal was fundamentally flawed in since it utilized the incorrect Appraisal Methodologies to value the property and the Board of Tax Appeals was correct to reject the County's Appraisal due to those issues.

Ms. Blosser, the appraiser for the county, not only used properties for her comparables that were geographically remote from the subject location but additionally she did not adjust her comparables for the fact that for the ones that sold were sold subject to a long term leases, and for her leased properties there was no adjustment of the lease amounts to reflect current market conditions of local rental market compared to when the properties' leases were first entered into.

With regards to leases this Court addressed this issue specifically in it's decision herein and restated it in it's *Lowes* decision stating " the general rule (is) that leased comparables will typically need to be adjusted in determining the value of the subject property that is itself unencumbered by such a lease." *Lowes* ¶ 16.

With regards to sales comparables utilizing leased fee properties this Court also addressed this issue directly in it's decision in this case: "Precisely because the lease affects the sale price and value, the leased-fee comparable ought to be adjusted when the subject property has no lease; the adjustment would remove the effect of the lease on the sale price so that the sale can indicate what the unencumbered subject property would sell for." *Rite Aid* ¶ 20. See also *Steak 'n Shake, Inc. v. Warren Cty Bd of Revision* Slp Op. 2015-Ohio-4836.

One final item to note in the County's memorandum is it's claim that none of the comparable sales locations could have been successfully used as a drug store without significant

modification since not one had a drive-through. Such a statement is clearly beyond the scope of what either appraiser testified to. Although not adequately reflected in the record before this Court it is important in this regard to note that the greater Marietta area has drug stores other than a store of one of the three major stand alone drug store chains. Those drug stores, drug stores of long standing, are contained within the walls of the local Wal-Mart, K-Mart, Krogers, and Giant Eagle and not all, if any, have drive through access for their drug store operations. There is no legal requirement in Ohio for a drug store to have a drive though.

In summary Appellant County has not established any grounds or brought new information to light upon which this Court should Reconsider it's Decision in the instant case.

For the above stated reasons the Appellee herein believes that the Motion for Reconsideration should be denied.

Respectfully Submitted


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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Merit Brief was served by regular U.S. Mail, postage prepaid and/or by electronic mail transmission upon: Kelly Gorry , Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin Ohio 43017; and the Honorable Michael DeWine, Ohio Attorney General, 30 East Broad ST., 17th Floor, Columbus Ohio 43215, this 19th day of February 2014



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