

Publications

The Evaluator - Special Edition: Ohio BTA Holds That Big Box Property Is NOT Special Purpose; Finds Value Near Taxpayer's Total

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CLIENT ALERT | 6.23.2016

The Ohio Board of Tax Appeals (BTA), on a remand from the Ohio Supreme Court, has held that the special purpose doctrine did not apply to a big box Lowe's property. In doing so the BTA noted that neither appraiser testified that the special purpose doctrine should apply, nor did the written appraisal reports employ such a theory. The BTA also noted that neither appraiser, in determining the highest and best use, indicated a specific continued use, but instead found that the highest and best use was "continued retail use."

While the BTA found that big boxes are not automatically special purpose facilities, it did leave open the possibility that based upon the factors present in a particular case, a big box property could be special purpose. In finding that the subject property, an eight-year-old, 142,446 square foot building was not special purpose, the BTA stated that there was no evidence in the record that the subject property, which was originally built for Lowe's, was less desirable on the open market than other similar properties and that there was no indication that if sold it wouldn't achieve a reasonable price.

Next, based upon the direction of the court, the BTA re-evaluated the appraisal evidence with specific attention to the adjustments to the leased-fee sales utilized. The BTA determined that the county's appraiser did not make adjustments for the property rights conveyed and rejected the remaining comparables for various reasons. The BTA also reviewed the property owner's sales comparison approach and determined that, while she utilized fee simple sales, adjustments to each sale were not adequately explained to support her conclusion of value. Turning to the income approach, the BTA relied upon one comparable, an adjusted lease rate of \$5 per square foot for another Lowe's, as well as the vacancy, expenses and capitalization rate utilized by the county's appraiser to arrive at a value of \$6,182,540. This compares to an original auditor's valuation of \$9,091,000. The county's appraiser had opined to a value of \$7,200,000 and the property owner's appraiser opined to a value of \$5,700,000.

In its earlier decision, the BTA had fully accepted the county appraiser's valuation. The Ohio Supreme Court vacated and remanded the BTA's decision. The Court determined that the BTA failed to address whether the special purpose doctrine applied and if it determined that the property was not special purpose in nature, it would need to determine if the sales of leased fee interests in the sales comparison approach would need to be adjusted pursuant to the court's decision in *Rite Aid v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-371; and *Steak n' Shake, Inc. v. Warren Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-4836.

Particularly in the area of retail properties, the tax valuation landscape is undergoing significant change in Ohio. Vorys has extensive experience in state and local tax and works with retailers and other property owners across the region to help manage real property taxes. Contact your Vorys attorney with questions or concerns about real property taxes and how this tax impacts your business.