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Ashtabula County Auditor
Scott Yamamoto

**BEFORE THE ASHTABULA COUNTY
BOARD OF REVISION**

**IN RE COMPLAINT OF
WHIRLWIND PROPERTIES, INC.** **BOR #2024-0011**

**COMPLAINANT'S
HEARING MEMORANDUM**

PROCEDURAL POSTURE

This Complaint for reduction of real estate property values is brought by Teri Caldwell, (Caldwell), Lessee of the five parcels subject to this action, and specifically pursuant to the written authorization/authority of the property owner/Lessor, Whirlwind Properties, Inc., as contained in a January 6, 2025, written lease amendment **(Exhibit 3).**

FACTUAL BACKGROUND

The five (5) parcels subject to this Complaint are owned by Whirlwind Properties, Inc., an Ohio Corporation (Whirlwind) and are more fully described in **Exhibit 1** attached to the complaint. The parcels were formerly used as a motor vehicle sales and service facility, selling, and servicing General Motors new and used vehicles under the name Stateline Chevrolet Buick. The dealership closed in 2018-19 due to lack of business and termination of its General Motors Sales and Service Agreement.

Whirlwind unsuccessfully attempted to sell the premises after the motor vehicle dealership ceased operations. The premises remained vacant and unused until July 2000 when Teri Caldwell (hereafter Caldwell) and Lee Campbell (hereafter Campbell) leased the five parcels from Whirlwind under a triple net lease for a term of five (5) years. The lease requires Caldwell to purchase the property at the end of five (5) years for the sum of $625,000.00, less all rent payments under the lease. The Lessees intended that Campbell would operate a used motor vehicle sales and service business and an autobody repair business from part of the premises and try to rent out other portions of the premises. A copy of the written lease with Whirlwind is attached to the complaint as **Exhibit 2**.

As the result of a business dispute involving civil litigation filed by Caldwell against Campbell in the Ashtabula County Court of Common Pleas, Campbell assigned his interest in the Whirlwind lease to Caldwell. Campbell's vehicle sales and service business failed and closed in late 2022-early-2023, but he continues to operate a small body shop repair business out of Parcel # 020132013200 pursuant to a sub-lease with Caldwell, pays $1,350.00 per month in rent to Caldwell, and will continue occupancy until July 31, 2025, when his sub-lease ends and he will vacate the parcel **(Exhibit 5).**

Parcel # 020132013300 is rented month-to-month by a small "Mom and Pop" coffee shop paying $1,200.00 per month in rent. There is no written lease.

Parcel 020180002601 is rented for boat storage to Roaming Shores Marina for $1,500.00 per month for 6 months, expiring November 1, 2025 **(Exhibit 6);**

Two bays of Parcel 0201180002500 are rented to Bryan Johnson for 6 months at $250.00 per month for golf cart storage, expiring November 1, 2025 **(Exhibit 7);**

The remainder of the property is vacant and presently not rentable due to its deteriorated condition **(Exhibit 4 A-Y—photos)**.

The July 22, 2020, lease agreement between Whirlwind and Caldwell is for a term of 60 months, triple-net, and a monthly rental of $3,725. At conclusion of the lease, the Lessee (Caldwell) is required to purchase all five parcels for the price of $625,000.00, less all rental payments made under the lease. The lease was negotiated in an arm's length transaction and the purchase price was set by the owner of Whirlwind. Complainant believes that the $625,000.00 purchase price fairly and accurately reflects the fair market value of the five parcels at that time the lease was entered as well as of the present. This is a reduction of $567,900.00 from the Ashtabula County Auditor's value of $1,192,900.00.

Complainant has been unable to provide necessary maintenance to the premises due to financial constraints arising from lack of rental income from the parcels and has received notices from the Village of Andover as to the poor condition of the property. Further the various structures on the parcels are in need to significant repair/maintenance to render them rentable. Repairs required include replacing roofs which leak, hot water tanks, HVAC systems, water infiltration damage, broken windows, and mold **(Exhibit 4 A-Y).** Further, as reflected by the real estate tax history for the five parcels, the real estate taxes have been in a delinquent status for several years due to lack of cash flow from the parcels to provide funding for payment of taxes, insurance, repairs, and upkeep. In fact, Caldwell has been unable to obtain casualty or liability insurance for the premises do to its condition and that much of it is vacant.

Complainant has retained Robert G. Stout Jr., MAI, to appraise the parcels and his appraisal is provided as **Exhibit 8.** Mr. Stout's appraisal report does not address parcels 020132012501 valued at $188,400.00 and 020132013300 valued at $140,000.00, for a total of $328,400.00, as Mr. Stout believes those values are reasonably accurate. Mr. Stout's appraisal of parcels 020132012501, 020180002500, and 020180002601 collectively establish a fair market value of $460,000..00. Total fair market value for the five parcels is $788,400.00. This is a reduction of $404,500.00 from the Ashtabula County Auditor's value of $1,192,900.00.

APPLICABLE LAW

Pursuant to R.C. §5713.03 Real Property taxation in Ohio is to be based, as nearly as possible, on the true value of the fee simple estate of real property. The County Auditor may consider evidence of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, to be the true value for taxation purposes.

In this case, all of the elements of an arm's length transaction exist: the sale price was voluntarily agreed upon without compulsion or duress to either party; the transaction occurred in an open market; and both parties were acting in their own self-interest. ***Walters v Knox Cty Bd. Of Revision (1989), 47 Ohio St.3d 23.***

Ohio Supreme Court case law further holds that the best method of determining real property value is an actual sale of such property between one who is willing to sell but under no compulsion to do so and one who is willing to buy but under no compulsion to do so. ***State Ex Rel. Park Invest. Co v Bd. Of Tax Appeals (1964), 175 Ohio St. 410; Berea City School Dist. Bd. of Educ. v Cuyahoga Cty. Bd. Of Revision (2005), 106 Ohio St 269.*** In the event of an arm's length transaction setting the price of real property, the Ohio Supreme Court says that such price shall be the true value of that property for real estate tax purposes. ***Lakota Local Sch. Dist. Bd. Of Educ. v Butler County Bd. Of Revision, 108 Ohio St. 3rd 310.***

The Ohio Supreme Court held in ***N. Royalton City Sch Dist Bd. of Educ v Cuyahoga County Board of Revision, 129 Ohio St. 3rd. 172,*** that a sale price negotiated in December 1998 and consummated in December 2005 (seven years between setting the value and completing the transaction) was valid evidence of market value and could and should be used to set the value of the parcel. There is nothing in §5713.03 which requires that an arms-length sale price be negotiated within a reasonable time before or after lien date. Accordingly, the sale price of $625,000.00 set forth in the July 2020 lease, to be paid at the end of the lease term in July 2025 is good evidence of the true value in money of the real estate subject to this action.

In the event that there is no arm's length sale data available, then appraisal value is the next best alternative. Here the appraisal value appears to be $788,400.00.

CONCLUSION

Complainant respectfully submits that based upon the arm's-length negotiated lease and mandatory purchase price, the current valuation of the five parcels at $1,192,450.00 is not the true value in money of the parcels. Instead, the true value is the lease end purchase price established by the parties in July 2020 of $625,000.00. Accordingly, Complainant seeks a reduction in value of $576,450.00 to the sum of $625,000.00. Alternatively, should the Board not accept the arm's length value established by the negotiated purchase price in the lease, then the appraisal value of $788,400.00 should be adopted as the true value of the five parcels.

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By____________________________
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