

OHIO BOARD OF TAX APPEALS

Colonial Village Ltd., An Ohio)	CASE NO. 2004-A-574
Ltd. Part.,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	Appeal Filed Feb. 28, 2008 Ohio Supreme Court
Washington County Board of Revision)	
and Washington County Auditor,)	Cross Appeal Filed Mar. 3, 2008
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 1370 West 6 th Street, Suite 200 Cleveland, Ohio 44113
For the County Appellees	- Rich, Crites & Dittmer, LLC James R. Gorry 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered February 1, 2008

Ms. Margulies, Mr. Eberhart and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals once again upon remand from the Supreme Court in *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 483, 2007-Ohio-4641, to “determine the taxable value of the property,’ as required by R.C. 5717.03.” Id. at ¶25. The court concluded “that the record in this case contains sufficient evidence to trigger the BTA’s duty to undertake an independent valuation of the property.” Id. at ¶24.

Therefore, we shall revisit the record in this matter in order to determine the taxable value of the subject property for tax year 2003.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel.

The subject real property, a 45-unit apartment project operated under a HUD federally subsidized housing program, consists of one parcel in the Marietta corporation taxing district, specifically parcel number 24-41000.000. The value of the 1.5125-acre parcel, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 60,400	\$ 21,140
Building	1,260,580	441,200
Total	\$1,320,980	\$ 462,340

Appellant contends that the auditor and the board of revision have overvalued the property in question and claims the property's market value is that which its appraiser opined in his report, as submitted to this board, specifically, \$917,000.

The subject property, a Section 8 subsidized project for low income residents, is located in a mixed neighborhood of residential and commercial uses and was built in 1981. The 45 units in the complex are contained in five buildings and consist of (3) 2-bedroom, one bath handicapped-accessible units with 897 square feet,

(12) 2-bedroom, one bath garden units with 898 square feet, (20) 2-bedroom, one and one-half bath townhouses with 878 square feet, and (10) 3-bedroom, one and one-half bath townhouses with 991 square feet. There is also a 728-square foot laundry/maintenance building on the premises, but there are no other amenities for the complex. The units are modestly finished, with baseboard heating and through-the-wall air conditioning units, and overall, are in average/good condition with no deferred maintenance. Ex. 1 at 1; H.R. at 20, 23-26.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm.

Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Further, with regard to valuation of subsidized housing, the Supreme Court held that when employing the income approach, “economic rent is a proper consideration in a situation in which contract rent is not truly reflective of true value in money.” *Canton Towers, Ltd. v. Bd. of Revision* (1983), 3 Ohio St.3d 4. Later, in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, the court further stated that “it is the fair market value of the property in its unrestricted form of title which is to be valued.” In said case, wherein the court considered the valuation process used for several apartment complexes that were operated with assistance from the Department of Housing and Urban Development, the court held that such an apartment property must be valued, “for real property tax purposes, with due regard for market rent and current returns on mortgages and equities.”

In support of its position that the subject property has been overvalued, appellant Colonial Village Ltd., An Ohio Ltd. Part. (“Colonial Village”) offered the testimony and appraisal report of Charles G. Snyder, RM, MAI, a state-certified general real estate appraiser. Mr. Snyder, in discussing the subject’s highest and best use, indicated that, as vacant, the subject’s highest and best use would be for a multi-family development. As improved, Mr. Snyder concluded that the subject’s highest

and best use would be its continued use as a 45-unit apartment complex. Ex. 1 at 36-38.

In completing his appraisal of the subject property, Mr. Snyder did not employ the cost approach in deriving his value. He indicated that due to the age of the subject, calculation of the depreciation component of the value would be too subjective. Further, he felt that most investors in this type of property would not utilize the cost approach in considering the property. H.R. at 28; Ex. 1 at 39-40. Thereafter, he proceeded to derive a land value, comparing the subject to three land sales that occurred between March 1997 and August 2000. After adjusting some of the sales for market conditions and topography, Mr. Snyder concluded to a value of \$55,000 per acre, or \$83,200 (rounded). Ex. 1 at 40-49.

Under the direct sales comparison approach, Mr. Snyder compared the subject to five apartment complexes that sold between June 2001 and April 2003. After making adjustments for differences in location, condition, unit type, quality of construction, and amenities, Mr. Snyder concluded to a value of \$22,000 per unit, or \$990,000. Ex. 1 at 49-68.

Using the income approach, Mr. Snyder first developed an estimate of potential gross income. He utilized five rent comparables to estimate the subject's economic rent at \$445-\$495 per month (according to unit type), per unit. Adding \$5,400 per year for laundry income resulted in total potential gross income of \$255,300 per year. From that figure, Mr. Snyder deducted an 8% vacancy and credit loss figure of \$20,424, based upon a survey of local realtors and rental agents, and

arrived at his effective gross income of \$234,876. An expense estimate was developed after looking at the subject's actual expenses as well as "at expenses on a per-unit basis for comparable units." Ex. 1 at 74; H.R. at 56. The total expenses were \$119,250, or \$2,650 per unit. After deducting the expenses and a reserve for replacement figure of \$11,925 (\$250-\$300 per unit) from the effective gross income, a net operating income of \$103,701 resulted. Ex. 1 at 75.

Mr. Snyder developed his capitalization rate primarily using the mortgage equity band-of-investment technique and direct capitalization/comparable sales, but he also completed a debt coverage ratio analysis. He concluded to a rate of 10% plus a tax additur of 1.4, for an overall rate of 11.4%. Accordingly, after capitalizing his net operating income, his overall value, via the income approach, was \$910,000 (rounded). Ex 1 at 82.

Mr. Snyder reconciled the foregoing values by weighting the income approach by 80% and the sales comparison approach by 20%, for an overall estimate of value of \$926,000. After deducting \$9,000 for personal property, he concluded to a final estimate of the real estate value of \$917,000. Ex. 1 at 83.

Because the county did not present any evidence or testimony before this board, it is necessary for us to first review what occurred at the board of revision to attempt to understand how the board of revision came to make its determination. See *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. Apparently, based upon the recommendation of the appraisal company retained by the county, the board of revision made no change to the auditor's valuation of the subject because "the

capitalization rate used [by the property owner] to generate the income value via the income approach was too high and [that] the expenses *** were not based on market evidence data and were not realistic in the typical market.” Audio tape; S.T. at Ex. F. Specifically, at the BOR, the owner had presented an opinion of value in which the expenses utilized in its pro forma analysis were \$129,375 (including reserves for replacement) and its capitalization rate was 11.4% (including the tax additur). S.T. at Ex. E.

As we reviewed Mr. Snyder’s report in our earlier decision, we noted several significant deficiencies. First, with regard to his income approach, Mr. Snyder failed to provide sufficient detail on several portions of his analysis. For example, he attributed an 8% vacancy and collection loss figure to the subject, relying upon higher than normal rates in the market “due to abnormally low interest rates, allowing more buyers into the marketplace.” However, other than the subject’s vacancy rates, no other property’s vacancy rates were set forth.

Even more critically, Mr. Snyder’s use of a 51% expense ratio and \$2,650 per unit expense figure was problematic. He stated that the “[e]xpenses for the subject property are predicated upon a review of actual [i.e., HUD] expenses provided by the owners.” Ex. 1 at 74. However, he also testified that he never saw the subject’s actual expenses, by category, but was given only summaries. H.R. at 109. He failed to

list his expenses, by category, or list any expense comparables¹ to which the subject's actual HUD expenses were compared to determine if the subject's actual expense rate conformed to the market. He simply alluded to his use of "[u]nits of a comparable nature on a regional basis" as his basis for comparison, but provided no data from such properties. Ex. 1 at 75. He indicated that he did not consult any professional publications, e.g., IREM reports, that provide data on income and expenses by category and location, to assist in his income approach calculations. H.R. at 106. Considering the foregoing, we could not rely upon the appraiser's bare assertions that the subject's actual HUD expenses were compared to those of comparable properties in the marketplace and were appropriately adjusted for differences between them, if necessary. Quite simply, there was no data in Mr. Snyder's report to support the expenses used, and with the income approach weighted most significantly in his overall valuation of the subject, i.e., 80%, we were reluctant to rely upon his conclusions thereunder.

With regard to his sales comparison approach, we first took issue with the fact that Mr. Snyder admitted that he only inspected the sales comparables from the exterior. H.R. at 33. Clearly, by performing an exterior inspection only, the accuracy of the comparison with each comparable property was compromised. For example, when discussing sale comparison #1, Mr. Snyder testified that "[i]t was really – *outward appearance at least*, it appeared to be of better quality construction." H.R. at

¹ We note that there was some expense information included in Mr. Snyder's report as part of his sales comparison approach comparables' data and his summary of recent sales used for the extraction of a capitalization rate. Using those figures and calculating the associated expense ratios, Mr. Snyder's expense ratio could not be supported, as none of the eleven comparables, except one, exceeded a 42% expense ratio.

36. In reviewing comparable #2, Mr. Snyder stated that “just the *general appearance* of the units, in my mind, was substantially better overall than the subject property. So I made an adjustment ***.” H.R. at 37. Making valuation conclusions based only upon the outside appearances of properties does not provide the detailed analysis upon which this board prefers to rely. Further, we questioned Mr. Snyder’s use of comparables #2 and #3, as both have approximately 1/4 the number of units as compared to the subject, are located on sites that are approximately 1/6 the size of the subject’s site, and rent for substantially less than the subject, yet the only adjustments made to the comparables were for differences in unit type (not number of units) and quality of construction (as observed from the outside of the buildings). We also questioned the locational adjustment to comparables #4 and #5, as both are listed as superior locations when compared to the subject, yet only -10% is applied to #4, while -30% is applied to #5. Finally, three of the five comparable sales provided an adjusted per unit value of at least \$24,000, yet Mr. Snyder concluded to a value of \$22,000 per unit, with no quantifiable support for such determination.

The BTA is not obligated to accept the testimony of any appraiser. The BTA is vested with wide discretion in determining the weight to be given evidence and credibility of witnesses. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13. See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. In consideration of the foregoing expressed concerns about the property owner’s

appraisal report, we concluded that the property owner had not offered sufficient, probative evidence of the subject's value for the tax year in question. See *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385. The Supreme Court, in its decision on appeal, stated “[i]n this case, the BTA found specific flaws in the appraiser's conclusion of value, and we defer to those specific findings. In doing so, we conclude that the BTA was justified in declining to accept the appraiser's conclusion of value.” *Colonial* at ¶19. The court then went on to indicate that the BTA should have fashioned its own value for the subject, based upon all information contained in the record, including portions of the appraisal report and the owner's opinion of value presented to the BOR. This board has consistently held that owner's opinions of value, as presented by representatives with no reliable supporting testimony or data, are generally not competent, probative evidence of value. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1997-M-848, unreported; *Grand Development Co. v. Cuyahoga Cty. Bd. of Revision* (June 5, 1998), B.T.A. No. 97-J-312, unreported; *Society Nat'l. Bank v. Montgomery Cty. Bd. of Revision* (Aug. 25, 1995), B.T.A. No. 94-P-875, unreported; *Society Nat'l. Bank v. Carroll Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 97-J-450, unreported; *Parkview Manor Company v. Cuyahoga Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-A-228, unreported.” *Id.* at 4-5. However, we must proceed, as directed by the court, to consider all information in the record before us.

As noted in our prior decision, this board was concerned with several deficiencies in appellant's appraiser's report. Taking into consideration those categories within the report already deemed faulty by this board with the agreement of the court, yet using the appraiser's calculations for gross potential income, reserves for replacement, and capitalization rate, with which we found no problems, we have developed a pro forma statement for the subject property, as follows:

Gross Potential Income	\$255,300
Less Vacancy and Collection – 5% ²	\$ 12,765
Effective Gross Income	\$242,535
Less Expenses – 40% ³	\$ 97,010
Reserves for Replacement	\$ 11,925
Net Operating Income	\$133,600

The foregoing net operating income is capitalized at a rate of 10% to which a tax additur of 1.4 is added, resulting in a final value, via the income approach, of \$1,171,930 (rounded). After a deduction of \$9,000 for furniture, fixtures, and equipment, the final value for the subject property, as of January 1, 2003, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 83,200 ⁴	\$ 29,120
Building	1,079,730	377,910
Total	\$1,162,930	\$ 407,030

It is the decision and order of the Board of Tax Appeals that the Washington County Auditor shall list and assess the subject property in conformity with this decision.

² This vacancy figure is taken from the owner's opinion of value.

³ This expense figure is based upon expense information from other properties that appear to be similar to the subject in size, configuration, and age, as contained in the appellant's appraiser's report under the sales comparison approach and the capitalization rate section.

⁴ This land value is the same as that which the appellant's appraiser utilized.

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