

**OHIO BOARD OF TAX APPEALS**

Colonial Terrace Apartments (an	)	CASE NO. 2005-A-993
Ohio General Part.),	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Washington County Board of	)	
Revision and Washington County	)	Appeal Filed Mar. 20, 2008 (By Appellant)
Auditor,	)	Ohio Supreme Court
	)	Cross Appeal Mar. 28, 2008 (By Appellees)
Appellees.	)	

APPEARANCES:

For the Appellant	- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 1370 West 6 <sup>th</sup> 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 22, 2008

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Washington County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

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<sup>1</sup> before this board, and the brief submitted by counsel to the appellant.

The subject real property, a 43-unit apartment project operated under a HUD federally subsidized housing program, consists of one parcel (approximately 5.5 acres) in the City of Marietta/Marietta City Schools taxing district, specifically parcel number 24-34232.000. The total true value of the parcel, as determined by the auditor and retained by the board of revision, was \$1,092,500. 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 the board of revision, specifically, \$716,400.

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 1972. The 43 units in the complex are contained in four buildings and consist of nineteen 1-bedroom, one-bath units with 541 square feet, six 2-bedroom, one-bath units with 736 square feet, and eighteen 2-bedroom, one-bath townhouses with 740 square feet. An office, laundry, storage area, and mechanical room are located in the lower level of one building. The units are equipped with differing mechanical systems, including gas forced air heat and central air conditioning,

---

<sup>1</sup> Although it was the hearing examiner's belief at the hearing that the instant matter could be consolidated with BTA Nos. 2005-A-987 and 2005-A-992 for disposition purposes, as it had already been consolidated for hearing purposes, it was later determined that since each case involves a separate property with separate ownership, for clarity of the record, the board will issue three separate decisions and orders. However, the hearing record, briefs, and any other information common to all three cases will be deemed part of the record in each separate case.

baseboard heating, and through-the-wall air conditioning units, and overall, are in average condition with no deferred maintenance. S.T., Ex. E at 1, 20-21.

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,” quoting *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34, 37, in *Canton Towers, Ltd. v. Bd. of Revision* (1983), 3 Ohio St.3d 4, 7. Later, in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, 23, 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.” *Id.* at 24.

In support of its position that the subject property was overvalued, appellant Colonial Terrace Apartments, an Ohio General Part., (“Colonial Terrace”), first relied upon the testimony and appraisal report of Charles G. Snyder, RM, MAI, a state-certified general real estate appraiser that it had presented to the board of revision. In his report, 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 43-unit apartment complex. S.T., Ex. E at 37-39.

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

chronological and effective age of the improvements, the cost approach was not utilized. S.T., Ex. E at 40-41. Thereafter, he proceeded to derive a land value, comparing the subject to three land sales that occurred between May 1999 and March 2005. After adjusting some of the sales for market conditions, site size, and location, Mr. Snyder concluded to a value of \$45,000 per acre, or \$250,000 (rounded). S.T., Ex. E at 41-50.

Under the direct sales comparison approach, Mr. Snyder compared the subject to five apartment complexes that sold between January 2003 and April 2003. After making adjustments to some of the sales for differences in location, condition, unit type, quality of construction, and amenities, Mr. Snyder concluded to a value of \$19,000 per unit, or \$817,000. S.T., Ex. E at 50-73.

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 \$375-\$435 per month (according to unit type), per unit. Adding \$5,160 per year for laundry income resulted in total potential gross income of \$215,940 per year. From that figure, Mr. Snyder deducted a 9% vacancy and credit loss figure of \$19,435, based upon a survey of local realtors and rental agents, and arrived at his effective gross income of \$196,505. An expense estimate was developed after looking at the subject's actual expenses. The total expenses amounted to \$107,500, or \$2,500 per unit. After deducting the expenses and a reserve for replacement figure of \$9,675 (\$225 per unit) from the effective gross income, a net operating income of \$79,330 resulted. S.T., Ex. E at 73-79.

Mr. Snyder developed his capitalization rate primarily using the direct capitalization/comparable sales method, the band-of-investment method, and a debt coverage ratio analysis. He concluded to a rate of 10% plus a tax additur of 1.3, for an overall rate of 11.3%. Accordingly, after capitalizing his net operating income, his overall value, via the income approach, was \$702,000, rounded. S.T., Ex E at 80-86.

Mr. Snyder reconciled the foregoing values by weighting the income approach value by 80% and the sales comparison approach value by 20% to arrive at an overall estimate of value of \$725,000, inclusive of furniture, fixtures, and equipment, with \$250,000 allocated to the land and \$475,000 to the buildings. After a deduction of \$200 per unit for furniture, fixtures, and equipment, his final estimate of value was \$716,400. S.T., Ex. E at 87.

Before this board, appellant also called Fred Westbrook as a witness, as if on cross-examination. Mr. Westbrook, an executive vice president with Barry R. Ankney, Inc., was the “overall project manager of the revaluation” for Washington County in 2004. H.R. at 22. Mr. Westbrook testified as to the methodologies employed by his firm in preparing property valuation recommendations for the county reappraisal in 2004. H.R. at 21-49. He indicated that he, himself, acted as a review appraiser before the BOR, in relation to the subject property and others. H.R. at 76. When asked whether Mr. Westbrook’s appraisal firm used the standard cost approach in valuing the subject property, he testified that the standard cost approach was not used and that the income approach was solely relied upon to arrive at the subject valuation. H.R. at 63. Mr. Westbrook also testified that the appraisers for the county

basically establish a value for a property, using any/all of the conventional approaches to value, and then work backwards, using the valuation method programmed into the county's computer system, to reflect their conclusions. H.R. at 89-90. He stated, "[b]ased on all approaches[,] we have to use a reporting mechanism at our disposal, and that was simply the way we had to do it." H.R. at 90. He also testified that under the terms of the firm's contract with the county, the auditor makes the final valuation determination on all of the properties under consideration. H.R. at 83.

As we review Mr. Snyder's report, we take notice that very similar reports for the 2003 and/or 2004 valuations of two companion properties were presented to this board by their property owners. Just as we ultimately determined on remand in the 2003 tax year case in *Colonial Village Ltd., An Ohio Ltd. Part. v. Washington Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2004-A-574, unreported and in the 2004 tax year cases in *Colonial Village Ltd., An Ohio Ltd. Part. v. Washington Cty. Bd. of Revision*, issued this date, BTA No. 2005-A-987, unreported and *Colonial Terrace Apartments II (an Ohio General Part.) v. Washington Cty. Bd. of Revision*, issued this date, BTA No. 2005-A-992, unreported, we also find several deficiencies in the appraisal report presented in the instant matter. See, also, *Colonial Village Ltd., An Ohio Ltd. Part. v. Washington Cty. Bd. of Revision* (Apr. 21, 2006), BTA No. 2004-A-574, unreported, 114 Ohio St.3d 483, 2007-Ohio-4641. First, as we review his income approach, we believe that Mr. Snyder did not provide some important details on some portions of his analysis. For example, with regard to the vacancy and collection loss for the subject, he attributes a 9% rate to the subject, relying upon higher than normal

rates in the market “due to abnormally low interest rates, allowing more buyers into the marketplace.” S.T., Ex. E at 79. Other than the subject’s vacancy rates, on a subsidized basis, no other property’s vacancy rates were set forth to support that figure. We further question the application of a 9% vacancy rate in the instant matter, when, in the companion *Colonial Village* case for the same tax year, he utilized an 8% rate for the same general market. Considering the county’s vacancy rate of 20% appears to be wholly unsupported, we will utilize the 8% figure. H.R. at 61.

Mr. Snyder also used a 55% expense ratio (60% if reserves for replacement are included) and a \$2,500 per unit expense figure, which raises concern. 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.” S.T., Ex. E at 78. However, he failed to list his expenses, by category, or list any expense comparables<sup>2</sup> 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. S.T., Ex. E at 78-79. Considering the foregoing, we cannot 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 is no data in

---

<sup>2</sup> We note that there was some expense information included in Mr. Snyder’s report as part of 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 only two of the ten comparables exceeded a 40% expense ratio, and only one exceeded 50%.

Mr. Snyder's report to support the expenses used, and with his significant reliance upon the income approach, we cannot rely upon his conclusions thereunder.

Further, although not heavily relied upon, under the sales comparison approach, we question Mr. Snyder's use of comparables #3 and #4. With regard to comparable #3, it has approximately 1/4 the number of units as compared to the subject and is located on a site that is approximately 1/25 the size of the subject's site, yet no adjustments were taken for such differences. Comparable #4 has approximately 2½ times the number of units as that of the subject and is located on approximately twice the acreage that the subject has, but, again, it does not appear that any adjustments to account for such differences were made.

At this juncture, we must reiterate that the same/similar arguments were made to this board by appellant's appraiser in the *Colonial Village* cases, *supra*, and we reaffirm our criticisms and corresponding rejection thereof, as set forth in both of those cases. 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.

However, we are also mindful of the Supreme Court's directive in *Colonial Village*, *supra*, and accordingly, will utilize the record before us to "undertake an independent valuation of the property." *Id.* at ¶24. The Supreme Court, in its

decision in *Colonial Village*, 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. While there is no owner’s opinion of value involved herein, we will proceed, as directed by the court, to consider all information in the record before us.

Taking into consideration those categories within Mr. Snyder’s report we have already deemed faulty, 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	\$215,940
Less Vacancy and Collection – 8%	\$ 17,280 (rounded)
Effective Gross Income	\$198,660
Less Expenses – 40% <sup>3</sup>	\$ 79,460 (rounded)
Reserves for Replacement	\$ 9,675
Net Operating Income	\$109,520 (rounded)

The foregoing net operating income is capitalized at a rate of 10% to which a tax additur of 1.3 is added, resulting in a final value, via the income approach, of \$969,200

---

<sup>3</sup> 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.

(rounded). After a deduction of \$8,600 for furniture, fixtures, and equipment, the total value for the subject property, as of January 1, 2004, is \$960,600 allocated<sup>4</sup> as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 96,060	\$ 33,620
Building	864,540	302,590
Total	\$960,600	\$ 336,210

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.

ohiosearchkeybta

---

<sup>4</sup> The value for the subject parcel was determined using the same ratio that the county auditor used (as between land and building).