

OHIO BOARD OF TAX APPEALS

James Helfrich,)
)
 Appellant,) CASE NO. 2007-N-414
)
 vs.) (REAL PROPERTY TAX)
)
) DECISION AND ORDER
) **Affirmed on Appeal March 6, 2009**
 Licking County Board of Revision) **Licking County Court of Appeals**
 and Licking County Auditor,) **Case No. 08CA0098**
)
 Appellees.) **2009-Ohio-982**

APPEARANCES:

For the Appellant - James Helfrich, pro se
P.O. Box 921
Pataskala, Ohio 43062

For the County Appellees - Kenneth W. Oswalt
Licking County Prosecuting Attorney
Dennis E. Dove
Assistant Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

Entered July 29, 2008

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

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed by James Helfrich. The appellant appeals from a decision of the Licking County Board of Revision (“BOR”), in which the BOR determined the true value of parcel number 064-068322-00.032 to be \$157,600 for tax year 2006. The appellant asserts a value of \$113,800.

The subject property is improved with a residential structure that is approximately 1,577 square feet in size. Statutory Transcript (“S.T.”) at C. The home, built in 2002, has three bedrooms and two and one-half bathrooms. The subject is

used as a rental property. The true and taxable values of the subject property, as determined by the Licking County Auditor (“auditor”) and the BOR, are as follows:

AUDITOR

Parcel No. 064-068322-00.032	TRUE VALUE	TAXABLE VALUE
LAND	\$ 30,000	\$10,500
BUILDINGS	<u>\$148,500</u>	<u>\$51,975</u>
TOTAL	\$178,500	\$62,475

BOARD OF REVISION

Parcel No. 064-068322-00.032	TRUE VALUE	TAXABLE VALUE
LAND	\$ 30,000	\$10,500
BUILDINGS	<u>\$127,600</u>	<u>\$44,660</u>
TOTAL	\$157,600	\$55,160

This matter came to the BOR pursuant to a complaint filed by the appellant. In his complaint, the appellant asked the BOR to decrease the value of the subject property to \$113,800, based upon a sale of the property that occurred on January 19, 2007.¹ S. T. at Ex. A. The subject property was purchased from the Secretary of Housing and Urban Development (“HUD”) through the “Property Disposition Program,” and was assigned HUD Case No. 413-429780. S.T. at Ex. A. The record indicates that the appellant appeared and testified before the BOR. The appellant identified what he deemed to be a comparable property at the BOR hearing, stating that the property was sold by a bank, approximately one to two weeks prior to the BOR hearing date of April 11, 2007, for \$117,725. S.T., Ex. D at 4. Appellant testified that he submitted an offer for this property that was not accepted, and that the

¹ In the sales contract and settlement statement attached to appellant’s BOR complaint, the sale price is listed as \$115,000. However, appellant asserts a value of \$113,800, since the seller reimbursed appellant \$1,200 in costs or expenses related to the sale. S.T. at Ex. A, D at 2-3.

property was identical to the subject, aside from certain amenities. S.T., Ex. D at 4-5. These amenities included a full basement, raised panel doors, and a finished garage with openers. S.T., Ex. D at 4. Appellant also testified that the comparable property and the subject property were both listed on the open market. S.T., Ex. D at 5-6. Appellant noted at the BOR hearing that the subject property rents for approximately \$925 to \$995 per month.² S.T., Ex. D. at 6-7. Upon review of the evidence before it, the BOR voted to reduce the value of the subject to \$157,600.

The appellant and counsel for the appellees appeared at a hearing before this board. The appellant expressed his opinion of value based upon the aforementioned HUD sale and various comparables, in addition to briefly referencing the rental rate associated with the subject property. No appraisal evidence was submitted. The appellees presented the testimony of Debbie Buchanan, an appraiser and supervisor employed by the auditor for approximately 29 years. The appellees, through the testimony of Ms. Buchanan, examined appellant's comparables and the appellees' comparables.³ Ms. Buchanan testified that most of the comparables used by the appellees had square footage values of approximately \$115 a square foot, while the subject property was valued at \$100 per square foot, which is the basis for the value found by the BOR. H.R. at 47-48. In summary of her direct testimony, Ms. Buchanan stated that appellant's comparables were either HUD sales or bank sales, while the

² At the hearing before this board, appellant stated that the rent was \$995 per month. Hearing Record ("H.R.") at 24.

³ Appellant entered an objection, to which this board's examiner reserved ruling, as to the use of certain comparables introduced by the appellees, namely appellees' exhibits two through seven. Appellant's basis for this objection relates to Ohio Adm. Code 5717-1-15(I), which provides for identification of documentary exhibits prior to hearing. Based on the record, specifically counsel for the appellees' representation that the exhibits were in response to exhibits provided by appellant that may or may not have been timely received by the appellees, we overrule appellant's objection, and hereby admit appellees' exhibits two through seven.

auditor's comparables reflected values more appropriate to the market in Licking County. H.R. at 48. Upon cross-examination, Ms. Buchanan further testified as to the basis for the BOR's valuation of the subject property. The appellant, in addition to his contention that the sale of the subject property was arm's length, addressed general market conditions in Licking County and compared both sale prices and assessed values of comparables during his questioning of Ms. Buchanan.

We begin our review of this matter by noting that “[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In determining value, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01(B) reads in part:

“The auditor shall assess all the real estate situated in the county at its taxable value [and] *** shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate ***.”

In determining what constitutes “true value in money,” the Supreme Court has held that the best evidence of a property’s fair market value or “true value in money” for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443.

“[A]n arm’s length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, at the syllabus. The absence of a single one of these factors is sufficient to demonstrate that a transaction was not conducted at arm’s length. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, at ¶ 13, citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145. See, also, *RLG Properties, LLC v. Franklin Cty. Bd. of Revision*, Franklin App. Nos. 06AP-132, 133, 134, 2006-Ohio-5096.

This board has rejected sales prices when those prices were the result of a purchase from HUD after HUD had received title to the property pursuant to its mortgage guarantee. *Donald C. Wright Investments, LLC v. Montgomery Cty. Bd. of Revision* (June 10, 2005), BTA No. 2003-M-1828, unreported. In *TSM Partners, Inc. v. Montgomery Cty. Bd. of Revision* (Feb. 18, 2005), BTA No. 2003-V-1825,

unreported, this board, citing to its previous holding in *Stevo Matic v. Mahoning Cty.*

Bd. of Revision (Dec. 11, 1992), BTA No. 1990-H-1114, unreported, at 7-8, held that:

“We do not believe the *** purchase of the subject property was an arm’s length sale under the *Walters* criteria. This Board has knowledge of the circumstances and facts surrounding a typical H.U.D. sale, and determines that these circumstances and facts may be considered by the Board and that they lead to the conclusion that this was not an arm’s length sale.

“H.U.D. is a guarantor of loans which are made by a mortgage lending institution to a mortgagor property owner. When the mortgagor property owner defaults on the loan the property is foreclosed on by the mortgagee lending institution. When the lending institution obtains title to the property, often as a result of judicial sale, it may transfer such ownership to H.U.D. for the amount of the Guarantee. H.U.D. may then turn around and, as in the instant case, sell the property to a third person ***.

“The Board does not consider that such a H.U.D. sale as the instant one is voluntary as that term is used in *Walters*. H.U.D. is not ordinarily a property owner. It obtained the subject property under duress, and obviously seeks to divest itself of the property for at least the amount of its guarantee.”

In the absence of data from a recent sale of a subject property, or concurrent with such data in some cases, Ohio Adm. Code 5703-25-07 provides that “true value in money” may be arrived at by considering any or all of the three recognized approaches to value: (1) the market data approach, in which recent sales of comparable properties are weighed; (2) the income approach, in which income attributed to a property is capitalized; and (3) the cost approach, which adds the depreciated cost of the improvements to the land to the value of the land itself. We also note that, while an owner is entitled to provide an opinion of his property’s worth,

to be considered probative such an opinion must be supported with reliable, tangible evidence of a property's value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. The weight to be accorded an owner's evidence and corresponding testimony is left to the sound discretion of this board. *Cardinal Fed. S. & L. Assn.*, supra, paragraphs two and three of the syllabus.

We first address appellant's contention that the January 19, 2007 sale of the subject property was an arm's-length transaction. As the record reflects that appellant purchased the property from HUD, we decline to find the sale to be arm's length in nature. *Wright and TSM Partners*, supra.

We next turn to the comparables produced by appellant and the appellees at the hearing before this board. Initially we review appellant's comparable located at 1398 Harold Stewart, which is the same street where the subject property is located.⁴ This property was the subject of a foreclosure proceeding in 2007. H.R., Exs. 2, 4. As such, we find this sale invalid for purposes of comparison to the subject property. We next review appellant's comparable located at 1021 Oxford. This property was purchased from a bank in August of 2007, and, prior to this sale, was the subject of a foreclosure proceeding. Although the latter transaction may not have been arm's length, we are concerned with the later sale to the current property owner. See *Murray*

⁴ Appellees' exhibits 3, 4, and 5 pertain to this property. Exhibit 2 is a foreclosure complaint, exhibit 3 is an appraisal of lands and tenements, and exhibit 4 is a conveyance fee statement. However, exhibits 2 and 4 list the address of this property as 1390 Harold Stewart instead of 1398 Harold Stewart. During Ms. Buchanan's testimony before this board, she identified appellees' exhibits 2 and 4 as relating to 1398 Harold Stewart. Additionally, a review of these exhibits indicates they do, in fact, pertain to 1398 Harold Stewart.

Hill Properties LP v. Franklin Cty. Bd. of Revision (Sept. 19, 1997), BTA No. 1996-A-1005, unreported (holding that a purchase from the mortgagor following acquisition at sheriff's sale did not invalidate the arm's-length nature of the subsequent, open-market sale). See, also, *Equity Strongsville II v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported; *Beljon v. Portage Cty. Bd. of Revision* (Aug. 1, 1997), BTA No. 1996-T-996, unreported; *S.V.A. Corp. v. Franklin Cty. Bd. of Revision* (Dec. 18, 1998), BTA Nos. 1997-A-777, et seq., unreported; *Oak Hills Local School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Nov. 17, 2000), BTA No. 1998-S-1174, unreported; *Lingg v. Montgomery Cty. Bd. of Revision* (Nov. 21, 2007), BTA No. 2006-T-1171, unreported. The property record card indicates that the sale in August of 2007 was a valid sale. H.R. at Ex. A. However, despite being marked as such, we cannot determine if this sale was arm's length. Aside from the property record card and appellant's general familiarity with the property, no evidence is contained in the record that details the circumstances surrounding the sale. A review of appellant's four other comparable properties, and the twenty-three comparable properties submitted by the appellees, indicates that no evidence is contained in the record that describes the circumstances surrounding the sales of any of these properties. We thereby are unable to determine whether these sales were arm's length in nature.

We next review appellant's assertion of value based on what he contends is the income approach to value. At the hearing before this board, appellant stated that, under the income approach, the subject property is worth \$99,500, based on rental income of \$995 per month. Specifically, appellant stated the following at hearing:

“Furthermore, another approach to this is income. The house rents for – it is a rental property – \$995 per month. And in the business, there is a rule of thumb that the house rents for 10 percent of what it is valued at is what landlord people in my business do.” H.R. at 24.

Using appellant’s calculations, it would appear that the property should be worth \$119,400, not \$99,500, if the property is rented yearly for ten percent of its value. However, we have nothing in the record that corroborates appellant’s calculations or data. While we acknowledge that appellant has owned rental properties for approximately thirty years, further information is needed to effectively calculate a value for the subject property based on the income approach.

Ohio Adm. Code 5703-25-05(F) sets forth a definition of the income approach to value, and Ohio Adm. Code 5703-25-07(D)(2) details how value is estimated using this approach. Ohio Adm. Code 5703-25-05(F) provides:

““Income approach”—An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

“(1) The reasonableness of the estimate of the anticipated net annual incomes;

“(2) The duration of the net annual income, usually the economic life of the building;

“(3) The capitalization (discount) rate;

“(4) The method of conversion (income to capital).”

Ohio Adm. Code 5703-25-07(D)(2) further provides:

“The income approach—The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract

rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5703-25-05 of the Administrative Code, and adding the result to the basic interest and capitalization rate. Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.”

The Appraisal of Real Estate (13th Ed. 2008), at 445, describes the income capitalization approach to value as consisting of methods, techniques, and mathematical procedures that an appraiser uses to analyze a property’s capacity to generate benefits and convert these benefits into an indication of present value. Two methods of income capitalization are direct capitalization, in which a single year’s income is divided by an income rate or multiplied by an income factor to reach an indication of value, and yield capitalization, in which future benefits are converted into a value indication by discounting them at an appropriate yield rate or applying an overall rate that reflects the investment’s income pattern, value change and yield rate. The Appraisal of Real Estate, at 465. Using the direct capitalization approach, four income streams may be analyzed; potential gross income, effective gross income, net operating income, and equity cash flow. The Appraisal of Real Estate, at 469. Discounting is a procedure used to convert periodic incomes, cash flows, and reversions into present value, based on the concept that benefits received in the future

are worth less than the same benefits received now. The Appraisal of Real Estate, at 520.

Absent more specific data as it relates to the information above, we are unable to find persuasive appellant's assertion of value based upon the income approach.

With regard to the use of assessed values by appellant in making comparisons of the comparable properties, we must reiterate our position that evidence of tax valuations of properties near the subject is not necessarily helpful, as those valuations themselves may not be accurate. "Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value." *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. See, also, *Sherman v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 2000), Cuyahoga App. No. 75971, unreported; *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No. 1992-B-879, unreported; *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported; *Davis v. Butler Cty. Bd. of Revision* (Apr. 29, 1994), BTA No. 1992-T-923, unreported. As such, we cannot rely on the assessed values of the comparables in determining a value for the subject.

It is this board's statutory duty to find taxable value herein. R.C. 5717.03. We must therefore determine the market value of the subject properties as of the tax lien date based on the record before us. Past values and percentages of increase are not helpful to this board in determining the true and taxable value of a parcel of real estate as of the tax lien date. *Marois v. Adams Cty. Bd. of Revision* (June 1, 2007),

BTA No. 2006-R-688, unreported; *Kitzerow v. Greene Cty. Bd. of Revision* (Feb. 23, 2007), BTA No. 2006-T-681, unreported; *Detrick v. Greene Cty. Bd. of Revision* (Oct. 21, 2005), BTA No. 2004-K-532, unreported; *Simmons v. Franklin Cty. Bd. of Revision* (Apr. 26, 2002), BTA No. 2000-K-987, unreported. *Hirani v. Belmont Cty. Bd. of Revision* (Apr. 30, 1999), BTA No. 1998-K-820, unreported; *Dell v. Summit Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1997-T-438, unreported. See, also, *Wehner v. Summit Cty. Bd. of Revision* (Aug. 6, 2004), BTA No. 2003-T-1385, unreported; *Henderson v. Hamilton Cty. Bd. of Revision* (June 14, 2002), BTA No. 2001-T-947, unreported; *Ondrejka v. Clark Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-B-821, unreported; *Miles v. Hamilton Cty. Bd. of Revision* (Dec. 22, 1995), BTA No. 1995-J-270, unreported (rejecting the use of general “inflationary methods” as an approach to valuing real property for tax purposes).

In *Wehner*, supra, this board commented:

“One difficulty in utilizing an inflationary approach to value is that there is a difference between inflation and appreciation in real value. ‘Inflation is an increase in the volume of money and credit, a rise in the general level of prices, and the consequent erosion of purchasing power. Appreciation in real value results from an excess of demand over supply, which increases property values beyond typical levels of inflation.’ *The Appraisal of Real Estate* (12th Ed. 2001), 492. Moreover, real property markets are subdivided into markets that correspond to the preferences of buyers and sellers. Such markets are influenced by the attitudes, motivations, and interactions of buyers and sellers, which are, in turn, influenced by a variety of factors, including geography, mortgage rates, supply and demand. Thus, where demand surpasses supply in a given market, real property values may increase far in excess of the inflation rate. See, generally, *The Appraisal of Real Estate*, supra, 97-103; *Henderson*, supra, at 5.” *Id.* at 6-7.

At the hearing before this board, the appellant made several references to percentage price increases of other properties in relation to the value of the subject property, in addition to comments related to price changes in the Licking County real estate market. Based on the above, we do not find helpful appellant's information related to percentage price differences and property prices in Licking County.

In summary, we must conclude that appellant has not presented the competent and probative evidence that is required to meet his burden of proof. *Columbus*, supra, *Cleveland Bd. of Ed. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55.

As previously noted, the BOR, apparently with the agreement of the auditor, voted to grant a reduction in the subject's value. We would prefer more information that supports the BOR's reduction of value. However, in light of recent decisions announced by the Supreme Court, we conclude that there is sufficient evidence in the record to support the BOR's value reduction, and the value determined by the BOR is retained. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Nov. 16, 2007), BTA No. 2005-K-1543, unreported; *Hrouda v. Cuyahoga Cty. Bd. of Revision* (June 17, 2008), BTA No. 2007-R-1052, unreported. Compare *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564.

The Board of Tax Appeals finds the true and taxable values of the subject property are as follows for tax year 2006:

Parcel No. 064-068322-00.032	TRUE VALUE	TAXABLE VALUE
LAND	\$ 30,000	\$10,500
BUILDINGS	<u>\$127,600</u>	<u>\$44,660</u>
TOTAL	\$157,600	\$55,160

We order the Auditor of Licking County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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