

OHIO BOARD OF TAX APPEALS

Thomas N. Tripp, Trustee,)
)
 Appellant,) (CASE NO. 2007-V-134
) (REAL PROPERTY TAX)
 vs.) DECISION AND ORDER
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and the)
 Columbus City School District)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

- For Appellant - Thomas N. Tripp
Attorney at Law
5420 Clark State Road
Gahanna, OH 43230

- For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
William Stehle
Assistant Prosecuting Attorney
373 South High Street, 20th Fl.
Columbus, OH 43215

- For the Appellee BOE - Rich & Gillis Law Group, LLC
Joseph E. Schmansky
300 East Broad Street
Suite 300
Columbus, OH 43215

Entered February 10, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This appeal came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by appellant Thomas N. Tripp, Trustee from a decision of the Franklin County Board of Revision (“BOR”).

The subject property is located at 660-62 Jaeger Street in Franklin County, Ohio and is identified on the auditor’s records as parcel number 010-069114.

The subject property is improved with a twin-single residence containing two apartment units.

The subject's valuation, as originally determined by the Franklin County Auditor ("auditor") for 2005, is as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 99,700	\$34,900
BLDG	\$145,300	\$50,860
TOTAL	\$245,000	\$85,760

Appellant filed an original complaint before the BOR, requesting that the total true value be lowered to \$100,820. Statutory Transcript ("S.T.") at 1.

After conducting a hearing, the BOR determined the true and taxable values of the subject property for tax year 2005 originally established by the auditor should be decreased as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 99,700	\$34,900
BLDG	\$130,300	\$45,610
TOTAL	\$230,000	\$80,510

Dissatisfied with the decision of the BOR, appellant now requests that the subject property's total true valuation be reduced to \$177,500.

We consider this matter upon the notice of appeal, the statutory transcript certified by the auditor, and the evidence presented at this board's evidentiary hearing ("H.R.").¹

¹ The instant appeal was heard before this board simultaneously with a second appeal filed by counsel for the taxpayer. Therefore, this board's hearing record considered today is the same as the hearing record contained in *Corinne C. Tripp v. Franklin Cty. Bd. of Revision*, BTA No. 2007-V-135, unreported, and decided today.

We begin our review of the evidence by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove its right to the value asserted. *Cleveland Bd. of Edn. 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; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of the board of revision to come forward and offer evidence that demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

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 adduced in contradiction to the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In

so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held 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.

Appearing before both the BOR and this board was Mr. Thomas Tripp. Mr. Tripp appeared and testified in various roles: attorney, trustee of the trust that holds title to the property, and as the vice president of the real estate management company that manages the subject property. H.R. at 53-56.

Before the BOR Mr. Tripp provided a three-year rental history of the subject, S.T. at 9(A), federal income tax returns relative to the subject property, Id. at 9(B), a three-year history of operating expenses and revenue for the subject property, Id. at 9(C), and his written observations as to the subject property's value, Id. at 9(D).

Mr. Tripp first testified concerning three sales of property he deemed to be comparable to the subject: 544-546 Beck Street, which sold for \$165,000 in March 2006; 446-48 Siebert Street, which sold for \$184,500 in April 2006; and 886-88 Macon Alley, which sold for \$183,000. Id. at 9(D) and 13.²

Mr. Tripp testified as to the subject's location, which faced an alley and the lack of parking for the property. S.T. at 13.

Turning to the subject's operating history, Mr. Tripp testified that the actual net operating income of the property applied to the county's valuation of \$245,000 yields a 2.2 percent capitalization rate, assuming the property tax bill stayed at a historical level of \$3,099.28. However, when Mr. Tripp recalculated the figures utilizing the higher tax bill (based on the county's \$245,000 valuation), the property would yield a 1.9 percent capitalization rate. S.T. at 9(D). In both instances, Mr. Tripp utilized a net operating income of \$5,400 as gleaned from the schedule E on his 2005 federal income tax return. Id. at 9(B).

Based upon his capitalization rate calculations, Mr. Tripp reasoned that the subject property would not be marketable to any prospective buyer, unless the capitalization rate was at least 5 percent. Applying the 5 percent capitalization rate to the reported \$5,400 net operating income, Mr. Tripp reasons that the subject property should be valued at \$108,000. S.T. at 9(D) and 13.

² It appears that the auditor's representative obtained a sales comparison printout of roughly 52 sales, which shows the Macon Alley comparable sold in February of 2005 for \$183,000 and was listed for sale at \$260,000. S.T. at 9(I).

The auditor's representative to the BOR briefly discussed sales comparables he obtained. S.T. at 9(I). The listing provides the prices paid for 45 two-unit multi-family properties from 2003 through 2006 in what appears to be the subject's immediate vicinity. Id. The average sales price paid for the 45 comparables is \$229,085. Id. The auditor's representative made a motion that the BOR lower the subject's value to \$230,000 based upon his comparative sales. The BOR agreed. Id. at 13.

At hearing before this board, Mr. Tripp provided a similar presentation. He testified to his three comparable sales: Beck Street, Siebert, and Macon Alley. H.R. at 12-13.

Regarding his argument concerning capitalization rates, Mr. Tripp argued before us that the subject's 2005 capitalization rate was 3.5 percent based upon the county's valuation of \$245,000 and an annual net operating income of \$8,600.³ Mr. Tripp submitted a new exhibit showing actual three-year figures for income, expenses, and net income for the subject property. Ex. 1. Mr. Tripp then calculated the three-year average of the subject's net income and applied it to capitalization rates of 5, 6, and 7 percent to arrive at a valuation range between \$122,425.14 and \$171,395.20. Id. Mr. Tripp then offered his opinion that the value be established at \$177,000. H.R. at 17.

³ Regarding the difference between his net operating income utilized before the BOR (\$5,400) and the net operating income figure used before this board (\$8,600), Mr. Tripp testified that he "backed depreciation out" of the figures he presented to this board. H.R. at 25-26. We further observe that his operating statement provided to the BOR lists an actual "net operating cash flow" of \$8,598.38 for 2005. S.T. at 9(C).

Through cross-examination, Mr. Tripp acknowledged that he has had no formalized education in real estate appraisal, yet Mr. Tripp cited to years of experience in the real estate field. H.R. at 29-30. Mr. Tripp further acknowledged that his capitalization rates used were not obtained from any published data and that he made no adjustments for differences between the subject and his comparable sales. Id. at 31.

Counsel for the BOR further focused on the subject's location within the neighborhood known as "German Village" and the location of Mr. Tripp's comparable sale on Beck Street, which is located outside of the German Village area. H.R. at 40-42.

Counsel for the BOR presented Mr. Tripp with deeds, conveyance fee statements, and location maps of comparable sales located within the German Village area. Specifically, the county introduced three comparables: 510-12 South Fourth Street, which sold on February 11, 2005 for \$260,000 (Ex. C); 37-41 Columbus Street, which sold on September 7, 2004 for \$237,000 (Ex. D); and 257-59 Deshler Avenue, which sold on August 2, 2005 for \$239,000 (Ex. E). H.R. at 42-52. In response, Mr. Tripp testified that although he was not familiar with the county appellees' three comparable sales, he wondered whether they might be former duplex homes that have been converted to single residences. He further questioned whether the three comparables have had substantial upgrades beyond the condition of the subject property. H.R. at 58.

The Board of Tax Appeals is given great discretion in what weight to give the evidence presented before it. *Cardinal Fed. S. & L. Assn.*, supra. The board

may accept or reject any and all evidence presented.

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 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 is left to the sound discretion of this board. *Cardinal Fed. S. & L. Assn.*, supra, paragraphs two and three of the syllabus.

Based on the record before us, we find that appellant has failed to meet its burden of demonstrating by competent and probative evidence the value of the subject property on tax lien date should be reduced.

Mr. Tripp's comparable properties selling between \$168,000 and \$184,000 stand in stark contrast to the county's comparables which sold between \$237,000 and \$260,000. We acknowledge that neither appellant nor the county appellees have much knowledge about any of the comparable sales beyond what can be gleaned from the public records; neither is able to make adjustments between the subject and the comparables for differences that would be relevant to the market.

Mr. Tripp's "income" approach to valuation is limited to the actual income and expense figures from the subject property as compared to a 5 percent capitalization rate. His approach is devoid of any analysis of market rents, market expenses, or market capitalization rates.

While we acknowledge that Mr. Tripp has practiced real estate law for

approximately forty years and is familiar with the buying, selling, and rental of properties such as the subject, further information is needed to effectively calculate a value for the subject property based on appraisal theory. Not only is Mr. Tripp's foundation lacking in his analysis, as discussed above, but his method is not an acceptable standard for property valuation. See Ohio Adm. Code 5703-25-07. See, also, *Helfrich v. Licking Cty. Bd. of Revision* (July 29, 2008), BTA No. 2007-N-414, unreported, appeal pending, Licking Cty. Ct. of Appeals, 08-CA-98.

We further find the BOR's decision to decrease the subject property's valuation to \$230,000 to be well supported based on the evidence before it, as well as the comparable sales reviewed by the BOR. Therefore, we find the value of the subject as of January 1, 2005 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 99,700	\$34,900
BLDG	\$130,300	\$45,610
TOTAL	\$230,000	\$80,510

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

ohiosearchkeybta