

**OHIO BOARD OF TAX APPEALS**

Corinne C. Tripp, )  
 )  
 Appellant, ) (CASE NO. 2007-V-135  
 ) (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, 20<sup>th</sup> 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 Corinne C. Tripp, now know as Corinne C. Kusmin, from a decision of the Franklin County Board of Revision (“BOR”).

The subject property is located at 631-37 Northridge Road in Franklin County, Ohio and is identified on the auditor's records as parcel number 010-149892. The subject property is improved with a four-unit apartment building.

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	\$ 60,000	\$21,000
BLDG	\$225,000	\$78,750
TOTAL	\$285,000	\$99,750

Appellant filed an original complaint before the BOR, requesting that the total true value be lowered to \$102,187.<sup>1</sup> 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 remain unchanged.

Dissatisfied with the decision of the BOR, appellant requests that the subject property's total true valuation be reduced to \$202,187.

We now 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.").<sup>2</sup>

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

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<sup>1</sup> At hearing before this board, counsel for the appellant explained the amount stated in the complaint was a typo, and should have read: \$202,187. Statutory Transcript ("S.T.") at 1.

<sup>2</sup> 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 *Thomas N. Tripp, Trustee v. Franklin Cty. Bd. of Revision*, BTA No. 2007-V-134, unreported, and decided today.

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, father of the appellant, 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), and a three-year history of operating expenses and revenue for the subject property, Id. at 9(C).

Mr. Tripp testified as to the difficulties of finding suitable tenants for the subject property, the reduction in rental rates at the subject necessary to keep the units

occupied, and the “irrational exuberance” of individuals paying too much for similar investments properties, given the low rate of returns. S.T. at 13.

Turning to the subject’s operating history, Mr. Tripp testified that the actual net operating income (for 2004)<sup>3</sup> of the property applied to the county’s valuation of \$285,000 yields a 3.3 percent capitalization rate, assuming his property tax bill stayed at a historical level. However, when Mr. Tripp recalculated the figures utilizing the higher tax bill (based on the county’s \$285,000 valuation), the property would yield a 2.1 percent capitalization rate. Mr. Tripp’s calculations were based upon the subject’s actual net operating income for 2004 of \$9,467.97. S.T. at 13, 9(F).

Based upon his capitalization rate calculations, Mr. Tripp reasoned that the subject property would not be marketable to any prospective buyer, unless the rents were raised substantially. *Id.*

Mr. Tripp briefly discussed a comparable sale in the area of a similar property that sold for \$215,000, and included information about two other comparables that sold for \$266,000 and \$252,000. *Id.* at 13, 9(E and F).

At the BOR’s meeting in which it reached its decision, the auditor’s representative to the BOR briefly discussed two sales comparables he obtained. S.T. at 9(I), 13. Both comparables are four-unit apartment buildings constructed in the 1950s, as is the subject. The first sold for \$299,000 in January 2004 and the second sold for \$300,000 in January 2004. The auditor’s representative made a motion that

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<sup>3</sup> Mr. Tripp testified that 2004 was the only year in his three years of information in which the property showed a profit. S.T. at 13.

the BOR retain the auditor's value for the subject property based upon his comparative sales. The BOR agreed. *Id.* at 13.

At hearing before this board, Mr. Tripp provided a similar presentation. He testified that in applying the 5 percent capitalization rate he selected to the \$8,600 net operating income from the property, the value of the property should be "roughly \$173,000."<sup>4</sup> *H.R.* at 17. He further testified that rents at the subject property have been reduced by \$100 per month per unit in an effort to keep the units occupied. Mr. Tripp additionally referred to the two comparable sales he offered to the BOR that sold for \$252,000 and \$266,000. *H.R.* at 17-19.

Mr. Tripp made mention of the comparable sale that sold for \$300,000 and stated that he thought the purchasers paid too much. *Id.* at 20-21.

Regarding his argument concerning capitalization rates, 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 testified that he had previously failed to back-out the depreciation figure from his original estimate before the BOR. 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 \$124,083.86 and \$173,717.40. *Id.* Mr. Tripp then offered his opinion that the value be established at \$177,500; however, he would be happy with a value of \$202,000. *H.R.* at 25-26.

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<sup>4</sup> We calculate the figure to be \$172,000.

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 27, 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 presented Mr. Tripp with deeds, conveyance fee statements, and location maps of comparable sales located within the subject's immediate area. Specifically, the county introduced two comparables: 600-606 Northridge Road, which sold on January 20, 2004 for \$300,000 (Ex. F) and 597-603 Chatham Road, which sold on February 2, 2004 for \$299,000 (Ex. G). H.R. at 52-53, 57. In response, Mr. Tripp testified that the Northridge comparable was "virtually identical" to the subject property. Id. at 53.

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.

As stated above, 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 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 \$252,000 and \$266,000 stand in contrast to the county's comparables which are between \$299,000 and \$300,000. 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 utilizing 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 very 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 leave the auditor's valuation unchanged at \$285,000 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	\$ 60,000	\$21,000
BLDG	\$225,000	\$78,750
TOTAL	\$285,000	\$99,750

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.

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