

# OHIO BOARD OF TAX APPEALS

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|--------------------------------------|---|---------------------|
| Kettering Moraine City Schools       | ) |                     |
| Board of Education,                  | ) |                     |
|                                      | ) | CASE NO. 99-E-1660  |
| Appellant,                           | ) |                     |
|                                      | ) | (REAL PROPERTY TAX) |
| vs.                                  | ) |                     |
|                                      | ) | DECISION AND ORDER  |
| Montgomery County Board of Revision, | ) |                     |
| Montgomery County Auditor, and       | ) |                     |
| Teachers Retirement System of        | ) |                     |
| Illinois,                            | ) |                     |
|                                      | ) |                     |
| Appellees.                           | ) |                     |

## APPEARANCES:

|                               |   |
|-------------------------------|---|
| For the Appellant -           | Jeffrey A. Rich<br>James R. Gorry<br>Rich, Crites & Wesp<br>20 East Broad Street<br>Columbus, Ohio 43215  |
| For the County<br>Appellees - | Mathias H. Heck, Jr.<br>Montgomery County Prosecuting Attorney<br>By: Michael Russell<br>Assistant Prosecuting Attorney<br>301 West Third Street, 5 <sup>th</sup> Floor<br>Dayton, Ohio 45422 |
| For the Property<br>Owner -   | Wayne E. Petkovic<br>840 Brittany Drive<br>Delaware, Ohio 43015   |

***ENTERED: November 30, 2001***

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed by Kettering Moraine City Schools Board of Education (“Appellant”) from a decision of the Montgomery County Board of Revision (“BOR”), wherein the BOR determined the taxable value of the subject property for tax year 1997.

The subject property is located in the Kettering Moraine taxing district, Montgomery County, Ohio, and is further identified as Parcel No. N64-043-19-0001.

The Montgomery County Auditor found the true and taxable value of the subject parcel for tax year 1997 to be as follows:

| Parcel No. N64-043-19-0001 | TRUE VALUE          | TAXABLE VALUE       |
|----------------------------|---------------------|---------------------|
| LAND                       | \$ 2,123,360        | \$ 743,180          |
| BUILDINGS                  | <u>\$10,191,960</u> | <u>\$ 3,567,190</u> |
| TOTAL                      | \$12,315,320        | \$ 4,310,370        |

Upon consideration of the complaint filed by Appellant and the counter-complaint filed by Appellee Teachers Retirement System Of Illinois (“property owner”), the Montgomery County Board of Revision confirmed the true and taxable value found by the county auditor.

In its notice of appeal, Appellant has alleged the correct value for the parcel for tax year 1997 to be as follows:

| Parcel No. N64-043-19-0001 | TRUE VALUE          | TAXABLE VALUE       |
|----------------------------|---------------------|---------------------|
| LAND                       | \$ 2,123,360        | \$ 743,180          |
| BUILDINGS                  | <u>\$15,626,630</u> | <u>\$ 5,469,320</u> |
| TOTAL                      | \$17,750,000        | \$ 6,212,500        |

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the county auditor (S.T.), the record of the evidentiary hearing (R.), the exhibits presented by the parties at the hearing<sup>1</sup> (Ex.), and the briefs of counsel.

The property consists of 19.965 acres located at the southwest corner of Ackerman Boulevard and Lincoln Park Boulevard in the City of Kettering. The subject

property is improved with a class A apartment complex known as The Residenz. The two- and three-story structures have brick and wood siding exteriors and are built on a concrete slab. (Ex. A at 3; Ex. 1 at 10). The complex contains a total of 368 apartment units, comprised of 152 one-bedroom units and 216 two-bedroom units. (Ex. A at 3; Ex. 1 at 10). Each unit includes a refrigerator, electric range, dishwasher and disposal. (Ex. 1 at 10). Some units include a washer and dryer hook-up. (Ex. 1 at 10). The tenant is responsible for all utilities except water. (Ex. 1 at 10). Amenities within the complex include a picnic area, swimming pool, clubhouse, workout facility and basketball and volleyball courts. (Ex. A at 3, Ex. 1 at 10). Garages and carports are available. (Ex. 1 at 10). Development of the complex began in 1986 and ended in 1988. (Ex. 1 at 10).

In an appeal from a board of revision valuation, this Board must determine the true value of the subject property. R.C. 5717.03. While the action of a county board of revision is given a presumption that it was taken in good faith and reflects sound judgment, the decision of a county board of revision regarding the value of property is not to be accorded a presumption of correctness. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. The Board of Tax Appeals must make an independent *de novo* determination as to a property's true value, predicated upon the preponderance of the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122.

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<sup>1</sup> By letter of April 13, 2000, the county appellees waived participation in the Board's hearing.

A party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has 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. It is not enough, however, to simply come forward with some evidence of value. A burden of persuasion rests with an appellant to convince this Board that it is entitled to the value that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

Accordingly, this Board must examine the available record and then determine value based upon the evidence in the record. *Coventry Towers, supra*; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we 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; *Wynwood Apartments v. Cuyahoga Cty. Bd. of Revision* (1979), 59 Ohio St.2d 34. Where the Board of Tax Appeals either rejects the evidence before it as not being competent, or sufficient evidence has not been presented by the party appealing, the Board may approve the board of revision's value determination without further evidence. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47.

In the matter before us, there has been no recent sale of the subject property. Therefore, absent a recent, arm's-length sale, the best indicator of value is typically an appraisal. In this appeal, two appraisers testified before the Board. Brian W. Barnes testified on behalf of Appellant. Don T. Carelli gave testimony on behalf of the property owner. The county appellees waived appearance at the Board's hearing. Mr. Barnes is an Ohio certified appraiser and holds an MAI designation from the Appraisal Institute. (Ex. A). He presented a summary appraisal report to the BOR and an updated summary appraisal report before this Board. Mr. Barnes estimated value using the market approach (also know as the sales comparison approach) and the income approach. (Ex. A at 5, 12; R. 23). He considered but did not use the cost approach because of the age of the complex and because, in his opinion, replacement cost would not be a primary consideration for a purchaser of income-producing property. (R. 23).

In the market approach Mr. Barnes reviewed the sales of five apartment properties. (Ex. A at 6). The sale prices ranged from \$29.75 to \$46.55 per square foot and from \$27,500 to \$39,106 per unit. (Ex. A at 6). The construction dates of the market sales ranged from 1966 to 1989, and the number of units from 86 to 360. (Ex. A at 6). Of the five sales, four were considered to be in average condition and one in good condition. The subject property was considered to be in good condition. He compared the subject property to the market sales based on the net income multiplier ("NIM") (sale price divided by net operating income) because in his opinion it was a better indication of value since the NIM eliminates variations in the classification of expenses among the

properties. (R. 24, 27). No adjustments were made to the market properties for differences in size, age, condition or other attributes.

Mr. Barnes also calculated value utilizing the income approach. Gross income was calculated using an average of the subject property's rents for 1996 and 1998. (R. 28). Expenses were estimated based on market-driven information at \$3,000 per unit with reserves estimated at \$200 per unit. (R. 29). The capitalization rate was calculated via the band of investment approach and was supported by the capitalization rates for his market sales in the Dayton area and the Korpacz national real estate study. (Ex. A at 6-7; R. 31). Mr. Barnes considered a capitalization rate of 10 to 10.5% to be reasonable for the subject property. (Ex. A at 7; R. 32). The tax additur was 1.8%.<sup>2</sup> (R. 34). His final value conclusion was \$15,000,000. (Ex. A at 12; R. 35).

Mr. Carelli, an Ohio certified appraiser, testified before the Board and presented an appraisal report on behalf of the property owner. (Ex. 1). No appraisal evidence was presented by the property owner before the BOR. He estimated value using the sales comparison approach and income approach. (Ex. 1; R. 99). In the sales comparison approach, he reviewed the sales of three apartment complexes. (Ex. 1 at 17; R. 112). The sale prices ranged from \$33.08 to \$46.55 per net rentable square foot. (Ex. 1 at 17). The construction dates of the market sales ranged from 1966 to 1986. (Ex. 1 at 17). Sale three was adjusted upward \$9 per square foot for age. (Ex. 1 at 17). Although he stated that sales one and two required a downward adjustment due to unit density, only

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<sup>2</sup> Mr. Barnes calculated value by including real property taxes in operating expenses and by use of the tax additur method. The expenses indicated on page 10 of Exhibit A include real property taxes. (R. 35).

sale one was adjusted downward to arrive at the \$42 per net rentable square foot number used in his value calculation of \$13,400,000. (Ex. 1 at 17).

In the income approach Mr. Carelli compared the subject property's actual rental rates for six months prior to and six months after tax lien date to similar suburban apartment complexes. (R.114-115). Because the subject property's rental rates were higher, he used the actual rental rates to calculate income. (R.115). Actual expenses and vacancy rate were used. (R.115-117). The capitalization rate, 11%, was calculated using the band of investment method. (Ex. 1 at 25; R. 120). Addition of the tax additur arrived at a capitalization rate of 13%. (Ex. 1 at 25; R. 121). The income approach resulted in a value determination of \$13,600,000. (Ex. 1 at 28). In correlating the values equal weight was placed on both the sales comparison and income approaches to arrive at a value of \$13,500,000. (Ex. 1 at 28). From that value a deduction of \$899,600 was made for the estimated cost of repairs to the siding and door jams in the complex, resulting in a final value conclusion of \$12,500,000. (Ex. 1 at 28).

Before determining the value of the subject property, the Board must address an objection raised by the BOE at the hearing and in its brief regarding the admissibility of the property owner's evidence regarding alleged defects in the subject property. The BOE contends that the testimony and documentary evidence regarding the alleged defects must be precluded pursuant to R.C. 5715.19(G) because the testimony and report were not made available for review before the BOR. R.C. 5715.19(G) provides, in pertinent part:

“A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge

or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision."

The information regarding the alleged defects is presented to this Board in the property owner's appraisal report. The Board has refused to exclude an appraisal report from its consideration because such appraisal report was not presented before the BOR and we decline to exclude the report in this case. *B & L Assoc. v. Franklin Cty. Bd. of Revision* (Dec. 20, 1996), B.T.A. No. 95-M-297, unreported at 11. See, also, *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Strongsville Senior Assocs. v. Strongsville Bd. of Edn.* (Mar. 7, 1991), Cuyahoga App. Nos. 58127, *et seq.*, unreported.

Furthermore, we find the specific evidence to which the BOE objects, the cost estimate to repair the siding and door jams, has little probative value in determining the true value of the subject property. The Supreme Court has held that evidence of needed repairs or the cost of needed repairs alone will not prove true value. *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 228. Rather, "(I)t is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA." *Id.* See, also, *Vogelgesang v. CECOS International, Inc.* (1993), 85 Ohio App.3d 339, (the cost of rectifying a defect is not invariably equated with value and such cost will not automatically require a reduction in the value of the property). The property owner's appraiser merely deducts the estimated cost of repairs from his value determination. Such an approach fails to demonstrate the

diminutive effect of the needed repairs on the true value of the property and is insufficient to establish any reduction in value due to the condition of the property is warranted. *Field v. Montgomery Cty. Bd. of Revision* (June 26, 1998), B.T.A. No. 97-T-1269; *Chem-Masters Corp. v. Geauga Cty. Bd. of Revision* (Dec. 21, 1990), B.T.A. No. 88-J-994; *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), B.T.A. No. 92-H-576, all unreported.

Given the income-producing nature of the subject property, the Board finds that the income approach is the most appropriate and reliable method of determining the value of the subject property. *Graines, Trustee v. Wayne Cty. Bd. of Revision* (Aug. 25, 1995), B.T.A. No. 94-S-712, unreported at 6-7. In *Graines*, the Board stated:

“The income approach is a method of valuation that is ‘property specific,’ i.e., figures used in the income approach are generally derived from the subject’s records and then tested against prevailing rents, vacancies, expenses and rates of return related to the market for comparable properties. Thus, the income approach leaves less opportunity for the appraiser’s personal bias or guesswork to influence the outcome. In fact, R.C. 5715.01 specifically provides that ‘in determining the true value of lands or improvements thereon for tax purposes \* \* \* the income capacity of the property, if any, \* \* \* shall be used.’”

*Id.*

Upon consideration of both income approaches, the Board finds that the methodology used in the property owner’s income approach accurately reflects the true value of the subject property. Both appraisers calculated the capitalization rate by using the band of investment method. Appellant’s appraiser assumes an 8% loan rate and an equity dividend rate of 8 to 10% but fails to provide sufficient information regarding the

origin or reasoning behind these values, particularly the derivation of the equity dividend rate.

Conversely, the property owner's appraiser utilized a loan rate (9.7%) based on the local market and an equity dividend rate (10.5%) that would provide positive leverage. (R. 120). Further, the property owner's appraiser averaged the actual rents for each style of unit, rather than using an overall average as Appellant's appraiser did. After comparing the actual rents for the subject to the market rents, the property owner's appraiser found the actual rents higher; therefore, he based his income calculation on the actual rents. He also compared actual expenses to market expenses and used the actual expenses after finding them in line with the market. While the Board finds that the methodology used in the property owner's income approach is probative of the value of the subject property, the Board finds for the reasons provided earlier in this decision and order<sup>3</sup> that any deduction for the estimated cost to repair is improper. Therefore, this deduction is rejected by the Board.

In conclusion, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable value of the subject property should be as follows for tax year 1997:

| Parcel No. N64-043-19-0001 | TRUE VALUE          | TAXABLE VALUE      |
|----------------------------|---------------------|--------------------|
| LAND                       | \$ 2,123,360        | \$ 743,180         |
| BUILDINGS                  | <u>\$11,476,640</u> | <u>\$4,016,820</u> |
| TOTAL                      | \$13,600,000        | \$ 4,760,000       |

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<sup>3</sup> See pages 8-9 of this Decision and Order.

It is the order of the Board of Tax Appeals that the Auditor of Montgomery County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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