

OHIO BOARD OF TAX APPEALS

Dogwood Terrace Apts of Lancaster Ltd.,)	
)	CASE NO. 2002-V-1790
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Fairfield County Board of Revision, the)	
Fairfield County Auditor, and the)	
Lancaster City School District Board of)	
Education,)	
)	
Appellees.)	

APPEARANCES:

- | | | |
|-----------------------------|---|--|
| For Appellant | - | Todd W. Sleggs & Associates
Todd W. Sleggs
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1015 Euclid Avenue
Cleveland, OH 44115 |
| For the County
Appellees | - | David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Board Street
Fourth Floor
Lancaster, OH 43130 |
| For the Appellee
BOE | - | Rich, Crites & Wesp
James R. Gorry
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Columbus, OH 43215 |

Entered December 5, 2003

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by Dogwood Terrace Apts of Lancaster (“Dogwood”) from a decision of the Fairfield County Board of Revision (“BOR”). In said decision, the BOR determined the true and taxable values of the subject property

for tax year 2001 originally established by the Fairfield County Auditor (“auditor”) should remain as follows:

Parcel 053-40116.00	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$316,000	\$110,600
BLDG	\$2,787,970	\$975,790
TOTAL	\$3,103,970	\$1,086,390

Dogwood requests that the subject property’s total true valuation be reduced to \$2,475,000. We now consider this matter upon the notice of appeal, the statutory transcript (“S.T.”) certified by the auditor, and the evidence presented at the evidentiary hearing, the record (“R”).¹

The subject property is located in Fairfield County, Ohio and is identified on the auditor’s records as parcel number 053-40116.00. The subject property is improved with a 110-unit apartment complex constructed in 1982 and is located on 7.91 acres of land. The complex consists of 21 one-story buildings, which contain a unit mix that includes 59 one-bedroom/one-bath apartments and 51 two-bedroom/one-bath apartments. (R. at 10, Exhibit 1 at 13-14) The improvements are framed modular units that were assembled on the subject property. (R. at 12-13, Exhibit 1 at 13-14)

Before the BOR, Dogwood presented the appraisal and testimony of Mr. Ron Davis, an appraiser who holds an MAI designation by the Appraisal Institute.

¹ The instant appeal is a continuation of a prior case filed with this board but dismissed upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Dogwood Terrace Apartments of Lancaster v. Fairfield Cty. Bd. of Revision* (Nov. 1, 2002), BTA No. 2002-V-972, unreported. In light of the fact that no party has objected, although given an opportunity to do so at hearing before this board, and in the interests of administrative economy, this board will take administrative notice of the previous record.

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. *Western 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 5705-3-03: 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.

In support of its contention of value, Dogwood offered at this board's evidentiary hearing the testimony and written appraisal report of Mr. Davis that was previously offered before the BOR. Mr. Davis developed an income approach and a sales approach to arrive at an opinion of value for the subject property. The BOE rested upon the record below and its cross-examination of Dogwood's expert witness. The county appellees did not attend the hearing.

Mr. Davis' appraisal report was prepared with an "as of" date of January 1, 2001. (Exhibit 1 at 1) After developing an income approach and a sales

comparison approach, Mr. Davis ultimately arrived at an opinion of value of \$2,475,000 for the subject property. (R. at 23, Exhibit 1 at 33)

Because a typical investor is motivated by economic factors such as forecasted income, Mr. Davis concluded that a cost approach analysis would not be useful in arriving at his opinion of value. (Exhibit 1 at 15)

In his sales comparison approach, Mr. Davis identified eight sales of comparable apartment complexes that occurred between June of 1998 and September 2001. Mr. Davis then calculated a price range per apartment unit of \$17,500 to \$25,000. (R. at 20, Exhibit 1 at 19) Mr. Davis determined that \$22,500 per unit was applicable to the subject, and concluded to a value of \$2,475,000 under the sales comparison approach for the subject's 110 units. *Id.*

Mr. Davis's income approach developed a pro-forma market analysis of the subject property's projected income and expenses, which are capitalized to arrive at an opinion of value. Mr. Davis began by utilizing rental rates that were slightly higher than the subject's current rental rates for the fifty-nine, one-bedroom apartments (\$415 per month) and for the fifty-one, two-bedroom apartments (\$525 per month) to arrive at a projected annual income of \$615,120 for the subject. Mr. Davis then made adjustments for vacancy and credit loss (-5%) and added other income to arrive at an effective gross income of \$614,364. (R. at 17-18, Exhibit 1 at 17)

Mr. Davis projected operating expenses for the subject property by looking at the subject's actual expenses (exclusive of taxes and reserves) over a two-year period and determined that his projected expenses should be higher (\$2,500 per

unit), given what he described as deferred maintenance issues. After deducting said projected expenses, Mr. Davis arrived at an annual net operating income of \$311,864. (R. at 18-19, Exhibit 1 at 17-18) In selecting a capitalization rate, Mr. Davis described in his report that: “[C]apitalization rates vary from 11-13%, with the lower end the best indication.” (Exhibit 1 at 17) Mr. Davis used an overall rate of 11.5% with an additional 1.16% tax additur to conclude to a capitalization rate of 12.66%. After applying the capitalization rate to the projected net operating income, Mr. Davis arrived at a value of \$2,465,000 for the subject under the income approach. (R. at 20, Exhibit 1 at 18)

In his final analysis, Mr. Davis stated that the income approach (\$2,465,000) and sales comparison approach (\$2,475,000) both provide reliable indications of value. Mr. Davis further stated in his written report that the sales comparison approach is the better indicator of value for the subject, and concluded to a value of \$2,475,000. (R. at 22, Exhibit 1 at 33)

We are not persuaded by Mr. Davis’ opinion expressed in his income approach. Mr. Davis has not provided this board with any market data to support the projected rental rates he uses, outside the actual rates for the subject. Mr. Davis testified that his expenses for the subject were extracted from the comparables found in his sales comparison approach. (R. at 25-26) However, there have been no meaningful adjustments (e.g., differences in age, condition, size, location, etc.) made to these expense comparables in the analysis before us. Additionally, Mr. Davis testified that the expense percentages gleaned from the comparable sales include real

estate taxes. *Id.* Conversely, the written report indicates that the expenses used were simply the subject's actual expenses (exclusive of taxes and reserves), increased to account for deferred maintenance on the subject property. (Exhibit 1 at 17)

Of the eight properties listed in Mr. Davis' sales comparison approach, he did not physically inspect any of them, nor did he make any personal verification of the information presented in his report. (R. at 30-31) The information and data on all eight were provided to Mr. Davis by either a third-party appraiser or the parent company of Dogwood. In at least two instances, the information obtained by the third-party appraiser was obtained from yet another appraiser. (R. at 30-31) Nevertheless, Mr. Davis simply provides an unadjusted range of price paid per unit for the comparable sales, and concludes to a price per unit to apply to the subject's 110 units. We find the lack of verification, inspection, or adjustment to these comparables to be insufficient to support Mr. Davis' conclusion under the sales comparison approach. Furthermore, Mr. Davis' reliance upon these comparables for purposes of his income approach to value is unreliable, given the record before us.

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. Therefore, for the above-mentioned reasons, this board finds that the opinion of Mr. Davis is not substantive and probative evidence of value. Consequently, we cannot rely on it in determining value as of the tax lien date for the subject property.

Therefore, we hold that Dogwood has failed to meet its burden of

demonstrating the subject property's fair market value by competent and probative evidence of value.

As we have found that neither Dogwood nor the BOE has offered sufficient, probative evidence of the subject's value for the tax year in question, and, with no other evidence of market value before us that we find to be probative and credible, we find the value to be consistent with the determination of the BOR:

Parcel 053-40116.00	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$316,000	\$110,600
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TOTAL	\$3,103,970	\$1,086,390

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

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