

**OHIO BOARD OF TAX APPEALS**

Lutheran Social Services of Central Ohio )  
Village Housing, Inc., )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Franklin County Board of Revision, )  
Franklin County Auditor, and the Board of )  
Education of the Southwestern City Schools )  
District, )  
 )  
Appellees. )

CASE NOS. 2003-A-1543,  
2003-A-1544

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant - Karen H. Bauernschmidt, Co., LPA  
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For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
Paul Stickel  
Assistant Prosecuting Attorney  
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For the Appellee Bd. of Edn. - Rich, Crites & Dittmer, LLC  
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Columbus, Ohio 43215

Entered June 10, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the above-named appellant from a

decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax years 2001 and 2002.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel to the appellant property owner and counsel to the appellee board of education.

The subject real property, a 44-unit apartment project built and operated under a HUD federally subsidized housing program, consists of one parcel in the city of Columbus-South Western City school district taxing district, specifically parcel number 570-242616. The value of the 3.3-acre parcel, as determined by the auditor and by the board of revision, is as follows:

	AUDITOR, 2001	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 150,300	\$ 52,610
Building	1,799,700	629,900
Total	\$1,950,000	\$ 682,510

	BOARD OF REVISION, 2001	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 150,300	\$ 52,610
Building	1,999,700	699,900
Total	\$2,150,000	\$ 752,510

	AUDITOR, 2002	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 157,800	\$ 55,230
Building	1,889,700	661,400
Total	\$2,047,500	\$ 716,630

BOARD OF REVISION, 2002

	TRUE VALUE	TAXABLE VALUE
Land	\$ 157,800	\$ 55,230
Building	1,992,200	697,270
Total	\$2,150,000	\$ 752,500

Appellant contends that the auditor and the board of revision have overvalued the property in question and claims the property's market value is that which its appraiser opined in his report, as submitted to this board, specifically, \$1,375,000. The board of education's position is that the board of revision's value should be retained, based upon the appraisal it submitted to the board of revision.

The subject property, a 44-unit apartment building for the elderly, was built in 2000. All of the units contain approximately 560 square feet and consist of a bedroom, living room, dining area, kitchen, and bath. Forty of the units are considered "standard," with three units dedicated to handicapped individuals, and one unit dedicated to hearing-impaired individuals. The building itself has a central corridor design, with two floors, serviced by an elevator. There are twenty units on the first floor along with public restrooms, a maintenance/mechanical room, a community room, a craft room, a small kitchen, a lobby/lounge area, a management office, a trash room, and a mailroom. The second floor has twenty-four units, an elevator lobby area, an exercise room, storage areas, a laundry room, a library, a lounge, and a small office. Ex. 1 at 27.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein

the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, it has long been held by the Supreme Court 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.

Further, with regard to valuation of subsidized housing, the Supreme Court held that when employing the income approach, "economic rent is a proper consideration in a situation in which contract rent is not truly reflective of true value in money." *Canton Towers, Ltd. v. Bd. of Revision* (1983), 3 Ohio St.3d 4. Later, in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, the court further stated that "it is the fair market value of the property in its unrestricted form of

title which is to be valued.” In said case, wherein the court considered the valuation process used for several apartment complexes that were operated with assistance from the Department of Housing and Urban Development, it was held that such an apartment property must be valued, “for real property tax purposes, with due regard for market rent and current returns on mortgages and equities.”

In support of its position that the subject property has been overvalued, appellant Lutheran Social Services of Central Ohio Village Housing, Inc. (“Lutheran Social Services”) offered the testimony and appraisal report of John M. Garvin, MAI, a state-certified general real estate appraiser. Mr. Garvin, in discussing the subject’s highest and best use, indicated that, as vacant, the subject’s highest and best use would be for a multi-family development. He went on to state that “[t]he existing use is the highest and best use of the site, if vacant. There are no alternative uses that could provide a higher present value than the subject’s current use. For these reasons, the existing use is considered to be maximally productive, and the highest and best use of the property, as improved.” Ex. 1 at 30.

In deriving a value for the subject property, Mr. Garvin first completed a cost approach analysis. Thereunder, he derived a land value, comparing the subject to three land sales that occurred between February 2000 and January 2001. He concluded to a value of \$150,000 per acre, concurring with the value as determined by the auditor. Then, using the Marshall Valuation Cost Manual and considering the actual costs of construction of the subject, Mr. Garvin developed a cost new estimate for the subject improvements, based on replacement cost, of \$2,350,980. From that figure,

Mr. Garvin deducted 2% for physical incurable depreciation to arrive at a depreciated value of \$2,303,960. He then deducted an additional \$1,090,085 for economic obsolescence, derived from the capitalization of the difference between the stabilized net operating income from the subject property and the net income required to support its cost new. Thus, Mr. Garvin's indicated value via the cost approach was \$1,365,000, which he did not rely upon in his final conclusion, "due to the degree of economic obsolescence present in the subject property." Ex. 1 at 34-37.

Under the income approach, Mr. Garvin first developed an estimate of potential gross income. He utilized four rent comparables to estimate the subject's economic rent at \$545 per month, per unit, or \$287,760 per year. He applied a 5% vacancy and credit loss figure of \$14,388, based upon a survey of property managers. He also added 2%, i.e., \$5,467, for other income, which included laundry room income, late charges, damage/cleaning charges, and security deposits, to arrive at an adjusted gross income of \$278,839. An expense estimate was developed after reviewing the subject's historic operating expenses, expenses for other non-subsidized apartment projects in Columbus, as assembled by Mr. Garvin, and IREM (Institute of Real Estate Management) data regarding regional average expenses for the Columbus market. Included in such expenses were management expenses, administrative expenses, advertising, utilities, garbage and trash removal, maintenance and repair expenses, payroll/payroll taxes/other employment expenses, insurance, and reserves for replacement. The total expenses amounted to \$117,342, or \$2,667 per unit. After

deducting the expenses from the adjusted gross income, a net operating income of \$161,497 resulted. Ex. 1 at 38-48.

Mr. Garvin developed his capitalization rate using the mortgage equity band of investment technique and through comparable sales. He concluded to a rate of 9.5% plus a tax additur of 1.951, for an overall rate of 11.45%. Accordingly, his overall value, via the income approach, was \$1,410,454. After deducting \$35,200 for personal property, he concluded to a final estimate of the real estate, via the income approach, of \$1,375,000 (rounded). Ex. 1 at 38-40.

With regard to the sales comparison approach, Mr. Garvin indicated that “[n]o sales of two-story elevator buildings were found in the market investigation. Due to the lack of truly comparable data, the sales comparison approach does not provide a reliable value indication. Therefore, it is not applicable in this appraisal.” Ex. 1 at 51.

Thus, based upon the foregoing, Mr. Garvin’s final estimate of value was based upon the income approach only, and resulted in a total value of the real estate only, of \$1,375,000.

Because the board of education did not present any evidence or testimony before this board, it is necessary for us to review that which it presented to the board of revision, especially because the board of revision relied upon the board of education’s appraisal of the subject in its ultimate valuation determination. See *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. Specifically, the board of

education offered the report and testimony of Brian W. Barnes, MAI, a state-certified general appraiser.

Initially, Mr. Barnes stated that “[t]he highest and best use of the property is considered to be as zoned for multi-family use, which is physically possible, legally permissible and represents maximum productivity of the site. Current improvements are considered representative of such use.” He went on to complete a sales comparison analysis of the subject, comparing it to seven properties that sold between July 1998 and April 2001. After analyzing the sales, Mr. Barnes determined value indications based upon effective gross income multiplier, net income multiplier, and price per unit. He ultimately concluded that the net income multiplier analysis was most reflective of the subject and concluded to a value, using the sales comparison approach, of \$2,300,000 - \$2,400,000. S.T. at Ex. 1, p. 6-9.

Under the income approach to value, Mr. Barnes first estimated potential gross income from the market of \$672 per month, or \$354,816 per year, relying upon rates from three apartment complexes. He also added \$4,400 in other income and deducted \$17,961, or 5% for vacancy and credit loss, to arrive at a net effective gross income of \$341,255. His projected total fixed and operating expenses totaled \$121,654, or \$2,765 per unit, based upon sixteen expense comparables, resulting in a net operating income of \$219,601. Deriving his capitalization rate from the band of investment analysis, debt coverage analysis, and market-driven rates, Mr. Barnes concluded to a final capitalization rate of 10% - 10.25%, resulting in a final value of

\$2,150,000 - \$2,200,000. In addition, by using the tax additur method, Mr. Barnes derived a value for the subject of \$2,150,000. S.T. at Ex. 1, p. 9-15.

Finally, Mr. Barnes completed a cost approach to value. Using Marshall Valuation Service, he estimated the cost new of the subject and added the cost of sprinklers, appliances and indirect costs to that figure to arrive at a net replacement value for the subject of \$2,254,976. After deducting 2%, or \$45,100, for physical depreciation based upon a 50-year life, he concluded to a depreciated value of improvements of \$2,209,877. To that, he added \$150,000 for the land value, to arrive at the final value via the cost approach of \$2,359,877. S.T. at Ex. 1, p. 16.

Overall, Mr. Barnes opined that “the value of the subject property would lie near the mid range indications.” S.T. at Ex. 1, p. 17. He concluded to a final value for the subject, as of January 1, 2001, of \$2,150,000.

As we compare the two appraisals, we note that both relied primarily upon the conclusions reached under the income approach. After reviewing both approaches, we find that Mr. Garvin’s more accurately depicts the subject property. Specifically, looking at the rent comparables offered by both appraisers, we find that Mr. Garvin’s are more reflective of the subject property. In his testimony before the BOR, Mr. Barnes stated that one of his rent comparables was superior to the subject and the remaining two, while similar to the subject, were also superior to the subject in amenities and finish. In fact, all of the comparables’ amenities, which included individual washer/dryer hook-ups, blinds, microwaves, clubhouse/pool, fitness center, vaulted ceilings, and fireplaces, far exceeded those of the subject. Yet, Mr. Barnes

concluded to a monthly rent that exceeded all of the comparables (i.e., subject = \$672/month; comp #1 = \$520/month, comp #2 = \$650/month, comp #3 = \$525/month). Considering that the rent comparables' square footage per 1-bedroom, 1-bath unit (i.e., 637-700 sq. ft.) also significantly exceeded the subject's (i.e., 560 sq. ft.), we question the logic of Mr. Barnes' conclusions.

Further, we find that some of Mr. Barnes' expenses have been underestimated. First, the advertising costs seem slightly low, considering the location of the subject, the fewer number of units available (and therefore its diminished presence in the rental market), and the overall lack of amenities available at the subject. It would appear to be necessary to increase the advertising budget to help compensate for the foregoing negatives associated with the property. Further, there is no expense for payroll/payroll taxes; if this item is to be considered part of administrative costs, then administrative costs must be increased or a separate entry must be created. Finally, the amount allocated for utilities should also be increased due to the fact that the owner pays not only heat/cooling expenses, but also common area electric, gas, water and sewer expenses.

With regard to Mr. Barnes' capitalization rate, we first note that his narrative regarding the rate is somewhat contradictory, as the report mentions that "the appropriate market supported overall capitalization rate to be used in capitalizing the subject's net operating income is between 9.5% and 9.75%." S.T. at Ex. 1, p. 14. He then goes on to utilize a capitalization rate of 10.00% - 10.25%. While arguably the earlier reference to 9.5% - 9.75% was a typographical error, it is not entirely clear from

the report. Without having the BOE's appraiser before this board to clarify the report, we are reluctant to presume that we understand what he intended.<sup>1</sup>

Thus, based upon the foregoing, we are unwilling to rely upon Mr. Barnes' report, and, ultimately, the BOR's conclusion, for the valuation of the subject property.

As we review Mr. Garvin's report, we agree with him that although the subject was recently constructed, given the nature of this property's development and the federal subsidy and contract rents, the cost approach would not provide an accurate valuation of the subject. Mr. Garvin testified that after he completed his cost approach, he concluded that "the subject property could not have been developed if it had to be supported by economic rents in that market. It relies upon the government's subsidy." H.R. at 35. Just as in *Canton Towers*, supra, the evidence before this board indicates that the market rents obtainable in the subject's area were not enough to make the construction of this project feasible, and that the project would not have been built without the federal subsidy. Ex. 1 at 37. Specifically, in *Canton Towers*, the Ohio Supreme Court reasoned that the low-income housing constructed by Canton Towers "exists only due to the FHA's willingness to underwrite its costs and continued maintenance, in the interest of providing centrally located low income housing for senior citizens. Without a federal loan guarantee, favorable mortgage terms, rent subsidy, and the income tax advantages, the cost of construction for such

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<sup>1</sup> We also note that Mr. Barnes' appraisal had several inaccuracies in the comparable rental grid. S.T. at Ex. 1, p. 10. While those inaccuracies were corrected at the BOR proceedings by Mr. Barnes, we question the care taken and the overall accuracy in the preparation of and conclusions made in the report.

housing would be prohibitively expensive.” Id. at 6-7. The court went on to hold that the “cost approach” of valuing the newly constructed, low-income housing was not appropriate given testimony that the market rents obtainable in the area were not high enough to make the project feasible and that the project could not have been built without the government’s subsidy. Id. Therefore, in the instant matter, Mr. Garvin has demonstrated that the cost approach would not provide a reasonable indicator of the subject’s value.

With regard to his income approach, we find that Mr. Garvin’s analysis utilized appropriate market rent and expense comparables and the capitalization rate was sufficiently justified. Therefore, we will rely upon the conclusions made in Mr. Garvin’s report and value the subject accordingly.

The board finds that appellant has met its burden of demonstrating the subject property’s fair market value by competent and probative evidence of value, with due regard for market rent and current returns. The appellees have failed to overcome or otherwise rebut the burden met by the appellant. Accordingly, we find, based upon the preponderance of the evidence before this board, that the value<sup>2</sup> of the subject real property for tax years 2001 and 2002 shall be as follows:

2001

	TRUE VALUE	TAXABLE VALUE
Land	\$ 110,000	\$ 38,500
Building	1,265,000	442,750
Total	\$1,375,000	\$ 481,250

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<sup>2</sup> The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject’s initial valuation.

2002<sup>3</sup>

	TRUE VALUE	TAXABLE VALUE
Land	\$ 115,500	\$ 40,420
Building	1,328,250	464,890
Total	\$1,443,750	\$ 505,310

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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<sup>3</sup> Because the auditor assigned a 5% increase in value to the subject property's 2001 value for tax year 2002, and, with no evidence in the record to dispute the validity of such increase, we have attributed a 5% increase to the value we determined for tax year 2001.