

OHIO BOARD OF TAX APPEALS

Cedargate Apts. Englewood Ltd.,) CASE NO. 2003-J-2086
)
Appellant,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Montgomery County Board of Revision,)
Montgomery County Auditor, and the)
Northmont City School District)
Board of Education,)
)
Appellees.)

APPEARANCES:

For the Appellant - Todd W. Sleggs & Associates
Todd W. Sleggs
Susan K. French-Scaggs
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Cleveland, Ohio 44113

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Douglas M. Trout
Assistant Prosecuting Attorney
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For the Appellee Board of Education - Rich, Crites, & Dittmer LLC
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Entered March 4, 2005

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by Cedargate Apts. Englewood Ltd. (“appellant”). The

appellant has appealed from a decision of the Montgomery County Board of Revision (“BOR”) that determined the value of the subject real property for tax year 2002. The property is located in the city of Englewood and is identified on the auditor’s records as parcel M57-3-8-12.

The value determined by the Montgomery County Auditor and the BOR is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 96,000	\$ 33,600
Building	\$1,602,350	\$560,820
Total	\$1,698,350	\$594,420

In the notice of appeal the appellant has alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 96,000	\$ 33,600
Building	\$1,204,000	\$421,400
Total	\$1,300,000	\$455,000

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR, and the brief filed by counsel for the appellant. The parties waived an evidentiary hearing before this board.

The Ohio Supreme Court has held that where the only evidence is the record of the proceeding before the BOR, this board must examine the statutory transcript in order to perform our statutory duty of making a de novo finding of value. In this regard we acknowledge *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, wherein the court held:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision]* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court’s review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision’s determination * * *.” Id. at 13-14.

The Supreme Court again addressed the review standard this board must follow in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, wherein the court stated:

“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

With the proper standard of review in mind, we shall examine the evidence submitted to the BOR. The subject property is a sixty-one unit apartment complex constructed in 1985. The apartments are contained in ten one-story frame apartment buildings. At the BOR hearing the appellant submitted the testimony and appraisal of Ronald P. Davis. Mr. Davis opined that the property had a value of \$1,300,000 as of January 1, 2002. He arrived at this conclusion by analyzing the property’s value via the market and income approaches to value.¹

¹ Ohio Adm. Code 5703-25-07 (D) provides that “true value in money” may be arrived at by an appraisal which considers any or all of the following recognized valuation approaches: (1) the market approach, in which recent sales of comparable properties are analyzed; (2) the income approach, in which net income

His income approach used a ten percent vacancy rate because the property was between eight and ten percent vacant during 2001 and 2002. He estimated that the market rent for the six studio apartments was \$359, which made the annual income \$25,848. His rent estimate for the forty-three one-bedroom apartments was \$449, which made the annual income \$231,684. The rent estimate for the nine two-bedroom, one-bathroom units was \$599, which made the annual income \$64,692. His rent estimate for the three two-bedroom, two-bathroom units was also \$599, which made the annual income \$21,564. The total estimated gross income based upon these market rent estimates was \$343,788. He deducted a ten percent estimate for vacancy and credit loss, and added \$25,000 as other income, making the effective gross income \$334,409. From the effective gross income he deducted operating expenses of \$146,400, or \$2,400 per unit, and \$15,250 as a reserve for replacements, which resulted in net operating income of \$172,750. He capitalized the net operating income at 13.30 percent, which produced a value of \$1,298,872, which he rounded to \$1,300,000.

His market approach reviewed several sales, which ranged from \$17,500 to \$25,000 per unit, with most of the larger projects ranging from \$18,000 to \$21,500 per unit. He opined that the subject has a very stable income stream and is in a good location, and therefore he chose a unit value of \$21,000. Multiplying the subject's 61 units times \$21,000 produced a value of \$1,281,000.

from the 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.

Although he states that capitalization rates have varied between eleven percent and thirteen percent, he omits the underlying data relied upon in drawing that conclusion. He does not state what adjustments, if any, were made to the comparable sales in deriving his market value conclusion. Accordingly, the board is unable to determine whether his estimates are representative of the market.

The board is not required to accept an expert's opinion. The decision to accept an appraiser's opinion turns upon the demonstrated worth of the appraisal. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA 1982-A-566, unreported. Mr. Davis' appraisal has not exhibited the necessary quality to merit acceptance.

The BOR also considered an appraisal review by Edward J. Orlett performed on behalf of the Northmont City School District Board of Education. Mr. Orlett reviewed the county's appraisal of the subject property for tax lien date. He opined that the mass appraisal which derived the auditor and BOR value was complete and the resultant value was reasonable. The board finds that although the appraiser did not perform a separate analysis of the property, his opinion does provide support for the auditor and BOR conclusion.

We conclude the appellant has failed to sustain its burden of proving that the value of the property is other than that established by both the Montgomery County Auditor and the BOR. There is no evidence from which we may determine value, and we therefore approve the value determined by the BOR.

Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision (1998), 82 Ohio St.3d 297; *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47; *Luken v. Miami Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1996-G-976, unreported.

Therefore, based upon a preponderance of the evidence, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 2002 is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 96,000	\$ 33,600
Building	\$1,602,350	\$560,820
Total	\$1,698,350	\$594,420

The Auditor of Montgomery County is ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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