

OHIO BOARD OF TAX APPEALS

Donald C. Wright Investments, LLC,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Montgomery County Board of Revision,)
 and the Montgomery County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant -	Thompson Hine LLP Robert M. Curry 2000 Courthouse Plaza NC 10 W. Second St. Dayton, Ohio 45402
For the County- Appellees	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura Mariani Assistant Prosecuting Attorney P.O. Box 972 301 W. Third Street Dayton, Ohio 45422

Entered June 10, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on November 25, 2003 from a decision, dated October 31, 2003, of the Montgomery County Board of Revision ("BOR"), appellee herein.

The subject properties are located in the city of Dayton, Montgomery County, Ohio, and further identified as parcel nos. N64-15-6-35, N64-15-5-9 and N64-15-3-41. The Montgomery County Auditor found the true and taxable values of the subject property for tax year 2002 to be as follows:

Parcel No. N64-15-6-35

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 51,360	\$ 17,980
Total	\$ 75,360	\$ 26,380

Parcel No. N64-15-3-41

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 50,280	\$ 17,600
Total	\$ 74,280	\$ 26,000

Parcel No. N64-15-5-9

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 50,350	\$ 17,620
Total	\$ 74,350	\$ 26,020

Upon consideration of the complaint filed by the appellant, the BOR determined the true and taxable values of the subject property for the 2002 tax year were correct and affirmed the auditor's values.

Through its notice of appeal, the appellant has alleged that the correct values for the subject properties for tax year 2002 are as follows:

Parcel No. N64-15-6-35

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 43,000	\$ 15,050
Total	\$ 67,000	\$ 23,450

Parcel No. N64-15-3-41

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 44,100	\$ 15,435
Total	\$ 68,100	\$ 23,835

Parcel No. N64-15-5-9

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 41,555	\$ 14,544
Total	\$ 65,555	\$ 22,944

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript received from the Montgomery County Auditor, as secretary of the BOR, and the testimony adduced at the hearing before this board.

The subject properties are all rental properties located in the city of Dayton. Two properties are located on Waterbury Street and one is located on Big Hill Road. The brick ranch residences of approximately 1,060 square feet, commonly known as "Huber Homes," were constructed in the late 1950s by Charles Huber. Appellant, Donald C. Wright Investments, LLC ("Wright Investments"), has, over the

years, purchased approximately 80 homes in a 12-block area for use as rental residences. The three properties under consideration in this appeal are so used.

Testifying at hearing on behalf of Wright Investments was Scott Wright. Mr. Wright is a real estate broker and has been employed by Wright Investments for approximately 10 years. Mr. Wright testified that homes built by Huber had small variations to a common floor plan, but, basically, each home contained approximately 1,040¹ square feet, three bedrooms, one bath, and a one-car garage. Over the years, some properties have been remodeled to, among other things, add extra living space from the one-car garages, install more efficient windows or update the kitchens and baths.

The three homes considered by the board in this appeal were purchased in late 2002 and early 2003. Mr. Wright testified that two of the homes were purchased through sheriff's sales and one home was purchased from the Secretary of Housing and Urban Development ("HUD"). The purchase prices were \$67,000 and \$68,100 for the properties acquired through sheriff's sales and \$65,555 for the property purchased from HUD.

¹ There is a minor discrepancy in the size of the properties. Mr. Wright testified that the properties are 1,060 square feet and the property record card indicates 1,040 square feet. The board finds this difference negligible when determining value.

The homes owned by Wright Investments in the subject properties' neighborhood rent for the same amount.² Because of the similarities between the properties in issue and the other properties owned by Wright Investments, Mr. Wright believes that the valuations for tax purposes should also fall into line. The first page of Appellant's Ex. 7, identified as "Donald C. Wright Investments, KMC Homes," is a list of the auditor's assessments for both 2001 and 2002, the year in issue, of 29 Huber homes owned by Wright Investments. The 2002 assessments range from \$65,220 to \$67,900, and average \$66,860. Page 2 of Ex. 7 lists properties identified as "Modern Manor Huber Homes." This list provides 2002 auditor's values for 32 homes also owned by Wright Investments. The values of the 32 homes presented range from \$62,840 to \$70,820, with an average of \$67,613. Why two separate lists were presented was not explained. Mr. Wright testified that the three homes under consideration in this appeal were similar in location and amenities to the 61 homes reflected in the exhibit.

Mr. Wright also presented a list of recent acquisitions by Wright Investments. This list included 29 properties in the location of the subject properties. Fifteen were purchased either through a sheriff's sale or from HUD. The remaining nine properties were identified as "direct purchase," which the board presumes describes a purchase directly from a homeowner. The purchases took place during the

² Mr. Wright testified that Wright Investments rental homes generally rent for \$750.00 per month. Some long-term tenants pay less.

period July 1994 through April 2003. The purchase prices ranged from \$58,000 to \$71,000. The average purchase price for the listed properties was \$64,136.

Mr. Wright also identified a document which he described as an "economic analysis" to support appellant's claim for reduction. The economic analysis presented provided the gross income, operating expenses, and net operating income for 29 single-family homes in "Huber South" for the years 1997 through 2003. Profit and loss statements for the same years were also introduced as part of the economic analysis. The profit and loss statements validate the figures used in the economic analysis. The economic analysis applies a 10 per cent capitalization rate to the average annual net operating income for the seven years presented, which calculates to an "indicated value" of \$1,616,480 or \$55,741 per unit for 29 units.

The BOR also presented testimony to support its valuation findings. Testifying on behalf of the BOR was Tonya Landess, an employee of the auditor and his representative to the BOR. Ms. Landess confirmed that the properties in issue in this appeal are "cookie cutters," approximately 1,040 square feet, and all constructed in 1956 and 1957.

Ms. Landess noted that the three properties in issue are all located in the same taxing district, but some of the information presented by Wright Investments

related to properties in different taxing districts. The import of a different taxing district, as explained by Ms. Landess, related to the application of tax rates.³

Ms. Landess presented a list of properties she believed to be comparable to the subject properties that had sold between 2000 and 2004. Ms. Landess further categorized the comparables by street. She was able to find a number of properties located on Waterbury Street that had sold during the identified time period. For comparables for the Big Hill property, she listed two sales on that street, and expanded her review to sales of homes located on Archdeacon and Cordell.

Ms. Landess limited her list to those properties she believed represented arm's-length transactions, not sheriff's sales or foreclosures. The sales for similarly sized properties ranged from \$62,000 to \$99,900 for the Waterbury comparables and from \$57,000 to \$74,000 for the Big Hill comparables.

We begin our review of this matter 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 the 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 a board of revision to come forward and offer evidence

³ While differing tax rates generally mean that the properties are located in different school districts, there was no testimony regarding the value of one school district over another. Therefore, the board will not reject any

which demonstrates his 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. 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.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

"The auditor shall assess all the real estate situated in the county *** at its true value in money ***."

Further, R.C. 5713.03 provides:

"In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes."

In interpreting the meaning of "true value" as set forth above, the Supreme Court has consistently held that the best evidence of a property's fair market value or "true value in money" for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment*

Footnote contd. _____
sale evidence presented.

Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443. The requirement of "willing parties" is brought into focus by R.C. 5713.04, which provides:

"The price for which *** real property would sell at auction or forced sale shall not be taken as the criterion of its value."

Two of the properties here under consideration were purchased through a sheriff's sale. In *Mason vs. Montgomery Cty. Bd. of Revision* (May 30, 2003), BTA No. 2002-R-1090, unreported, this board declined to consider the price paid at sheriff's sale when valuing a home located in Huber Heights:

"In *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455, the Supreme Court of Ohio stated:

"Moreover, the price that Dublin paid at sheriff's sale is not a relevant consideration in establishing true value. R.C. 5713.04 prevents the price paid at the sheriff's sale from establishing the best evidence of true value * * *"

"In *Novy v. Ashtabula Cty. Bd. of Revision* (May 21, 1993), BTA No. 1991-N-567, unreported, we observed:

"This board is unable to place significant weight upon this [sheriff's] sale. *** Based upon appellant's testimony that the sale occurred at a sheriff's sale, the sale does not constitute an arm's length transaction, and therefore precludes reliance upon it as the best evidence of the subject's true value. Moreover, the price that Dublin paid at sheriff's sale is not a relevant consideration in establishing true value. R.C. 5713.04 prevents the price paid at the sheriff's sale from establishing the best evidence of true value * * *."

"See *HAP Enterprises v. Cuyahoga Cty. Bd. of Revision* (May 30, 1991), Cuyahoga App. Nos. 58678 and 58679; *Lockwood Park Ltd. v. Franklin Cty. Bd. of Revision* (June 21, 2002), BTA Nos. 2000-G-338 and 339, unreported; *Claycraft Road, Inc. v. Franklin Cty. Bd. of Revision* (May 10, 2002), BTA No. 2000-T-2139, unreported; *Taranga Properties, Ltd. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, April 26, 2002), BTA No. 2000-P-1640, unreported. Consequently, this board cannot use the sheriff's sale to establish value for the subject property." Id. at 5, 6.

We have also rejected sales prices when those prices were the result of a purchase from HUD after HUD had received title to the property pursuant to its mortgage guarantee. *TSM Partners, Inc vs. Montgomery Cty. Bd. of Revision* (Feb. 18, 2005), BTA No. 2003-V-1825, unreported; *Stevo Matic vs. Mahoning Cty. Bd. of Revision* (Dec. 11, 1992), BTA No. 1990-H-1114, unreported. In rejecting the purchase price garnered through foreclosure or HUD sale as evidence of value, the board does not mean to suggest that such a sale cannot, under any circumstance, reflect market value. However, the statutes and case law are clear that a sale price garnered in such sales must be rejected as evidence of market value for ad valorem taxation purposes.

When no sale evidence exists, or such evidence is rejected, other methods of finding value must be considered. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59. True value in money can be calculated by applying any of three alternative methods provided for in Ohio Admin.

Code 5703-25-07: 1) the market data approach, where the value of property is estimated on the basis of recent sales of comparable properties in the market area, 2) the income approach, which capitalizes the net income attributed to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Income statements for seven years were presented, along with an "economic analysis" that indicates a per unit value of \$55, 741. We first note that Mr. Wright did not hold himself out to be a real estate appraiser. He was not qualified at hearing to testify as an expert. Ohio law recognizes that a principal owner of real property is competent to testify as to the property's worth. *Amsdell v. Cuyahoga County Bd. of Revision* (1994), 69 Ohio St. 3d 572. However, the properties under consideration are owned by Wright Investments. In *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, the Supreme Court concluded that a corporate officer could not present an opinion of value on behalf of a corporation unless he met the requirements set forth in *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St. 3d 621 (finding that before one may testify as to his opinion of the value of property, one must generally qualify as an expert.) We find that the same rule applies to an employee of a limited liability company.

Even if we were to find that the opinion of value expressed by Mr. Wright and supported by the economic analysis was evidence we should consider, we would ultimately reject placing any probative weight on the analysis. The analysis is

wholly lacking in factual support. The analysis is devoid of any market evidence, such as rents or expenses (other than Wright Investment properties). Without any overview of the market this board cannot be assured that the vacancy rate used mirrored market conditions or that expenses identified matched market expectations.⁴ There was no discussion of how the capitalization rate was derived. It was not even explained why only 29 properties were included in the financials when evidence of ownership of at least 32 more in the neighborhood was in the record.

The property owner also presented evidence of auditor's assessments regarding other properties owned by Wright Investments. However, "tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value." *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported.

In valuing these properties, we place no weight upon evidence in the record which relates to income or to tax valuations assigned to neighboring properties. However, both the property owner and the BOR presented evidence of sales of Huber

⁴ In fact, a review of the expenses indicated that for each year real property tax costs were considered as an expense. The approved manner in which to derive value under the income capitalization approach is to deduct real property expenses and include a tax additur to the capitalization rate. Ohio Adm. Code 5703-25-07(D)(2) While not including a tax additur is not fatal, see *Miamisburg City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (May 30, 2003), BTA No. 2002-A-1708, unreported, given the lack of other support for the opinion of value in the record, the board is reluctant to place any reliance upon the witness' opinion of value derived through the capitalization approach.

homes taking place during a period relevant to the tax lien date. We conclude that sales evidence is the most probative evidence of value contained in the record. We acknowledge that Wright Investments uses these properties in a commercial manner. However, valuing the properties only for such a purpose treads very close to valuation in use, prohibited in this state. *Dinner Bell Meats, Inc. v. Cuyahoga County Bd. of Revision* (1984) 12 Ohio St. 3d 270; *State ex rel Park Invest. Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St. 2d 28. We are also persuaded by the number of sales presented and by the testimony from both witnesses that the properties are "cookie cutter" properties, with small variables that have little effect on value.

Of the property owner's sales, this board considers only properties purchased directly from the prior homeowner during a relevant time period before and after tax lien date, which we deem to be July 1, 2001 through June 30, 2003. Using this criteria, only two properties are considered. 2104 Owendale was purchased in February 2002 for \$71,000 and 3802 Endover was purchased in April 2003 for \$66,100.

We have also culled the BOR's list to only those properties that contain 1,040 square feet with 3 bedrooms and one bathroom. We will consider only the properties transferring during the time period identified above. The BOR's summary reflects six sales which may be used as comparables for the Waterbury properties and three sales which may be used as comparables for the Big Hill property. These sales include 3844 Waterbury, sold May 15, 2003 for \$66,027, 3930 Waterbury, sold

February 3, 2003 for \$82,000, 3690 Waterbury, sold April 1, 2003 for \$99,900, 3559 Waterbury, sold April 3, 2003 for \$68,100, 3680 Waterbury, sold April 22, 2003 for \$83,000 and 3644 Waterbury, sold June 30, 2003 for \$93,500. The average of these sales is \$82,087. Even if the two purchases made by Wright Investments are included, the average value falls to only \$78,703. Given these values, we do not find a reduction warranted.

The average values for the Big Hill property are more favorable to Wright Investments. The average of the three properties the BOR presented, two sales of 1643 Archdeacon, once for \$57,000 and a second time for \$83,000, and the sale of 1770 Big Hill for 67,000, is \$69,000. We find this to be probative of the value of the property located on Big Hill.

Therefore, the board finds that the record supports a valuation finding as of January 1, 2002 as follows:

Parcel No. N64-15-6-35

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 45,000	\$ 15,750
Total	\$ 69,000	\$ 24,150

Parcel No. N64-15-3-41

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 50,280	\$ 17,600
Total	\$ 74,280	\$ 26,000

Parcel No. N64-15-5-9

	True Value	Taxable Value
Land	\$ 24,000	\$ 8,400
Building	\$ 50,350	\$ 17,620
Total	\$ 74,350	\$26,020

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 these values be carried forward in accordance with the law.

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