

OHIO BOARD OF TAX APPEALS

Scott D. Wright,)
)
 Appellant,) (CASE NO. 2003-M-1829
) (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 Douglas Trout 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.

This appeal is a companion to *Donald C. Wright Investments, LLC v. Montgomery Cty. Bd. of Revision*, BTA No. 2003-M-1828, unreported, released this same date. The property which is the subject of this appeal, parcel no. R72-164-18-37, located on Rainier Drive in Dayton, is the same type of property as was fully discussed in the companion appeal. This Huber home was purchased in February 2003 from the Secretary of Housing and Urban Development ("HUD"). The purchase price was \$57,000.

The subject property is 1,008 square feet. The Montgomery County Auditor found the true and taxable values of the subject property for tax year 2002 to be as follows:

Parcel No. R72-164-18-37

	True Value	Taxable Value
Land	\$ 17,460	\$ 6,110
Building	\$ 53,460	\$ 18,710
Total	\$ 70,920	\$ 24,820

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 property for tax year 2002 are as follows:

Parcel No. R72-164-18-37

	True Value	Taxable Value
Land	\$ 17,460	\$ 6,110
Building	\$ 38,970	\$ 13,640
Total	\$ 56,430	\$ 19,750

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.

In the present appeal, the appellant first argued that the price garnered through a sale from HUD should be competent and probative evidence of the fair market value of the subject property. As fully discussed in the companion appeal, this board has previously rejected the price paid for a previously foreclosed-upon home owned by HUD as competent evidence of fair market value. *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.

The appellant also provided some information concerning rental income, including the current lease. However, appellant did not provide any evidence of market rents and, for expenses, he estimated a 35 to 38 percent rate. The record contains no market information. The capitalization rate also was not supported by market information. Without such market information, the value opined becomes

investment, as opposed to market driven. The value opined by the appellant is the value of the property to him personally and not the value that may be obtainable on the open market. *Dayton Hudson Corp. v. Franklin Cty. Bd. of Revision* (July 18, 2003), BTA No. 2002-T-1951, unreported.

The appellant also presented a list of recent sales in the area. The list included five properties, including the subject property, which had sold during the period January 1, 2002 through March 26, 2004. At least two properties, including the subject, were owned by HUD prior to sale. One property, 4726 Barnhart, was listed on appellant's Ex. E as having been sold on July 23, 2002 for a sale price of \$55,000. However, the attachments to Ex. E reflect a sale of the same property on June 23, 2003 for a sale price of \$87,000.

As in the earlier appeal, the BOR presented Tonya Landess, an employee of the auditor's office. Ms. Landess presented a number of sales taking place in the taxing district in which the subject property is located. Except for two properties, the sales are of homes of 1,008 square feet. The sales take place during the period January 2000 through August 2004. Sales prices range from a low of \$48,300 to a high of \$90,000.

As we found before in the companion case, market sales are the best indicators of value for the subject property. In the present matter, we again consider the period July 1, 2001 through June 30, 2003. We place little weight upon sales which appear to be HUD properties. The BOR's list of 38 properties has been

reduced to 15, which have an average value of \$71,943. Given this value, the board cannot find that the subject is overvalued. Therefore, the board finds that the record supports a valuation finding as of January 1, 2002 as follows:

Parcel No. R72-164-18-37

	True Value	Taxable Value
Land	\$ 17,460	\$ 6,110
Building	\$ 53,460	\$ 18,710
Total	\$ 70,920	\$ 24,820

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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