

OHIO BOARD OF TAX APPEALS

S.A.R.B.G. Delaware, Ltd.,)
)
Appellant,) (CASE NO. 2003-R-1303
) (REAL PROPERTY TAX)
)
vs.) (DECISION AND ORDER)
)
Delaware County Board of Revision,)
Delaware County Auditor, and)
Delaware City Schools)
Board of Education,)
)
Appellees.)

APPEARANCES:

For the Appellant - Leonard A. Carlson
Attorney at Law
2700 East Main Street, Suite 111
Columbus, OH 43209

For the County Appellees - W. Duncan Whitney
Delaware County Prosecuting Attorney
140 North Sandusky Street
Delaware, OH 43015

For the Appellee - Martin Hughes & Associates
Jackie Lynn Hager
150 East Wilson Bridge Road, Suite 300
Worthington, OH 43085-2386

Entered April 29, 2005

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by S.A.R.B.G. Delaware, Ltd. (“SARBG”). SARBG appeals a decision of the Delaware County

Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 2002.

The Delaware County Auditor determined that the true and taxable values for the subject property for 2002 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-000		
Land	\$ 169,860	\$ 485,300
Building	\$ <u>-0-</u>	\$ <u>-0-</u>
Total	\$ 169,860	\$ 485,300

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-001		
Land	\$ 171,400	\$ 489,700
Building	\$ <u>4,253,520</u>	\$ <u>12,152,900</u>
Total	\$ 4,424,920	\$12,642,600

The BOR reduced the true and taxable values for the subject property for 2002 as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-000		
Land	\$ 169,860	\$ 485,300
Building	\$ <u>-0-</u>	\$ <u>-0-</u>
Total	\$ 169,860	\$ 485,300

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-001		
Land	\$ 171,400	\$ 489,700
Building	\$ <u>3,928,750</u>	\$ <u>11,225,000</u>
Total	\$ 4,100,150	\$11,714,700

SARBG, however, in its notice of appeal contends that the true and taxable values of the subject property should be further reduced as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-000 Total	\$ 98,000	\$ 280,000

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-001 Total	\$ 1,400,000	\$ 4,000,000

The subject property is comprised of two contiguous parcels, containing approximately 21.94 acres. The improvements were recently constructed beginning in 1999 to early 2001 and consist of two-story frame buildings with two hundred eighteen apartment units, garages, a clubhouse, and a swimming pool. The property is located at One Trotters Circle, Delaware, Delaware County, Ohio, in the Delaware Corporation – Delaware City Schools taxing district.

SARBG filed a complaint against the valuation of real property at the BOR, requesting a reduction in value for tax year 2002. The BOE filed a counter-complaint. After consideration, the BOR issued a decision, reducing the value of the subject property, from which the property owner appealed.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, the record of the evidentiary hearing before this board (“H.R.”), including exhibits, and the briefs of counsel.

At the hearing before the board, the appellant called Stephen Campbell as a witness on its behalf. Mr. Campbell is the chief financial officer (“CFO”) of SARBG and of Plaza Properties, the manager of the subject property. In addition, SARBG called Samuel D. Koon, an MAI appraiser, who testified and presented a complete, narrative appraisal report. The BOE did not call any witnesses and presented one document for consideration. Despite due notice, the BOR did not appear.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has 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. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant’s evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers*, supra; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

The subject property is owned by S.A.R.B.G. Delaware, Ltd., a limited partnership. It is managed by Plaza Properties, which is owned by the same family members as SARBG. According to Stephen Campbell, CFO of SARBG and Plaza Properties, Plaza Properties has been in business since 1959. It owns and operates approximately 4500 apartments in the central Ohio and Cincinnati areas. In addition, Plaza Properties owns between 1,800,000 and 1,900,000 square feet of shopping center space in central Ohio and in Cleveland.

Mr. Campbell testified that SARBG acquired the subject property located in the city of Delaware, Ohio, in December 2000. The project was intended to be an upscale apartment complex with amenities such as a swimming pool and clubhouse. The construction was not yet completed as of that date. The HUD loan was for \$12,644,000 over forty years at seven and three-quarters percent interest. It finally closed in July of 2001.

Immediately upon possession in December 2000, SARBG began leasing units that were completed. Based upon the seller's and lender's projections, SARBG expected to have the subject property leased at eighty percent within six months.

However, according to Mr. Campbell, the subject property only achieved a forty percent occupancy rate within six months. And, according to Mr. Campbell, the rate for this project had finally risen to between sixty-nine and seventy-two percent in July 2002. Mr. Campbell testified that the seller and the lender had overestimated tenant availability and rent amounts for the city of Delaware. Because of this, it was necessary for SARBG to reduce rents and grant rent concessions. Furthermore, it was difficult to find quality tenants, and there was significant turnover. Mr. Campbell testified that SARBG experienced a fifty

percent rate of rejection for tenant applications. Mr. Campbell stated that this property ranks as the lowest in all of Plaza Properties' portfolio.

Before this board, the property owner also presented the testimony and appraisal report of Samuel D. Koon, a professional, independent appraiser. Mr. Koon performed all three approaches to value: cost, sales, and income.

In performing the cost analysis, Mr. Koon first determined the value of the land. He utilized four sales, including the purchase of the subject site in November of 1999 for \$46,000 an acre. After making adjustments for dissimilarities, Mr. Koon determined that the value of the subject site as of the tax lien date was \$50,000 an acre, for a total of \$1,060,000. Mr. Koon calculated the building reproduction cost using Marshall & Swift Valuation Service and arrived at a value of \$10,900,000. Although he did not have the actual construction costs, he was satisfied from discussions with SARBG that his derived construction costs approximated actual construction costs. After adding five percent, or \$600,000, for the developer's profit, Mr. Koon determined that the subject property had a value of \$11,498,000.

From this, Mr. Koon estimated physical, functional, and economic depreciation. Since the project was only approximately one year old as of tax lien date, Mr. Koon estimated physical depreciation at \$255,000 based on a forty-five-year life. Mr. Koon determined that there was no functional obsolescence attributable to this property. However, it was Mr. Koon's opinion that based upon the project's failure to meet occupancy and rent expectations, this project would not have been built. Therefore, he deducted an additional

\$2,900,000 for economic obsolescence. Mr. Koon arrived at a final opinion of value using the cost approach of \$9,400,000.

In his income approach, Mr. Koon examined the subject property's rent rolls and utilized the actual rental income generated by the subject property from apartment rents, before concessions, garage rents, rent premiums, utility reimbursements, and miscellaneous income sources. From this, Mr. Koon determined a potential gross income of \$1,871,880.

Mr. Koon used a survey of seven hundred sixty-eight apartments in Delaware, Ohio to arrive at a twelve percent vacancy and credit/collection loss, although, as Mr. Koon points out, the experience of the subject property was higher. To this, he added three percent for rent concessions. To arrive at operating expenses, Mr. Koon reviewed the actual expenses for the subject property and the average from the Institute of Real Estate Management. Taking these elements together, Mr. Koon derived a net operating income of \$978,149.

In determining a capitalization rate, Mr. Koon utilized the rates of eight sales of institutional grade properties similar, in Mr. Koon's opinion, to the subject property. Mr. Koon also used a debt coverage ratio analysis. From this, he elected to use an 8.7 percent capitalization rate with a 1.64 percent tax additur, for a total capitalization rate of 10.4 percent. This indicated a value for the subject property of \$9,400,000 using the income approach to value.

Mr. Koon utilized eight sales from the Columbus, Ohio area in his sales comparable approach. Mr. Koon was unaware of any sales of comparable properties in Delaware, Ohio. And, in his opinion, the suburban Columbus, Ohio market is superior to the

Delaware, Ohio market. After adjustments, these sale prices ranged from \$46,000 to \$53,000 a unit. That equated to a value using the sales comparable approach of \$10,360,000.

In his reconciliation, Mr. Koon gave the most consideration to the income approach, the other two methods supporting the value derived using that method. Therefore, Mr. Koon arrived at a final estimate of value of \$9,400,000. After deducting an amount for personal property, it was Mr. Koon's final opinion that the subject property should be valued at \$9,000,000.

Several aspects of Mr. Koon's appraisal concern the board. First, the board does not believe Mr. Koon gave adequate weight to the cost approach. In *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision* (1984), 12 Ohio St.3d 270, the Supreme Court of Ohio acknowledged the applicability of the theory of substitution, that a knowledgeable buyer would pay no more for a property than the cost of producing a substitute property. The court also noted that such a theory was particularly applicable to new improvements that represent the highest and best use of the land. See, also, *Wenk v. Cuyahoga Cty. Bd. of Revision* (May 21, 1999), BTA No. 1997-T-816, unreported, and *Stone Falls Associates, Ltd. v. Greene Cty. Bd. of Revision* (Feb. 18, 2005), BTA No. 2002-R-2254, unreported. As the Supreme Court found in the seminal case of *Meijer, Inc. v. Montgomery Cty. Bd. of Revision*, 75 Ohio St.3d 181, 1996-Ohio-223, the cost valuation is a supportable method of valuation and, properly presented, indicates market value absent evidence of an aging or non-functional building or a changing market. The subject property was only one year old as of tax lien date. In addition, Mr. Koon acknowledges that the highest and best use of the property is as improved. Therefore, the board finds the cost approach to be a relevant indicator of value.

The second problem the board finds with Mr. Koon's appraisal is contained in his cost approach. Mr. Koon does not adequately explain for this board the basis for a \$2,900,000 deduction for economic obsolescence. Although he stated that no one would build the project based upon the economics that the subject property experienced, obviously someone did. And, SARBG admits that it is a sophisticated, experienced buyer and operator of these types of projects in the central Ohio area and was willing to pay an amount to the seller in excess of taking over the \$12,644,000 loan. Therefore, as of December 2000, and even as late as July 2001 when the loan closed, SARBG was willing to invest an amount that approximated the cost to build the project to purchase the subject property. Further, a lender was also willing to loan \$12,644,000 on the project.

As to the income approach, documentation was provided to this board that asking rents were increasing from year to year. See Appellee's Ex. 1. Therefore, the additional three percent reduction in income for reduced rents and rent incentives appears to be excessive and without basis.

Mr. Koon chose a capitalization rate of 8.75 percent before the tax additur. However, a review of the capitalization rates from the eight sales utilized by Mr. Koon demonstrates that only two of the eight capitalization rates were lower than the rate chosen by Mr. Koon. This is especially puzzling since this project located in Delaware, Ohio would appear from the testimony to be a riskier investment than all eight of the Columbus, Ohio sales. The greater the risk; the greater the expected return on investment.

In addition, Mr. Campbell testified that the appellant would not consider selling the subject property for less than the mortgage balance of \$12,400,000.

In resolving the issues before it, this board must examine the available record and 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, the board is given broad discretion to 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.

Based upon the foregoing, the board finds that the existing record supports the valuation as determined by the BOR. Mr. Koon's cost approach, adding back the \$2,900,000 reduction for economic obsolescence, puts the value of the subject property at \$12,300,000. In addition, Mr. Koon's sales comparable approach derived a value of \$10,360,000. In this board's opinion, these support the BOR's value of \$12,200,000. Therefore, the Board of Tax Appeals finds the value of the subject property as of January 1, 2002 to be as the BOR determined as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
519-323-01-002-000		
Land	\$ 169,860	\$ 485,300
Building	\$ <u>-0-</u>	\$ <u>-0-</u>
Total	\$ 169,860	\$ 485,300

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
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Land	\$ 171,400	\$ 489,700
Building	\$ <u>3,928,750</u>	\$ <u>11,225,000</u>
Total	\$ 4,100,150	\$ <u>11,714,700</u>

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Delaware County list and assess the subject property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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