

**OHIO BOARD OF TAX APPEALS**

State Street Bank - Trust Co. of )  
Connecticut NA et al., )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Montgomery County Board of Revision, )  
the Montgomery County Auditor and )  
Northmont City Schools )  
Board of Education, )  
 )  
Appellees. )

CASE NO. 2004-M-40  
  
(REAL PROPERTY TAX)  
  
DECISION AND ORDER

APPEARANCES:

For the Appellant - Todd W. Sleggs & Associates  
Todd W. Sleggs  
820 W. Superior Avenue, Suite 410  
Cleveland, Ohio 44113

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Laura G. Mariani  
Assistant Prosecuting Attorney  
301 West Third Street  
P.O. Box 972  
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For Bd. of Edn.- Rich, Crites & Dittmer, LLC  
James Gorry  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

Entered August 12, 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 January 5, 2004, from a

decision, dated December 5, 2003, of the Montgomery County Board of Revision ("BOR"), appellee herein.

The subject property is located in the city of Englewood taxing district of Montgomery County, Ohio, and further identified as parcel nos. M57-5-2-21 and M57-5-2-64.

The Montgomery County Auditor found the true and taxable values of the subject property for tax year 2002 to be as follows:

Parcel No. M57-5-2-21

	True Value	Taxable Value
Land	\$ 546,010	\$ 191,100
Building	\$ 985,930	\$ 345,080
Total	\$ 1,531,940	\$ 536,180

Parcel No. M57-5-2-64

	True Value	Taxable Value
Land	\$ 106,170	\$ 37,160
Building	\$ -0-	\$ -0-
Total	\$ 106,170	\$ 37,160

Both the property owner, State Street Bank - Trust Co. of Connecticut NA et al. ("Motel 6"), and the Northmont City Schools Board of Education ("BOE") filed complaints challenging the auditor's value with the BOR. Upon consideration of those complaints, the BOR determined that the auditor's values were correct and declined to change value.

Only Motel 6 filed an appeal. Through its notice of appeal, Motel 6 asserts the correct values for tax year 2002 are as follows:

Parcel No. M57-5-2-21

	True Value	Taxable Value
Land	\$ 546,000	\$ 191,100
Building	\$ 547,830	\$ 191,740
Total	\$ 1,093,830	\$ 382,840

Parcel No. M57-5-2-64

	True Value	Taxable Value
Land	\$ 106,170	\$ 37,160
Building	\$ -0-	\$ -0-
Total	\$ 106,170	\$ 37,160

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript certified by the Montgomery County Auditor as secretary of the BOR. The hearing scheduled in the matter was cancelled upon notice that the parties had reached an agreed settlement. When the settlement was not forthcoming, the matter was again rescheduled. At that time, the appellant waived hearing but sought opportunity to make legal argument. The other parties to this matter did not appear, nor have they entered any argument.

The board will consider this matter under the standards enunciated in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. The Ohio Supreme Court held in that case that a common pleas court reviewing the action of a board of revision was not required to hold a de novo hearing, but was required to make a thorough and comprehensive review of the evidence before it and make an independent determination as to value. The court later held this board to the same standard in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13.

The property under consideration is a 108-room, nationally branded hotel located in Englewood, Ohio. The prior owner, Accor Economy Lodging ("Accor"), participated in a number of sale/leaseback arrangements, transferring the subject and other operating motels to new owners, such as State Street Bank-Trust Co. of Connecticut NA et al., in order to free investment equity. The transfer of the subject property took place in early 1998.

Even though the property transferred to a new owner, the current operation remained in place and continued as a Motel 6, operated by Accor. For tax lien date January 1, 2002, Motel 6 challenged the value assigned by the auditor to this and another property in the Montgomery County area.<sup>1</sup> In *Motel 6 Operating LP v. Montgomery Cty. Bd. of Revision* (Jan. 7, 2005), BTA No. 2004-J-36, unreported, this board concluded on similar evidence presented before the BOR in this matter that the appraisal evidence presented in that case was not sufficiently competent or probative of value so as to allow this board to find a value different from that assessed by the auditor and unchanged by the BOR.

As to the specific evidentiary burdens placed upon the parties to a real property valuation appeal, 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*

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<sup>1</sup> At hearing the appraiser made reference to three properties operated by Motel 6 in Montgomery County and the fact that values on all three properties had been challenged.

*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 which demonstrates its 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 competent and probative evidence of true value has been presented by an appellant, other parties asserting a different value then have a corresponding burden to provide sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Before the BOR, Motel 6 presented the testimony and appraisal report of Mitchell W. Wilson. Mr. Wilson is a licensed appraiser in a number of states, including Colorado, Pennsylvania, and South Carolina. Mr. Wilson presented an opinion of value for the subject property as of January 1, 2002 and derived that value through a number of approaches all based upon income (as opposed to cost to build or recent sales). The board will spend little time reviewing the appraiser's "opinion of value." First, we note that nowhere does the appraiser suggest that he is opining to a value for the subject property. In fact, the appraiser's opinion is presented in a document entitled "Correlation of Value."

As stated above, the information presented before the BOR in this appeal was much the same type of information presented by the same appraiser in the earlier appeal and ultimately rejected by both the BOR and this board. We find the same flaws to be evident in the report presented in the present appeal. The appraiser

first provided actual income and expense reports for 2001 and summary information, including average room rates, occupancy levels for the same period, net room revenues, and expenses related to the realty for the period 1999 through 2002. Mr. Wilson also included certain pages from national publications, which provided some market information for the Dayton, Ohio area.

From this property specific and market evidence, Mr. Wilson calculated three different values utilizing a room revenue multiplier. One calculation applied a room revenue multiplier to 2001 net income earned by the motel, one applied a room revenue multiplier to the motel's three-year average income, and one calculation applied a room revenue multiplier to net income derived from the market. Mr. Wilson also opined to values under the direct capitalization approach, again deriving three different values, one utilizing the motel's 2001 net income, one utilizing the motel's three-year average net income, and one utilizing net income derived from the market. After presenting his calculations, none of which derived a value of \$1,200,000, Mr. Wilson opined to a value for the subject property as of tax lien date of \$1,200,000.<sup>2</sup>

In *Motel 6 Operating LP*, supra, the board was critical of mathematical errors present in the appraiser's material. Similar mathematical errors are again present. Some errors appear to be rounding errors; other numbers look like calculations, but are, in fact, income actually earned by the motel and not calculated at

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<sup>2</sup> The appraiser recognized the fact that none of his calculations derived a \$1,200,000 value through his testimony before the BOR. There, he explained that his value for the subject property was affected by his appraisals of the two companion properties operated by Motel 6.

all.<sup>3</sup> Such inattention to detail causes the board to question the appraiser's ultimate conclusion of value.

The BTA is vested with wide discretion in determining the weight to be given evidence and credibility of witnesses. *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, (1975), 44 Ohio St.2d 13. See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. In the present matter, we decline to place any weight upon an appraiser's opinion that has not been properly supported by market data.

Given the foregoing, and considering the full record before us, this board finds that the value of the subject property as of tax lien date 2002 was as follows:

Parcel No. M57-5-2-21

	True Value	Taxable Value
Land	\$ 546,010	\$ 191,100
Building	\$ 985,930	\$ 345,080
Total	\$ 1,531,940	\$ 536,180

Parcel No. M57-5-2-64

	True Value	Taxable Value
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Building	\$ -0-	\$ -0-
Total	\$ 106,170	\$ 37,160

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<sup>3</sup> For example, the "Room Revenue Multiplier: Based on Motel 6 2001 Income" indicates the average daily room rate is \$36.04 and the occupancy level is 53.83 percent and the net room revenue is \$774,274. However, multiplying the average daily room rate x 108 rooms x 365 days, and multiplying that figure by the occupancy level calculated to \$764,761, and not \$774,274, as indicated on the appraiser's table. However, the actual revenue for 2001 was \$774,274 (after inclusion of other operating revenue), as indicated by the 2001 financials. In addition, the appraiser suggested that the actual reported occupancy rate was 53.83 percent. In fact, the financials reveal an occupancy rate of 54.8 percent.

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 this value be carried forward in accordance with the law.

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