

Brookwood Inn Inc.,)	
)	CASE NO. 95-A-27
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Auditor,)	
Cuyahoga County Board of)	DECISION AND ORDER
Revision, and the Board of)	
Education for the Berea City)	
School District,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Herbert R. Whiting Brookwood Inn Inc. 29999 Bolingbrook Road Pepper Pike, Ohio 44124
For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney By: Sandra Curtis-Patrick Assistant Prosecuting Attorney Courts Tower, 9th Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee Board of Education	-	Kevin M. Hinkel Kadish, Hinkel & Weibel 2112 East Ohio Building 1717 East 9th Street Cleveland, Ohio 44114

Entered March 14, 1997

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on January 5, 1995, by the above-named appellant from a decision of

the Cuyahoga County Board of Revision, mailed to appellant on December 6, 1994. Therein, said board determined the taxable value of the subject property for tax year 1992.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the Board by the county board of revision, and the evidence presented at a hearing before this Board. We note that appellant's counsel filed a brief with this Board on December 6, 1996. The appellee school board's counsel responded to such filing with a motion to strike the appellant's brief, and based upon the arguments set forth in such motion, including the fact that appellant's brief was originally due on April 15, 1996 (which included an extension of the due date scheduled at the hearing of March 18, 1996), the appellant's brief is stricken from the record herein.

The subject property, Brookwood Inn Inc., (hereinafter "Brookwood"), is a hotel/motel that was closed for business as of February 12, 1993. Prior to its closing, the hotel's clientele was primarily residential in nature, with individuals residing at the hotel/motel for weeks and months at a time. Built primarily in 1960 and 1962, the site is approximately 1.321 acres and is located in the Berea taxing district and appears on the Cuyahoga County Auditor's records as parcel number 343-05-006. It is a part one-story, part two-story, part three-story masonry building with a small basement area, office space in the front, and a maintenance garage at the rear. It consists of 89 rooms, as well as a restaurant/lounge area and a large lobby/registration area. The

restaurant area was remodeled into an office area including four private offices, conference room, reception area, rest room and storage facilities. The main kitchen area remains, although most of the equipment was removed. Part of the former bar/lounge area also remains but it is used for storage. The partial basement area contains a former restaurant/cocktail lounge, kitchen, party room, office, boiler room, rest rooms and storage space.

The subject is located in the city of Brook Park, approximately 10 miles southwest of Cleveland's downtown Public Square. Located nearby to the subject is Cleveland Hopkins Airport, the NASA Lewis Research Center, the IX Center, and other older light industrial and commercial development. Many of the businesses in the subject's immediate vicinity have been closed, including at least one other hotel. The opposite side of the street from the subject is now developed with adult bookstores, movie houses, and nude bars which, appellant contends, attract prostitutes, pimps, drug dealers, and foster criminal and other unsavory activity.

The value for the subject parcel for tax year 1991 as determined by the Cuyahoga County Auditor and retained by the Cuyahoga County Board of Revision is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 146,510	\$ 51,280
Bldg	781,000	273,350
Total	<u>\$ 927,510</u>	<u>\$ 324,630</u>

Whereas, the appellant, in its Notice of Appeal, contends that the subject has a current market value of \$1.00, with a corresponding taxable value of \$1.00, as well.

At the outset, this Board must address issues upon which the attorney examiner at hearing reserved ruling. Specifically, the appellee school board filed motions with this Board to limit the appellant's evidence as well as to dismiss the instant matter. The basis for these motions lies in appellant's treatment of this case as for tax years 1992 and 1993.

Originating with its filing of a complaint with the board of revision on March 29, 1993, appellant identified the tax year in question on said complaint as "1992-1993". The appellee school board filed a counter-complaint on April 27, 1993, for tax year 1992 only. The board of revision's minutes from their hearing on this matter as well as the decision they rendered thereafter all refer to the tax year in question as 1992.

We must first note that there is no provision in the law for appealing two tax years on one complaint form or one notice of appeal form. Separate years require separate filings. See R.C. 5715.19; R.C. 5715.30. Additionally, we recognize that a complaint for tax year 1993 could only be filed after October 1, 1993, the first date on which the tax value of the property for year 1993 could be determined; therefore, appellant could not have properly filed its 1993 complaint with the board of revision on March 29, 1993. See R.C. 319.28.

Thus, based upon the foregoing, this Board will grant appellee's motion and limit its review of appellant's evidence to

that for tax year 1992. However, with regard to the appellee's motion to dismiss, we find appellant's complaint was sufficient for purposes of establishing jurisdiction with the board of revision for tax year 1992, as witnessed by the fact that the board of revision rendered its decision for said year. Accordingly, we deny the appellee's motion to dismiss.

Finally, we must address appellant's evidentiary exhibits. The attorney examiner at the hearing herein reserved ruling on Exhibits 2, 3, 4, 5, 6, and 7. Exhibits 2, 4 and 6 will not be received into evidence as each deals primarily with information geared toward the valuation of the subject for tax year 1993. Exhibit 7 is already part of the evidence before this Board as it is contained in the statutory transcript as filed by the board of revision. Exhibits 3 and 4 will be received into evidence for what they are worth.

Initially, this Board notes the decisions in Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St. 3d 336, 337, and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St. 3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. Id.; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318, 319.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction," Conalco v. Bd. of Revision (1977), 50 Ohio St. 2d 129; State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in OAC 5705-3-03: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income from the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

In support of its position that the Cuyahoga County Auditor and Board of Revision have overvalued the property, appellant first offered the testimony of the majority stockholder in the corporation that owned Brookwood, Herbert Whiting.

Mr. Whiting testified to not only the condition of Brookwood and the surrounding neighborhood, but also to his opinion of value for the subject. According to Whiting, in November 1992, the subject premises was inspected by the building inspector and the mayor of the city of Brook Park. Thereafter, Whiting was contacted by the city, by letter, to inform him that he "could no longer operate the property as a residential place for tenants," without applying for a "change of use." (R., p. 37) Whiting was unable to comply with zoning requirements to allow for residential use, e.g., rooms measuring 300 square feet with a kitchen, yet the

transient hotel/motel business in the subject's area "had just about fallen off to nothing." (R., p. 39) Whiting testified that after meeting with city officials and trying to convince them that his use of the subject for residential purposes should be "grandfathered" since it had been so used since the subject was opened in 1961, he received a letter indicating that Brookwood was to be closed because it could not be operated as a residential motel under current zoning provisions and could not be operated as a transient motel since it was not properly licensed. (R., p. 41) Whiting continued to operate the motel, charging his tenants on a weekly, as opposed to monthly basis, until he was notified that he must close the subject and all of his tenants were notified that they had to leave. (R., p. 44) Eventually, all of the tenants were evicted on February 12, 1993. Whiting indicated that the city's basis for wanting to close the subject was that it was a "fire trap", that it was "crime infested, prostitute infested, drug infested." (R., p. 47-48)

With regard to the subject's condition, Whiting indicated that due to the influx of the freeway systems in the area, the transient motel business declined, and, as a result, there were insufficient funds for him to maintain the subject properly. He stated that the elevator, the telephone system, and the air conditioning units were no longer in working order, the roof had developed several leaks, and the landscaping and blacktop had become severely deteriorated. (R., p. 49-51) After receiving a list of items that would have to be replaced or repaired in order to remain open from the city, Whiting contacted an architect who

indicated the cost to comply with the city's requirements was \$250,000, in addition to another \$250,000 to rehabilitate the premises.

Whiting, who is a lawyer by training and has no apparent formal appraisal training, indicated that his opinion of the value of the motel "was next to nothing in 19 - - in January 1, 1992, based on the condition of the transient business, the trend of the transient business, the abysmal loss, financial loss record of the motel over a long period of time * * * and as a result of the blight across the street, pornographic, crime ridden, crime infested, prostitute infested, drug infested activity that went on across the street, which was a constant problem with all the motels on the strip." (R., p. 52-53)

Upon the conclusion of Mr. Whiting's testimony, the appellant then offered the testimony and associated appraisal report of Wesley E. Baker, a state certified general real estate appraiser. Mr. Baker indicated that in addition to the subject, he had appraised the hotel located adjacent to the subject as well as almost all of the motels located on a several-block corner where the subject is located. (R., p. 80-81)

Turning to the specifics contained in his appraisal, Baker wrote, "(t)he subject property still affords the potential of a limited occupancy hotel/motel (i.e. second or third rate hotel/motel with commensurate room rates). In my judgment, this use represents the Highest and Best Use, at least for the immediate future. On the other hand, the long range use may be a conversion of this building to an alternate use (i.e. nursing home, assisted

living, etc.) or possibly razing the building and redeveloping the land in assemblage with abutting properties. * * * In all likelihood, the alternate Highest and Best Use of the land would be for some low density commercial/retail development, or more likely light industrial development or assemblage, consistent with the predominant development trends in this immediate area." (Ex. 1, p. 25-26)

In arriving at his final valuation, Baker first independently determined the land value. He then utilized both the income approach and the sales comparison approach in reaching an overall valuation for the subject parcel. He did not use the cost approach to value in his report, indicating that it would be extremely difficult to ascertain reproduction/replacement costs, as well as depreciation. In addition, he indicated that most investors in a hotel/motel project are more concerned with the property's income-producing capability or the price for which comparable properties are selling. (Ex. 1, p. 30)

To determine the value to attribute to the land, Baker utilized eleven sales of commercial/light industrial land sites, dating from November 1986 through November 1993. After making adjustments to these sales for variables like location and size, he arrived at a range of value for the subject land of \$125,000 - \$150,000 per acre, and, ultimately, valued the land on the basis of \$137,500 per acre, or \$180,000 (rounded).

In completing his income approach, Baker first had to estimate a stabilized income for the subject. Based upon the hotel's actual experience for fiscal years ending 2/28/90 and

2/28/91, Baker derived an average annual income, including room rentals, office space rental, and miscellaneous income. He based his expenses primarily on the actual expenses, and allowed for the real estate taxes in the capitalization rate. Based upon financing costs, equity return rates and a reasonable mortgage term available as of the date of valuation, as well as capitalization rates for comparable hotel/motel properties, Baker arrived at a capitalization rate of 11.00% with a tax additur of 1.77%. After applying the capitalization rate, Baker arrived at a value of \$435,000, from which he deducted \$20,000 for personal property. Accordingly, Baker's final rounded value for the subject, using the income approach, is \$415,000.

Baker's calculations under the income approach can be summarized as follows:

Income Estimate - Room Revenue	=	\$342,000	
Office Rental	=	18,000	
Miscellaneous Income	=	3,000	
			TOTAL INCOME = \$363,000
Departmental Expenses	=	\$225,000	
Indirect Expenses	=	55,000	
Insurance	=	2,500	
Replacement of FF&E	=	6,750	
Management expense	=	18,150	
			TOTAL EXPENSES, ex. real est. taxes = \$307,400
			NET INCOME = \$ 55,600
capitalization rate	=	11.00%	
	+	1.77 tax additur	
		12.77%	= \$435,000 (rounded)
deduction for personal property (\$250 x 90 rooms)	=	\$ 20,000	(rounded)

VALUE = \$415,000

Using the sales comparison approach, Baker compared 12 motel sales dating from 1987 through 1994 to the subject. He indicated that he made appropriate adjustments for differences between his comparables and the subject, using as the common unit of comparison either the price per room or the price per gross square foot of building area. In the process, Baker stated that:

"The subject property has much higher than typical deferred maintenance, including but not limited to: new [sic] air conditioning units, telephone switchboard and hook up, elevator, roof and parking lot. As previously discussed, the total cost estimate for these items of deferred maintenance is +230,000, equivalent to \$2,556/unit. With these improvements, I estimate the value of the subject to be in the range of \$7,000 to \$8,000/unit, however in lieu of the rehabilitation, modernization and renovation costs, I estimate the 'as is' value of the subject building to be between \$5,000 and \$5,500/unit * * * ." (Ex. 1, p. 34)

Based upon the foregoing observations, Baker believed that the subject property should be valued between \$450,000 to \$495,000 using per room calculations, and, including personal property. In addition, using a per gross square foot of building area calculation, Baker estimated the buildings value at between \$445,000 and \$485,000. After excluding personal property, Baker concluded that the subject should be valued in the mid-range of the foregoing valuations, or \$465,000.

Baker reconciled his two valuations by determining that:

"The maximum spread indicated above is greater than typical, \$50,000, say 12%. In my judgment, the data relied upon in the Income Approach more reasonably measures the economics of the subject property for a

continued hotel/motel use. These estimates are based upon historic data adjusted for inflationary increases.

"The Market Data Approach represents more of a rule of thumb; the data in and of itself varies significantly and requires larger than typical adjustments.

"All things considered, I place primary weight upon the Income Approach, however recognizing the higher indication via the Market Data Approach, I take my final estimate of value as of 1/1/92 to be: \$425,000. (Ex. 1, p. 38)

The appellee school board offered only exhibits A and B to this Board, an "appraisal" authored by the majority stockholder of the corporation that owns the subject property as well as a copy of the appellant's interrogatories and request for production of documents propounded to the appellee school board. The county offered no testimony or evidence herein.

Upon review of the appraisal presented to this Board by Mr. Baker, we note that he primarily relied upon the income approach to valuation in valuing the subject. He used the second approach to valuation only to support his ultimate determinations, which we find entirely appropriate for such an income-producing property. In addition, we find that while his report could have been enhanced with use of some supported, market-driven data in conjunction with the subject corporation's unaudited income and expense statements, we also find that the subject was arguably uniquely situated, in that it was still in operation, making some money, even considering the conditions present at the subject and in the surrounding neighborhood. Based upon the testimony presented by appellant, and the information presented therein about the conditions of the subject's market, we find that Baker's

appraisal most accurately reflects the "market value" for the subject.

Further, the appellees herein did not present any expert appraisal testimony or other reliable, substantive evidence on their own behalf to refute the valuation contained in Baker's report. The appellees failed to present competent, probative evidence of value upon which this Board could rely. Thus, based upon the existing record, the Board finds the appraisal report of Wesley Baker to be uncontroverted, and, therefore, the most competent evidence of the value of the subject property as of the tax lien date, January 1, 1992, available to us. See Gregory & Vincenza Caniglia v. Cuyahoga County Board of Revision, et al (October 21, 1994), B.T.A. Case No. 93-R-1436, unreported.

Accordingly, this Board adopts the valuation as set forth in the appraisal authored by Mr. Baker and offered on behalf of the appellant. Thus, the value of the subject property, as of January 1, 1992, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 180,000	\$ 63,000
Bldg	245,000	85,750
Total	\$ 425,000	\$ 148,750

It is the Decision and Order of the Board of Tax Appeals that the Cuyahoga County Auditor shall list and assess the subject property in conformity with this decision. ohiosearchkeybta