

Stanley Trust,)	
)	CASE NO. 96-A-1217
)	
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Franklin County Board of)	
Revision, Franklin County)	DECISION AND ORDER
Auditor, and the Columbus)	
Board of Education,)	
)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Todd W. Sleggs Todd W. Sleggs & Associates Third Floor 1015 Euclid Avenue Cleveland, Ohio 44115
For the County Appellees	- Ronald O'Brien Franklin County Prosecuting Attorney By: Matthew Chafin Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215-6310
For the Columbus Board of Education	- Karol Cassell Fox Teaford, Rich & Wheeler 20 East Broad Street Columbus, Ohio 43215-3682

Entered July 17, 1998

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 by the above-named appellant from a decision of the Franklin County Board

of Revision. Therein, said board determined the taxable value of the subject property for tax year 1994.

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, the evidence presented at a hearing before this Board, and the briefs submitted by counsel.

The subject property, approximately 2.5 acres, is located in the City of Columbus - Columbus City School District (010) taxing district and is identified in the auditor's records as parcel number 178873. Built in 1977, the multi-story office building measures approximately 69,834 square feet (gross). The immediate neighborhood of the subject is characterized as a predominantly commercial area, with some residential areas, multiple-family residential locations, small office buildings, and a retirement facility also located nearby.

The subject itself is an average quality/condition 5-story office building (including finished office space in the lower level), featuring painted drywall over steel studs. It has an ADP security system, a fire alarm system, hard-wired smoke detectors, a sprinkler system, 2- 2,500 pound elevators, 2 stairwells, and an HVAC system which includes a heat recovery system located under the roof of the building and a cooling tower located on the roof. Each floor has office space, 2 rest rooms, a janitorial closet, and a mechanical closet. In 1991 all of the interior hallways were refurbished with new carpeting, mini blinds, and wallpaper and the parking lot (90,000 square feet) was resealed and repaved.

The value for the subject parcel for tax year 1994 as determined by the Franklin County Auditor and retained by the Franklin County Board of Revision is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 544,500	\$ 190,570
Bldg	<u>2,173,500</u>	<u>760,720</u>
Total	\$2,718,000	\$ 951,290

The Board of Revision, in making their determination of value, indicated they were not convinced by the appraisal submitted on behalf of the appellant because the expense comparables that were utilized were based upon large "campus" type developments, the sale comparables were only 1-3 stories, and the subject appeared to have incurred higher than typical expenses three out of the four years set forth on the operating summaries offered by appellant. (S.T., Ex. 4, TAPE) Thus, the board of revision retained the county auditor's valuation, which, based upon review of the property record card, was based upon the cost approach and the income approach. (S.T., Ex. 5)

The appellant property owner, Stanley Trust (hereinafter "Stanley"), contends that the subject has a true value of \$2,000,000, with a corresponding taxable value of \$700,000.

When determining value, 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.

Additionally, we must make note of 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.

In support of its position that the Franklin County Auditor and Board of Revision have overvalued the property, Stanley offered the testimony and appraisal report of Ronald P. Davis, MAI, a state certified general real estate appraiser in Ohio. Mr. Davis began his analysis by stating that if vacant, "(T)he most appropriate use for the subject site is considered to be for retail or office use, and the most profitable utilization would result by developing the site with the greatest amount of space, since a positive relationship exists between the amount of space and

income." Further, he indicated that "(S)ince the present improvements have a positive impact on value, the highest and best use is as improved." (Ex. 1, p. 18-19)

In arriving at his final valuation for the subject, Mr. Davis utilized the income approach to value and the market data approach to value. He indicated that "(K)nowledgeable investors typically base their decisions upon economic factors such as forecasted net income and return on investment. Because the Cost Approach does not reflect these income related considerations, we believe it provides little basis for accurately estimating the subject's value. Therefore, it was not utilized." (Ex. 1, p. 20)

In completing his income approach, Davis first estimated a stabilized income for the subject. Based upon his market analysis of rents, using six lease comparables, Davis arrived at a lease rate of \$10 per square foot. In discussing the rent comparables he utilized, Davis stated that "(B)uildings #1-#5 are multi-tenant buildings located in close proximity to the subject, while #6 is a similar building in Upper Arlington. All were built since 1970, and are Class "B/C" buildings, with similar amenities. The older buildings rent from \$8.50 - \$12.00 gross, while the newer building [#5] rents for \$13.00." (Ex. 1, p. 23) Thus, Davis' gross rental income totalled \$462,600.

Considering the "desirability of the property's location, its tenant mix, its visual appeal and condition, its management, and its rent structure in relation to the competition," Davis estimated a stabilized vacancy rate of 10%, leaving an effective gross income of \$553,734. (Ex. 1., p. 25, 27)

In projecting expenses for the subject, Davis looked at not only the subject's historical expenses but also expenses from three other office complexes. He concluded that \$5.18 per square foot of expenses (exclusive of real estate taxes), or \$318,707, was appropriate herein. (R., p. 18; Ex. 1, p. 26-27) After a deduction for expenses, a net operating income of \$235,027 resulted.

Davis utilized the band of investment method and the debt coverage ratio method in determining an appropriate capitalization rate to be applied. He employed a rate of 10%, with a tax additur of .0174, for a final rate of 11.74%. Accordingly, Davis' estimated value via the income approach for the subject was \$2,000,000 (rounded).

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

Potential Gross Income	= \$	615,260
Vacancy & Credit Allowance, 10%	= \$	61,526
Effective Gross Income	= \$	553,734
Expenses	= \$	318,707
NET INCOME	= \$	235,027
capitalization rate	=	11.74%
ESTIMATED VALUE	=	\$2,000,000

Using the sales comparison approach, Davis compared 4 sales of comparable office complex sales in the market area dating from August 1993 through July 1994 to the subject. In the process, Davis stated that:

"The final sales have an unadjusted range of \$27.11 to \$51.58. An adjustment is

not made for time because the sales have occurred after the 'roll down' in rents since 1990. A series of minor adjustments is made for age/condition, quality, L/B ratio, entry, user, and size, with the adjusted range being \$27.91-\$31.96, which is a tight range. The middle of the range is the best indication of value, based on sale #1 and #2.

Davis used a value of \$30.00 per square foot to derive his final valuation, using the market approach, of \$2,100,000 (rounded).

Davis reconciled his two valuations, which were very close in value, by concluding to a value of \$2,000,000.

Neither the county appellees nor the appellee school board offered any evidence or testimony regarding the valuation of the subject property to this Board. Instead, they relied solely upon their cross examination of appellant's witness as well as the statutory transcript to establish the valuation of the subject under consideration.

In arriving at our final valuation of the subject, we first note the appellees' contention that Mr. Davis' report is unreliable because he was engaged and paid by an outside party, who was not the property owner, to complete the appraisal in question. The record also indicates that Mr. Davis was engaged by the owner to provide an appraisal of the property at some point in 1992, which was completed in January 1995. In view of our determination of value which follows, we will not give further consideration to this contention.

We note that the determination of value is a question of fact which is primarily within the province of the taxing authorities. North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of

Revision (1990), 54 Ohio St. 3d 98. The Board of Tax Appeals is vested with wide discretion in determining the weight to be given to the evidence. Witt Co. v. Hamilton Cty. Bd. of Revision (1991), 61 Ohio St. 3d 155; Cardinal Federal Savings & Loan Association v. Board of Revision (1975), 44 Ohio St. 2d 13.

As we review the appraisal offered by appellant, we note our agreement with said appraiser's conclusion that the income approach to valuation is the most appropriate and reliable methodology to utilize when valuing the subject. Accordingly, we will primarily focus upon Mr. Davis' income approach in determining value herein, although we will also review his market data approach, which he claims supports his findings under the income approach.

As evidenced in the cross examination of appellant's appraiser, there are many weaknesses in the appraisal report he offered. Specifically, under his income approach rent comparables, we find that Mr. Davis relied upon an industrial publication for the information he utilized, without verifying any of the details with building owners or managers. In addition, Mr. Davis could not verify exactly what time frame in 1994 the information he utilized came from, thus leaving room for speculation as to the accuracy of the information in relation to the tax lien date in question. (R., p. 36-37) Further, with regard to income generated by the subject, Mr. Davis acknowledged that the subject receives income from common area maintenance charges, but never included it in his effective gross income calculations. In addition, none of his cited comparables generate that type of income. (R., p. 53, 54)

With regard to the subject's vacancy rate, Mr. Davis did not know what it was for tax year 1993, leading up to the tax lien date in question. (R., p. 41) Further, his vacancy rates for the subject's competition were obtained in the aforementioned industrial publication, for which he had no specific recollection about the period in 1994 to which they applied. (R., p. 40)

Mr. Davis utilized expense comparables from large office complexes consisting of several buildings, which we do not find to be comparable to the subject building. In addition, we question why Mr. Davis did not use the same comparables that he utilized for the rent determination for the expenses. Doing so, would have clearly made for a more consistent, even-handed approach.

A review of Mr. Davis' market data approach indicates his reliance upon 4 sales located outside of the immediate area of the subject, specifically, in Worthington, a more affluent and upscale market, yet no adjustment was made for location. Several of the comparables are dramatically larger than the subject, i.e., three times larger, and we question their comparability at the outset and their inclusion in the sales discussion. In addition, Mr. Davis made adjustments to the subject for age/condition and also for quality, which appear to be a double deduction for the same type of information/characteristic. Arguably, on its face, it would appear that the age deduction should be made based upon a strict comparison of the years in which the buildings were built. Any deduction for condition should be reflected in the quality category. Since we cannot determine the factors considered by Mr.

Davis in using these designations, we cannot rely upon the results thereunder.

Based upon the foregoing, this Board finds in the instant matter, the appellees' cross examination of appellant's witness pointed up some weaknesses in Mr. Davis' report, sufficient enough to justify not relying upon it as a basis for our valuation determination. We find that Mr. Davis' report does not provide sufficient probative evidence for our utilization in the valuation process.

Accordingly, this Board finds that appellant has not provided credible, probative evidence of value sufficient to meet its burden of persuasion herein. See Natl. Church Residence v. Licking Cty. Bd. of Revision (1995), 73 Ohio St. 3d 397. Since the appellant has failed to meet its burden, it will not, in turn, be shifted to the appellees.

Thus, having determined that the appellant has not provided this Board with sufficient probative evidence, and there being no other evidence of value offered by the appellees, we will rely upon the county's valuation of the subject. As the Supreme Court stated in Simmons v. Cuyahoga Cty. Bd. of Revision (1998), 81 Ohio St. 3d 47, "(W)here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."

Accordingly, this Board adopts the valuation for the subject property as established by the county auditor and adopted

by the board of revision. Specifically, the value of the subject property, as of January 1, 1994, shall be as follows:

TRUE VALUE TAXABLE VALUE

Land	\$ 544,500	\$ 190,570
Bldg	<u>2,173,500</u>	<u>760,720</u>
Total	\$2,718,000	\$ 951,290

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