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STATEMENT OF THE CASE

This case comes to the Court from a decision and order of the Ohio Board of Tax Appeals under Revised Code Section 5717.04. A complaint for the tax year 2003 was filed by the Appellant, First Interstate Hawthorne Ltd. Partnership in connection with the commercial retail property that is the subject of this appeal. A counter-complaint was filed by the Appellee Bedford Board Education wherein they requested that the County Auditor's value of \$3,060,000 fair market value be maintained. The basis for the Taxpayer's complaint was the decline in occupancy that occurred during the calendar years 2000 and 2001, which continued during the calendar years 2002 and 2003. Supplement to the Briefs (hereinafter Supp.) at pages 8-20. The Cuyahoga County Board of Revision had reduced the 2002 tax year assessment based on the same factors. Supp. at page 3. The Board of Revision's 2002 tax year decision was referenced in and attached to the Appellant's 2003 tax year complaint. Supp. at pages 1 and 3. The 2002 tax year assessment of the property is currently before this Court as Case Number 05-2311.

The Cuyahoga County Board of Revision conducted a hearing on the 2003 tax year complaints on October 12, 2004 and issued a decision on October 27, 2004 wherein the County Auditor's assessment of the property was reduced to a fair market value of \$1,500,000. Supp. at page 29. The Appellee Bedford Board of Education (hereinafter Appellee and/or Board of Education) appealed the decision of the Cuyahoga County Board of Revision to the Ohio Board of Tax Appeals under Revised Code Section 5717.01.

When this matter came on for hearing before the Ohio Board of Tax Appeals the Appellee presented the testimony of Timothy C. Nash, a real estate appraiser. Mr. Nash did not appraise the property or express an opinion of value in the case. Supp. at pages 37-38 (Transcript of Board of Tax Appeals hearing (hereinafter Transcript) at pages 24-25). In its decision and

order the Ohio Board of Tax Appeals rejected the Board of Revision's determination of value and cited its 2002 decision and order on the property that "[t]here was no evidence in the record to support the BOR's valuation of the subject. *** There is nothing to which we can point to as the basis for its action, we cannot rely upon its conclusions...we will rely upon the county auditor's valuation of the subject, as set forth in the property record cards included in the statutory transcript." Board of Tax Appeals at decision and order at page 5. The Board of Tax Appeals reinstated the Cuyahoga County Auditor's assessment for the property of \$3,060,000. Board of Tax Appeals decision and order at pages 6 and 9. The Record in this appeal is as follows.

STATEMENT OF THE FACTS

At the hearing before the Cuyahoga County Board of Revision, Robin Liberatore, Vice President of Asset Management for the property was not able to attend the hearing as she had done in the 2002 tax year case and the Board of Revision was referred to her testimony in the 2002 tax year proceeding since much of the same information was submitted to the Board of Revision in the 2003 case regarding the history of vacancy at the property; the financial information for the property from the 2002 Board of Revision hearing was also submitted at the hearing on the 2003 tax year complaint. See tape recording of Board of Revision hearing contained in the Transcript on Appeal filed with the Board of Tax Appeals by the Board of Revision under Revised Code Section 5717.01 (hereinafter Tape in Transcript) and Supp. at pages 11-20. The property consists of 50,957 square feet of retail space located in Oakwood Village, Ohio.

The Transcript on Appeal contains a copy of the County record card (Exhibit "D"). The record card identifies the same retail area depicted in the diagrams of the property submitted by

the Appellant at hearing before the Board of Revision. Supp. at pages 10 and 27. The record card also contains the income and cost approaches to value utilized by the County Auditor in valuing the property. Supp. at pages 25-28. The County Auditor 's income approach utilized a 5% vacancy factor versus the subject's actual vacancy of 78.00% as of December 31, 2002. Supp. at pages 11 and 27. The County Auditor's net operating income (N.O.I.) was \$295,803 versus the actual net operating income for the property of \$135,421.46 for 2001 and \$145,507.27 for 2002, roughly one half of the County Auditor's projection used in assessing the property at \$3,060,000. Supp. at pages 11 and 27. Based on this evidence the Cuyahoga County Board of Revision reduced the assessment of the property from \$3,060,000 to \$1,500,000. Supp. at page 29.

At the hearing conducted on their appeal before the Ohio Board of Tax Appeals the Appellee Bedford Board of Education did not submit evidence as to the fair market value of the property. Instead, their appraiser testified as to his opinion of the highest and best use of the property. Supp. at pages 35 and 37 (Transcript at pages 13, 14, 23, and 24). The Appellee's appraiser did not perform a highest and best use analysis of the subject property before the Board of Tax Appeals. Supp. at 39 (Transcript at page 29). Similarly, the Appellee's appraiser, Mr. Nash, testified to his opinion of the economic unit of value for the property even though he submitted no data to the Board of Tax Appeals to support his opinion. Supp. at pages 37 and 38 (Transcript at pages 24 and 25). Paul D. Provencher, a real estate appraiser, reviewed the evidence in the record in this appeal and testified that it would be possible to value the property whose value is at issue in the appeal based on the information in the Transcript on Appeal. Supp. at pages 41-43 (Transcript at pages 37-46).

LAW AND ARGUMENT

PROPOSITION OF LAW NO. 1

THE OHIO BOARD OF TAX APPEALS, COUNTY BOARDS OF REVISION AND COUNTY AUDITORS ARE REQUIRED TO VALUE INDIVIDUAL PARCELS FOR PURPOSES OF REAL PROPERTY TAX ASSESSMENT.

This proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order reinstating the County Auditor's assessment of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2.

The Board of Tax Appeals finding that there is no evidence in the record to support the Board of Revision's valuation of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3.

The Board of Tax Appeals finding it could not value the parcel at issue in the appeal is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4.

The Board of Tax Appeals finding on highest and best use and economic unit is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7.

The Board of Tax Appeals decision and order overturning the Board of Revision's assessment of the property is unreasonable and unlawful.

Section 5713.01 of the Ohio Revised Code designates county auditors as the assessors of real estate in Ohio and Section 5713.02 of the Ohio Revised Code authorizes the county auditor to prepare a "correct and pertinent description of each tract and lot of real property." Then "[t]he

county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property....” Ohio Revised Code Section 5713.03. The record in this appeal clearly shows that the Cuyahoga County Auditor was able to identify and value the real property as issue in this appeal. Supp. at pages 22-28. Then, as a member of the Cuyahoga County Board of Revision under Ohio Revised Code 5715.02 the Cuyahoga County Auditor in a unanimous decision voted to change his assessment of the property to \$1,500,000 based upon the financial information submitted by the Appellant in this case. Supp. at page 29. This was a significant point in the opinion of Board Member William Dunlap who dissented from the Board of Tax Appeals decision and order in this case. See Board of Tax Appeals decision and order at page 10 (where Mr. Dunlap references his dissent in the 2002 tax year Board of Tax Appeals decision and order currently on appeal before this Court as Case Number 05-2311). Despite the evidence in this case the Board of Tax Appeals held that it could not carry out the mandate contained in Ohio Revised Code Section 5717.03 to “determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of....” This finding by the Board of Tax Appeals based upon the record in this appeal is unreasonable and unlawful. See Dublin Senior Community L.P. v. Franklin Cty. Bd. Of Revision (1997), 80 Ohio St. 3d 455, 460 (noting that “[t]he answer that it is difficult to accurately separate the income and expenses between business and real estate activities is not sufficient reason not to separate them; it must be done, because we tax real estate in this case). The record in this appeal clearly shows that the subject property was and can be valued as a single parcel.

The Cuyahoga County Auditor valued the parcel at issue in this appeal using the income and cost approaches to value as allowed by the Ohio Administrative Code. See Ohio Revised

Code 5713.01(B), Ohio Administrative Code Rule 5705-3-03(D), and Supp. at pages 22-28. At the hearing before the Cuyahoga County Board of Revision the Appellant submitted an analysis of the income from the property for the years 1998 through 2002 and the income and expense, occupancy history, and rent rolls for the property. Supp. at pages 11-20. The Cuyahoga County Board of Revision valued the property at \$29.50 per square foot, or \$1,500,000 based upon the evidence in the record. Supp. at page 29. On appeal, the Appellee submitted the testimony of Timothy Nash, an appraiser, who did not attempt to value the property or submit any market data to the Board of Tax Appeals in support of his opinions. Supp. at pages 37-39 (Transcript at pages 24-29). Mr. Nash testified that while the property could be valued separate from the shopping center of which it is a part, he did not try to value it separate from the larger economic unit, i.e. the entire shopping center. Supp. at pages 37 (Transcript at pages 23-24).¹ The Board of Tax Appeals could not find a basis for the Board of Revision's decision in the record (See Board of Tax Appeals decision and order at page 5) and reinstated the Cuyahoga County Auditor's assessment of the property which did identify and value the subject property (parcel) separate and apart from the rest of the shopping center. See Supp. at pages 22-28. The Board of Tax Appeals finding that it could not value the center (as the Board of Revision, Appellant, and County Auditor did in this case) and its decision and order reinstating the County Auditor's assessment valuing the parcel are unreasonable and unlawful.

The Board of Tax Appeals erred in its finding on the issues of highest and best use and economic unit. The issue of highest and best use relates to whether a particular use is (1) physically possible, (2) legally permissible, (3) financially feasible, (4) and maximally productive of the real estate. See The Appraisal of Real Estate, Twelfth Edition, at page 307.

¹Mr. Nash did not attempt to appraise the entire shopping center and then value the subject property.

None of these issues were explored or discussed by Mr. Nash in this case. Supp. at page 39 (Transcript at page 29). Similarly, economic unit relates to the relevant unit of value for purposes of comparison and valuation. See The Appraisal of Real Estate, Twelfth Edition, at pages 424-425. Again, Mr. Nash made no investigation and submitted no data to support his opinion that the subject property should be valued as part of a larger economic unit. Supp. at page 37 (Transcript at pages 23-25). The County Auditor, Appellant, and Board of Revision valued the parcel at issue in this appeal as a retail shopping center using the income approach to value, the Board of Revision expressed its value for the property on a per square foot basis. See Supp. at pages 11-29. The Board of Tax Appeals finding that “[t]here is no evidence in the record to support the BOR’s valuation of the subject [property]” is unreasonable and unlawful.

For these reasons, the Appellant respectfully requests that the Court reverse the decision and order of the Board of Tax Appeals and remand the case with instructions to value the parcel at issue in this appeal based upon the evidence submitted by the Appellant. See Dublin-Sawmill Properties v. Franklin Cty. Bd. Of Revision (1993), 67 Ohio St. 3d 575, 577 (reversing and remanding a real property tax appeal “to the BTA so that it can redetermine the true value of the subject property by giving due regard to all the land sales to appellant.”).

PROPOSITION OF LAW NO. II

THE OHIO BOARD OF TAX APPEALS IS A DENOVO FINDER OF FACT, NOT AN APPELLATE COURT.

This proposition of law addressed the following assignments of error:

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals decision and order does not constitute an independent determination of value and as a result it is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6.

The Board of Tax Appeals decision and order goes beyond the mandate of Revised Code Section 5717.03 and is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8.

The Board of Tax Appeals abused its discretion, acted unreasonably, unlawfully and arbitrarily in its decision and order.

ASSIGNMENT OF ERROR NO. 9.

The decision and order of the Board of Tax Appeals is unreasonable and unlawful and is contrary to the laws of Ohio and the Ohio Constitution.

ASSIGNMENT OF ERROR NO. 10.

The decision of the Board of Tax Appeals violates Article XII, Section 2 Ohio Constitution that property should be taxed by uniform rule according to value.

ASSIGNMENT OF ERROR NO. 11.

The decision of the Board of Tax Appeals violates the right of “equal protection” under Article I, Section 2, and Article II, Section 26, Ohio Constitution and Amendment XIV, Section I United States Constitution in that it treats the Appellant different from other property owners for purposes of taxation.

The Board of Tax Appeals did not render an independent determination of value in this case. In its decision and order the Board of Tax Appeals expressly stated that it could not value the property (parcel) at issue in this appeal because it could not determine the basis for the Board of Revision’s decision. Board of Tax Appeals decision and order at page 5. Based on this finding the Board of Tax Appeals reinstated the County Auditor’s assessment of the property.² As a result, the Board of Tax Appeals never attempted to render an independent determination of value in this case as required under Ohio Revised Code Section 5717.03. The Board of Tax Appeals in its decision and order found that “there is no evidence in the record to support the

²The Court should note that the County Auditor voted as a member of the Board of Revision to change his initial value of \$3,060,000 for the property to \$1,500,000. Supp. at page 29. This was an important fact in the opinion of Board Member William Dunlap as noted in Footnote 1 of his dissent at page 10 in the 2002 tax year Board of Tax Appeals decision and order currently on appeal before this Court as Case Number 05-2311.

BOR's valuation of the subject... and without an understanding of the basis for its action, we cannot rely upon its conclusions." Board of Tax Appeals decision and order at page 5. This section of the Board of Tax Appeals decision and order reads more like an appellate court opinion than a independent denovo determination of the value of the real property at issue in this case. Other recent decisions of the Board of Tax Appeals reflect this apparent change in the Board of Tax Appeals approach in deciding cases under Sections 5717.01 and 5717.03 of the Ohio Revised Code. See Board of Education of the Hilliard City Schools v. Franklin County Board of Revision, Franklin County Auditor, and Sunningdale Corporation, Board of Tax Appeals Case No. 2005-A-1178, decided September 1, 2006, Slip Op. at pages 6 and 7("having found no legitimate basis for the county board of revision's reduction in the valuation of the subject, we are constrained to utilize the county auditor's valuation of the subject." Dunlap dissents and quotes this Courts decision in Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision(2006), 108 Ohio St. 3d 310(hereinafter Lakota), citing Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision(2001), 90 Ohio St. 3d 564, 566 - "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision."); and Board of Education of the Columbus City Schools v. Franklin County Board of Revision, Franklin County Auditor, and Paul J. Falco, Trust and Donald W. Kelly, Trustee, Board of Tax Appeals Case No. 2005-A-163, decided April 6, 2006, Slip Op. at page 9 ("we find that the board of revision had insufficient evidence before it to justify a reduction in the subject's valuation." Dunlap dissents at page 11 - "Such a decision ignores the burden of proof assigned the appellant, and, in the alternative, registers a valuation adjudication by default, essentially finding for an appellant that has provided no affirmative

evidence of value at any stage in the proceedings.”); See also Board of Education of the Northridge Local Schools v. Montgomery County Board of Revision, Montgomery County Auditor and CS Hotels Ltd. Partnership, Board of Tax Appeals Case No. 2004-B-35, decided January 28, 2005, Slip Op. at page 5 (“we conclude that it was error on the part of the BOR to modify the auditor’s value for the subject property.”). These decisions by the Board of Tax Appeals differ significantly from the decision and order of the Board of Tax Appeals contained in the Appellant’s July 14, 2005 notice of additional authority before the Board of Tax Appeals wherein the Board of Tax Appeals stated that:

In the absense of competent and probative evidence indicating a more appropriate value, we find no basis upon which to alter the auditor’s and BOR’s value determination in this appeal. Simmons v. Cuyahoga Cty. Bd. of Revision (1998), 81 Ohio St.3d 47, 49 (“Where 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.”).

Streetsboro City School District Board of Education v. Portage County Board of Revision, Portage County Auditor and Park View Federal Savings Bank, Board of Tax Appeals Case No. 2004-K-601, decided June 30, 2005, Slip Op. at page 8.

In a recent decision by the Board of Tax Appeals the Board seems to be following the Court’s decision in Lakota, supra at page 314 (where the Court reversed the decision of the Board of Tax Appeals and reinstated the decision of the Board of Revision). See Westlake Board of Education v. Cuyahoga County Board of Revision, Cuyahoga County Auditor, and Sturbridge Square Apartments Investors, LLC, Board of Tax Appeals Case No. 2004-T-1301, decided September 1, 2006, Slip Op. at page 8 (hereinafter Westlake), (After finding that the appellant had not met its burden of persuasion the Board of Tax Appeals found the same value as established by the Board of Revision stating: “The BOR appears to have accepted the evidence

before it. The BOR suggests that it based its valuation upon a review of the financial statements and supporting documentation. We have reviewed all of the evidence submitted to the BOR, and conclude that the income and expense statements do support a value for the subject of \$15,000,000. Lakota, supra; Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision (1996), 76 Ohio St. 3d 13. Upon review of the evidence as a whole, we therefore conclude that the value of the subject property is \$15,000,000. Columbus, supra.”). The Board of Tax Appeals decision in this appeal was issued subsequent to the Court’s opinion in Lakota. In his dissent Board Member William Dunlap referenced his dissent in the 2002 tax year appeal currently before this Court as Case Number 05-2311 where he found that the Bedford Board of Education had not met its burden of proof and, like the Board in Westlake, supra, cited to the evidence in the record supporting the Board of Revision’s determination of value. Board of Tax Appeals decision and order at page 10.

Board Member William Dunlap dissented in a number of the cases cited above in addition to his dissent in this appeal. In each instance Mr. Dunlap noted that the appellants in the appeals failed to come forward with evidence sufficient to support the Board of Tax Appeals decisions throwing out the Board of Revision decision and reinstating the county auditor’s valuation. Again, the Board of Tax Appeals decisions in these case read more like appellate court opinions than denovo determinations of value and as such they go beyond the statutory mandate contained in Ohio Revised Code Sections 5717.01, 5717.03, and this Court’s decisions in Lakota and in the cases cited below.

This Court has held that the Board of Tax Appeals under Ohio Revised Code Section 5717.03 is to hear appeals “denovo” and render an independent determination of value. See Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St. 3d16, 25 (The BTA or

the court of common pleas is to hear the case denovo); Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision (1996), 76 Ohio St. 3d 13,17 (The BTA's failure to find value based upon its own independent analysis of the evidence is unreasonable and unlawful.); Black v. Bd. of Revision (1985), 16 Ohio St. 3d 11, 13 (the court is required to make an independent determination concerning the valuation of the property at issue); Park Ridge Co. v. Franklin Cty. Bd. of Revision (1987), 29 Ohio St. 3d 12, 14 (The provisions of R.C. 5717.05 require the common pleas court to consider the administrative record from the board of revision.). In this appeal the Board of Tax Appeals failed to render an independent determination of the taxable value of the Appellant's property based on the evidence in the record in the appeal.

The Appellee Bedford Board of Education did not present any evidence of value in their appeal to the Board of Tax Appeals. As a result, there was no evidence in the record for the Board of Tax Appeals to use to render a value different from the Cuyahoga County Board of Revision. See Mr. Dunlap's dissent at pages 9 and 10 in the Board of Tax Appeals decision and order in the 2002 tax year appeal currently pending before the Court as Case Number 05-2311. By acting as an appellate or reviewing court the Board of Tax Appeals avoided the issue of rendering an independent determination of value based upon the record in this appeal. The Board of Tax Appeals decision and order applying an appellate standard not contained in Ohio Revised Code Sections 5717.01 and 5717.03 is unreasonable and unlawful. The decision and order of the Board of Tax Appeals should be reversed and the case remanded to the Board of Tax Appeals with instructions to render an independent determination of value based upon the evidence submitted by the Appellant in this case.

CONCLUSION

For the foregoing reasons, the Appellant First Interstate Hawthorne Ltd. Partnership respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and remand the case to the Ohio Board of Tax Appeals with instructions to find the fair market value or true value in money of the subject real property to be \$1,500,000 as of January 1, 2003, for a corresponding taxable value, utilizing a 35% common level of assessment of \$525,000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Appellant was mailed via regular U.S. mail postage prepaid, the 13th day of November 2006 to the following: Thomas A. Kondzer, Kolick and Kondzer, 24500 Center Ridge Road, Suite 175, Westlake, Ohio 44145-5697, Attorney for the Appellee Bedford Board of Education, Timothy J. Kollin, Assistant County Prosecutor, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113, Attorney for the Appellees Cuyahoga County Board of Revision and Cuyahoga County Auditor, and James Petro, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for the Appellee Tax Commissioner of the State of Ohio.



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IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

BEDFORD BOARD OF EDUCATION,)
)
)
 Appellee,)
)
 v.)
)
 CUYAHOGA COUNTY BOARD OF)
 REVISION, CUYAHOGA COUNTY)
 AUDITOR, AND TAX COMMISSIONER)
 OF THE STATE OF OHIO,)
)
 Appellees,)
)
 and)
)
 FIRST INTERSTATE HAWTHORNE)
 LTD. PARTNERSHIP,)
)
 Appellant.)

SUPREME COURT CASE
 NUMBER: **06-1686**

BOARD OF TAX APPEALS
 CASE NUMBERS 2004-V-1310
 and 2004-V-1311

FILED
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 SUPREME COURT OF OHIO

NOTICE OF APPEAL

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ATTORNEY FOR APPELLEES
CUYAHOGA COUNTY BOARD OF
REVISION AND CUYAHOGA
COUNTY AUDITOR

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

BEDFORD BOARD OF EDUCATION,	)	SUPREME COURT CASE
	)	NUMBER: _____
)	
Appellee,)	
)	
v.)	
)	
CUYAHOGA COUNTY BOARD OF	)	BOARD OF TAX APPEALS
REVISION, CUYAHOGA COUNTY	)	CASE NUMBERS 2004-V-1310
AUDITOR, AND TAX COMMISSIONER	)	and 2004-V-1311
OF THE STATE OF OHIO,)	
)	
Appellees,)	
)	
and)	
)	
FIRST INTERSTATE HAWTHORNE	)	<u>NOTICE OF APPEAL TO THE</u>
LTD. PARTNERSHIP,	)	<u>SUPREME COURT OF OHIO</u>
	)	<u>PURSUANT TO SECTION</u>
	)	<u>5717.04 REVISED CODE</u>
Appellant.)	

The Appellant, First Interstate Hawthorne Ltd. Partnership, by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 11th day of August 2006, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though

fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B" which are incorporated herein by reference.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA



Todd W. Sleggs, Esq. (0040921)

COUNSEL OF RECORD

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Cleveland, OH 44113

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ATTORNEYS FOR APPELLANT

FIRST INTERSTATE HAWTHORNE LTD.

PARTNERSHIP

OHIO BOARD OF TAX APPEALS

Bedford Board of Education,	)	CASE NOS. 2004-V-1310
	)	2004-V-1311
Appellant,)	
	)	(REAL PROPERTY TAX)
vs.)	
	)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
the Cuyahoga County Auditor, and)	
First Interstate Hawthorne Limited)	
Partnership,)	
)	
Appellees.)	

APPEARANCES:

- | | | |
|-----------------------------|---|--|
| For the BOE | - | Kolick & Kondzer
John P. Desimone
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| For the Property Owner | - | Sleggs, Danzinger & Gill Co., LPA
Todd W. Sleggs
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Cleveland, OH 44113 |
| For the County
Appellees | - | William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy J. Kollin
Assistant Prosecuting Attorney
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113 |

Entered **AUG 11 2006**

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap dissents.

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the Bedford School District Board of Education ("BOE"), from a decision of the Cuyahoga County Board of Revision

Exhibit "A"
(1 of 10)

("BOR"). In said decision, the BOR determined the taxable value of the subject property for tax year 2003.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript ("S.T.") certified to this board by the BOR, the evidence and testimony presented at a hearing ("H.R.") before this board, and the briefs submitted by counsel to the BOE and counsel to the appellee property owner.

The subject real property is located in the Oakwood taxing district, specifically parcel number 795-06-022, and consists of in-line retail store space, a portion of a parking lot, and several strips of land that are all part of a larger shopping complex.

This board previously addressed the subject property's valuation for tax year 2002 in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Nov. 10, 2005), BTA Nos. 2005-A-287, 288, unreported, currently pending on appeal, Ohio Supreme Ct. No. 2005-2311, (the "2002" appeal). The facts of the 2002 appeal are identical to the facts before us today.

The values of the parcel, as originally determined by the auditor for tax year 2003, are as follows:

<u>Parcel 795-06-022</u>	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,611,700	\$ 564,100
BLDG	\$1,448,300	\$ 506,900
TOTAL	\$3,060,000	\$1,071,000

After consideration of a complaint filed by the property owner, the BOR reduced the subject's values as follows:

Parcel 795-06-022	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 750,000	\$262,500
BLDG	\$ 750,000	\$262,500
TOTAL	\$1,500,000	\$525,000

On appeal, the BOE contends that the BOR's decision to reduce the value of the subject property is not supported by competent, probative evidence of value. Conversely, it is the property owner's position that the BOR's value should be retained, based upon the information it submitted to the BOR.

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. Thus, the burden is upon the appealing party, the board of education, to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

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 Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value. However, no appraisals were offered to this board and only an "owner's opinion of value" was entered into evidence before the BOR.

The BOE argues that the BOR improperly relied upon the information offered by appellee property owner. In consideration of the BOE's position, we must review what transpired at the BOR.¹

Specifically, before the BOR, the property owner presented an "opinion of value" that suggested the value of the subject, as of January 1, 2003, was \$1,500,000. Counsel requested that the value be based upon the BOR's previous decision to set the subject's value at \$1,500,000 based upon the evidence and testimony presented in the 2002 case before the BOR. Attached to its complaint is a copy of the BOR's 2002 decision letter. Counsel for the property owner argued that all the facts necessary for the BOR to reduce the value to \$1,500,000 were the same, and that the BOR hearing for the 2002 case was conducted in early 2004 and contained relevant information relating to the

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subject's valuation for 2003. Unlike in the 2002 case, the representative of the property owner was unable to appear and verify the information taken from the owner's records in the instant appeal.² Provided within the owner's written opinion submitted by counsel were income and expense statements for the property that show the decline in income at the property as vacancy has increased. Also attached are a rent roll and a summary of the store tenants with the square footage and percentage of center space each tenant occupies. "The valuation set forth in the complaint is based on the historic income and expense information for the property, the vacancy at the property, and the prospect for a turnaround at the center." S.T. at Ex. D.

After considering the foregoing, the BOR decreased the subject's market value to \$1,500,000. The hand-written notation on the BOR's worksheet indicates: "BOR hearing for 2002-\$1,500,000 K-Mart (vac), 2003-same decision 2002."

In our 2002 decision, we held:

"[T]here was no evidence in the record to support the BOR's valuation of the subject. *** There is nothing to which we can point as the basis for its ultimate determination, and without an understanding of the basis for its action, we cannot rely upon its conclusions. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564. Thus based upon the foregoing concerns we will rely upon the county auditor's valuation of the subject, as set forth in the property record cards included in the statutory transcript." *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, at 10.

² Counsel for the property owner requested that the BOR listen to the audio tape from the 2002 case. S.T., audio tape. Likewise, in its merit brief, the property owner asks this board to review the BOR audio tape from 2002. Appellee's brief at 2-3. Our review of the record from below in the instant appeal fails to disclose any agreement of the parties or notice from the BOR regarding taking any administrative notice of the record from the 2002 case. Furthermore, at no point in the proceedings before this board have the parties requested us to take any administrative notice of the record in the 2002 case.

Given the BOR's reliance upon its previous decision to determine value for 2003, we necessarily reach the same conclusion today. We find that the evidence before the BOR was insufficient to support the decrease in value assigned to the subject property.

As was the case in the 2002 appeal, the BOE offered the testimony of Timothy C. Nash, MAI before this board. As an expert real estate appraiser, Mr. Nash testified that he considered the subject property part of a single economic unit made up of the entire shopping complex. H.R. at 14. Mr. Nash testified that although in theory it would be possible to place a value on a portion of the whole economic unit, the subject should be valued in conjunction with the entire economic unit. H.R. at 23. The property owner similarly provided the testimony of Paul D. Provencher, an expert real estate appraiser, who testified that the subject property could be appraised and valued separately from the remainder of the shopping center. H.R. at 39. Neither appraiser offered an opinion of value for the subject property.

The BOE argues that the property owner is collaterally estopped from re-litigating the issue of the subject's highest and best use as a single economic unit. As we read our 2002 decision, we held that the property owner failed to meet its burden of proof and further concluded that the BOR did not have competent and probative evidence to support its decision to reduce value. We further concluded that:

"Based on the configuration of the subject parcel and Mr. Nash's representations on how much a shopping center is traditionally viewed in the market, we agree that it would logically follow that

the highest and best use of the subject property is as a single economic unit.” *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, at 9-10.

The test for determining whether the relitigation amounts to collateral estoppel was stated by the Supreme Court in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 41:

“In *Thomson v. Wing* (1994), 70 Ohio St.3d 176, 183 ***, we stated that collateral estoppel was applicable when the fact or issue ‘(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.’ ****” (Citations omitted.)

The court has previously held that a finding of value for a prior tax year is clearly not res judicata as to a subsequent tax year. *Id.*, *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. Furthermore, the 2002 case is currently pending before the Supreme Court and has yet to receive a final determination. See *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 382 (“A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. ****”) Therefore, we hereby decline to apply the doctrine of collateral estoppel in the present situation.³

Furthermore, the property owner argues in its brief that its filing of the complaint against the valuation of the subject property for tax year 2003 was an effort to

³ While we were not persuaded that the subject property could have been valued as a portion of an economic unit in the 2002 case, we are unable to speculate whether it could not be done, based on the record before us.

invoke the so-called "carry-forward" provisions of R.C. 5715.19(D), citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, in an effort to have the BOR apply its 2002 decision to tax year 2003.

R.C. 5715.19(D) provides in pertinent part:

"If a complaint filed under this section for the current year is not determined by the board of revision within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer ***."

In *Columbus Bd. of Edn.* the property owner challenged the valuation of its property for tax year 1993 and appealed the BOR's determination to this board. In August of 1996, we determined value for 1993 and ordered the auditor to list and assess the property in conformity with our order. The auditor assessed the property for tax years 1993, 1994, and 1995 consistent with our order; however, the auditor's 1996 value represented a different value after a triennial update. The property owner sent a letter to the BOR, on February 5, 1997, requesting this board's order be applied to 1996. The BOR treated the letter as a continuing complaint for 1993, conducted a hearing, and ultimately determined the subject's value for 1996, utilizing our 1993 valuation determination with a 5% increase factor. On appeal, this board held that the BOR did not have jurisdiction to decide the subject's 1996 valuation. The Supreme Court reversed our decision, holding that the BOR did have authority to decide the continuing 1993 complaint under R.C. 5715.19(D):

“According to R.C. 5715.19(D), the complaint for 1993 continued as a valid complaint into tax year 1996, when the BTA finally determined the 1993 complaint. According to this statute, the original, 1993 complaint ‘shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section’ *** We interpret R.C. 5715.19(D) to mean that the 1993 complaint continued to be valid for tax year 1996 and that *** [the property owner] was not required to file a fresh complaint for that year. *Of course, a fresh complaint filed by *** [the property owner] or the BOE would have halted the automatic carryover of the value determined in the 1993 complaint.* *** Thus, the BOR had jurisdiction over this complaint for tax year 1996 without further filing by *** [the property owner].” Citations omitted, explanations and emphasis added.

The property owner filed a complaint against the valuation of the subject property for 2003. Said “fresh complaint” halted any carryover status the 2002 complaint may have had. See, also, *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285.

Accordingly, based upon the preponderance of the evidence before this board, the value of the subject real property for tax year 2003 shall be as follows:

Parcel 795-06-022	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,611,700	\$ 564,100
BLDG	\$1,448,300	\$ 506,900
TOTAL	\$3,060,000	\$1,071,000

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.

Mr. Dunlap dissenting.

I disagree with the foregoing decision and order and, for the reasons I expressed in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, I respectfully dissent.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Julia M. Snow, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order reinstating the County Auditor's assessment of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals finding that there is no evidence in the record to support the Board of Revision's valuation of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals finding it could not value the parcel at issue in the appeal is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals finding on highest and best use and economic unit is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals decision and order does not constitute an independent determination of value and as a result it is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals decision and order goes beyond the mandate of Revised Code Section 5717.03 and is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals decision and order overturning the Board of Revision's assessment of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8

The Board of Tax Appeals abused its discretion, acted unreasonably, unlawfully and arbitrarily in its decision and order.

ASSIGNMENT OF ERROR NO. 9

The decision and order of the Board of Tax Appeals is unreasonable and unlawful and is contrary to the laws of Ohio and the Ohio Constitution.

ASSIGNMENT OF ERROR NO. 10

The decision of the Board of Tax Appeals violates Article XII, Section 2 Ohio Constitution that property should be taxed by uniform rule according to value.

ASSIGNMENT OF ERROR NO. 11

The decision of the Board of Tax Appeals violates the right of "equal protection" under Article 1, Section 2 and Article II, Section 26 Ohio Constitution and Amendment XIV, Section 1 United States Constitution in that it treats the Appellant different from other property owners for purposes of taxation

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to Timothy Kollin, Assistant Prosecuting Attorney, Courts Tower – 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113, Attorney for Appellees, Cuyahoga County Board of Revision and County Auditor; John P. Desimone, Kolick & Kondzer, 24500 Center Ridge Road, #175, Westlake, Ohio 44145, Attorney for Appellee Bedford Board of Education , James Petro, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio and the Tax Commissioner of the State of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 43215 on this 7th day of September 2006.



Todd W. Sleggs, Esq. (0040921)

TWS:caf
T1318-03
(s:wpdocs\sct\1318sapp)

OHIO BOARD OF TAX APPEALS

Bedford Board of Education,)	CASE NOS. 2004-V-1310
)	2004-V-1311
Appellant,)	
)	(REAL PROPERTY TAX)
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The test for determining whether the relitigation amounts to collateral estoppel was stated by the Supreme Court in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 41:

“In *Thomson v. Wing* (1994), 70 Ohio St.3d 176, 183 ***, we stated that collateral estoppel was applicable when the fact or issue ‘(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.’ ***” (Citations omitted.)

The court has previously held that a finding of value for a prior tax year is clearly not res judicata as to a subsequent tax year. *Id.*, *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. Furthermore, the 2002 case is currently pending before the Supreme Court and has yet to receive a final determination. See *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 382 (“A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. ***”) Therefore, we hereby decline to apply the doctrine of collateral estoppel in the present situation.³

Furthermore, the property owner argues in its brief that its filing of the complaint against the valuation of the subject property for tax year 2003 was an effort to

³ While we were not persuaded that the subject property could have been valued as a portion of an economic unit in the 2002 case, we are unable to speculate whether it could not be done, based on the record before us.

invoke the so-called "carry-forward" provisions of R.C. 5715.19(D), citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, in an effort to have the BOR apply its 2002 decision to tax year 2003.

R.C. 5715.19(D) provides in pertinent part:

"If a complaint filed under this section for the current year is not determined by the board of revision within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer ***."

In *Columbus Bd. of Edn.* the property owner challenged the valuation of its property for tax year 1993 and appealed the BOR's determination to this board. In August of 1996, we determined value for 1993 and ordered the auditor to list and assess the property in conformity with our order. The auditor assessed the property for tax years 1993, 1994, and 1995 consistent with our order; however, the auditor's 1996 value represented a different value after a triennial update. The property owner sent a letter to the BOR, on February 5, 1997, requesting this board's order be applied to 1996. The BOR treated the letter as a continuing complaint for 1993, conducted a hearing, and ultimately determined the subject's value for 1996, utilizing our 1993 valuation determination with a 5% increase factor. On appeal, this board held that the BOR did not have jurisdiction to decide the subject's 1996 valuation. The Supreme Court reversed our decision, holding that the BOR did have authority to decide the continuing 1993 complaint under R.C. 5715.19(D):

“According to R.C. 5715.19(D), the complaint for 1993 continued as a valid complaint into tax year 1996, when the BTA finally determined the 1993 complaint. According to this statute, the original, 1993 complaint ‘shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section’ *** We interpret R.C. 5715.19(D) to mean that the 1993 complaint continued to be valid for tax year 1996 and that *** [the property owner] was not required to file a fresh complaint for that year. *Of course, a fresh complaint filed by *** [the property owner] or the BOE would have halted the automatic carryover of the value determined in the 1993 complaint.* *** Thus, the BOR had jurisdiction over this complaint for tax year 1996 without further filing by *** [the property owner].” Citations omitted, explanations and emphasis added.

The property owner filed a complaint against the valuation of the subject property for 2003. Said “fresh complaint” halted any carryover status the 2002 complaint may have had. See, also, *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285.

Accordingly, based upon the preponderance of the evidence before this board, the value of the subject real property for tax year 2003 shall be as follows:

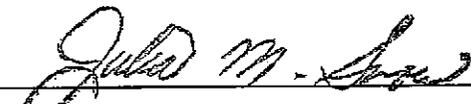
Parcel 795-06-022	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,611,700	\$ 564,100
BLDG	\$1,448,300	\$ 506,900
TOTAL	\$3,060,000	\$1,071,000

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.

Mr. Dunlap dissenting.

I disagree with the foregoing decision and order and, for the reasons I expressed in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, I respectfully dissent.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Julia M. Snow, Board Secretary

County of Cuyahoga

BOARD OF REVISION

County Administration Building
1219 Ontario Street, Room 232
Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

71318-03

Facsimile: (216) 443-8282

Email: 2003resbor@cuyahogacounty.us

Commissioner
Peter Lawson Jones

Auditor
Frank Russo

Treasurer
James Rokakis

RECEIVED OCT 29 2004

October 27, 2004

Complaint No. 200403250051
FIRST INTERSTATE HAWTHORNE
LTD. PARTNERSHIP
c/o MITCHELL C. SCHNEIDER
23220 CHAGRIN BLVD. SUITE 202
BEACHWOOD OHIO 44022

Complaint No. 200406030361
BEDFORD BOARD OF EDUCATION
475 NORTHFIELD ROAD
BEDFORD OHIO 44146

Re: Parcel No. 795-06-022 (2003)
Journal No. 274A

Dear Complainants:

I am writing to inform you that upon consideration of the evidence and testimony presented at your oral hearing, the Board of Revision found the market value of the property to be \$1,500,000. This is a reduction of \$1,560,000 in the market value for the tax year 2003. As your County Auditor, it is my duty as Secretary of the Board of Revision to inform you of their action.

In order to assure you right to pursue this complaint further, you may appeal this decision directly to the Court of Common Pleas of Cuyahoga County pursuant to Section 5717.05 O.R.C. or the Ohio Board of Tax Appeals under the provisions of Section 5717.01 O.R.C. within 30 days after date of mailing of this letter.

If no action is taken, the Board's decision will be reflected in your tax bill.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Land Red. \$ 861,700
Building Red. \$ 698,300
\$1,560,000

Respectfully,



Frank Russo
Cuyahoga County Auditor
Secretary, Board of Revision

RMC:bs
CERTIFIED MAIL
cc: Todd Sleggs
John Desimone

Docid
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-28-efcen

praiser, shall be awarded pursuant to the competitive bidding procedures set forth in Sections 307.86 to 307.92 of the Revised Code and shall be paid for, upon the warrant of the auditor, from the real estate assessment fund.

(G) Experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value. The auditor may also summon and examine any person, under oath in respect to any matter pertaining to the value of any real property within the county.

Caution: See 5713.01, as reproduced below, amended by H.B. 66, Laws 2005, is effective June 30, 2005 and applicable to tax year 2006. For provisions effective through June 29, 2005, see above. CCH.]

Sec. 5713.01. County auditor shall be assessor; assessment procedure.—(A) Each county shall be the unit for assessing real estate for taxation purposes. The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation, but this section does not affect the power conferred by Chapter 5727 of the Revised Code upon the tax commissioner regarding the valuation and assessment of real property used in railroad operations.

(B) The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code. The commissioner may grant an extension of one year or less if the commissioner finds that good cause exists for the extension. When the auditor so views and appraises, the auditor may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall revalue and assess at any time all or any part of the real estate in such county, including land devoted exclusively to agricultural use, where the auditor finds that the true or taxable values thereof have

changed, and when a conservation easement is created under sections 5301.67 to 5301.70 of the Revised Code. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with Section 36, Article II, Section 2, Article XII, Ohio Constitution; this section, and sections 5713.03, 5713.31, and 5715.01 of the Revised Code.

(C) When the auditor determines to reappraise all the real estate in the county or any class thereof, when the tax commissioner orders an increase in the aggregate true or taxable value of the real estate in any taxing subdivision, or when the taxable value of real estate is increased by the application of a uniform taxable value per cent of true value pursuant to the order of the commissioner, the auditor shall advertise the completion of the reappraisal or equalization action in a newspaper of general circulation in the county once a week for the three consecutive weeks next preceding the issuance of the tax bills. When the auditor changes the true or taxable value of any individual parcels of real estate, the auditor shall notify the owner of the real estate, or the person in whose name the same stands charged on the duplicate, by mail or in person, of the changes the auditor has made in the assessments of such property. Such notice shall be given at least thirty days prior to the issuance of the tax bills. Failure to receive notice shall not invalidate any proceeding under this section.

(D) The auditor shall make the necessary abstracts from books of the auditor's office containing descriptions of real estate in such county, together with such platbooks and lists of transfers of title to land as the auditor deems necessary in the performance of the auditor's duties in valuing such property for taxation. Such abstracts, platbooks, and lists shall be in such form and detail as the tax commissioner prescribes.

(E) The auditor, with the approval of the tax commissioner, may appoint and employ such experts, deputies, clerks, or other employees as the auditor deems necessary to the performance of the auditor's duties as assessor, or, with the approval of the tax commissioner, the auditor may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work, the amount to be expended in the payment of the compensation of such employees shall be fixed by the board of county commissioners. If, in the opinion of the auditor, the board of county commissioners

fails to provide a sufficient amount for the compensation of such employees, the auditor may apply to the tax commissioner for an additional allowance, and the additional amount of compensation allowed by the commissioner shall be certified to the board of county commissioners, and the same shall be final. The salaries and compensation of such experts, deputies, clerks, and employees shall be paid upon the warrant of the auditor out of the general fund or the real estate assessment fund of the county, or both. If the salaries and compensation are in whole or in part fixed by the commissioner, they shall constitute a charge against the county regardless of the amount of money in the county treasury levied or appropriated for such purposes.

(F) Any contract for goods or services related to the auditor's duties as assessor, including contracts for mapping, computers, and reproduction on any medium of any documents, records, photographs, microfiche, or magnetic tapes, but not including contracts for the professional services of an appraiser, shall be awarded pursuant to the competitive bidding procedures set forth in sections 307.86 to 307.92 of the Revised Code and shall be paid for upon the warrant of the auditor, from the real estate assessment fund.

(G) Experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances, reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value and, in the case of land valued in accordance with section 5713.01 of the Revised Code, its current agricultural use value. The auditor may also summon and examine any person under oath in respect to any matter pertaining to the value of any real property within the county.

(As amended by S.B. 361, Laws 1953; S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B.'s 175 and 337, Laws 1963; S.B. 455, Laws 1972; S.B. 423, Laws 1978; H.B. 920, Laws 1976; H.B. 504, Laws 1979; H.B. 201, Laws 1982; H.B. 260, Laws 1983; S.B. 243, Laws 1992, effective August 19, 1992; H.B. 66, Laws 2005, effective June 30, 2005, applicable to tax year 2006.)

Note: Sec. 4, H.B. 177, Laws 1998, effective September 16, 1998, applicable to reductions in taxes under division (B) at section 323.152 of the Revised Code for tax years 1998 and thereafter, provides that:

Sec. 4. Not later than February following the effective date of this act, each county auditor, by ordinary mail, shall send a notice substantially in the form of the notice prescribed by division (C)(2) of section 323.131 of the Revised Code, as amended by this act, to each owner of residential real property if all of the following apply:

(1) The property was conveyed during tax years 1995 through December 31 following the effective date of this act;

[132-735]

Sec. 5713.011. Notice to homeowner of right to 2-1/2% reduction.—If the county auditor determines under section 5713.01 of the Revised Code that the construction of a dwelling on a previously vacant parcel of land is not available for use or that an additional dwelling is constructed on a parcel of land and is now available for use, the county auditor, by ordinary mail, shall send to the owner of the dwelling a notice that the applicant may apply for a reduction in taxes under division (A)(2) of section 323.153 of the Revised Code. The notice shall be substantially in the form of the notice prescribed under division (C)(2) of section 323.131 of the Revised Code.

(As enacted by H.B. 177, Laws 1998, effective September 16, 1998, applicable to reductions in taxes under division (B) at section 323.152 of the Revised Code for tax years 1998 and thereafter.)

[132-745]

Sec. 5713.02. Duties of assessor.—An assessor, from the maps and descriptions furnished him by the county auditor and other sources of information, shall make a correct and pertinent description of each tract and lot of real property in his district. When he deems it necessary to obtain an accurate description of any separate tract or lot in his district, he may require the owner or occupier thereof to furnish such description, with any title papers he has in his possession. If such owner or occupier, upon demand, neglects or refuses to so furnish a satisfactory description of such parcel of real property, the assessor may employ a competent surveyor to make a description of the boundaries and location thereof, and a statement of the quantity of land therein. The expense of such survey shall be reimbursed by such assessor to the county auditor, who shall add it to the tax assessed upon such real property, and it shall be collected by the county treasurer with such tax, and when collected, shall be paid, on demand, to the person to whom it is due.

[132-765]

Sec. 5713.03. Taxable valuation of real property.—The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and

(2) Such property is not receiving the two and one-half per cent tax reduction;

(3) The owner does not receive a tax bill for the property because the bill is mailed or delivered to an agent of the owner or taxes are billed through an information exchange agreement under section 323.134 of the Revised Code;

(4) The county auditor has not previously mailed to the owner a notice substantially in the form of the notice prescribed by division (C)(2) of section 323.131 of the Revised Code, as amended by this act.

the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. He shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. He shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

(As added by H.B. 337, Laws 1965, as amended by S.B. 423, Laws 1974; H.B. 920, Laws 1976, effective October 11, 1976; H.B. 260, Laws 1983, effective September 27, 1983.)

§ 132-790

Sec. 5713.04, Tracts to be valued separately; split listing for tax exemption; deductions.—Each separate parcel of real property shall be valued at its taxable value, excluding the value of the crops, deciduous and evergreen trees, plants, and shrubs growing thereon, and taking into account the diminution in value as the result of the existence of any conservation easement created under sections

§ 132-790 § 5713.04

5301.67 to 5301.69 of the Revised Code. The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value. If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests.

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof if a separate entity would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway at the time of such assessment.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965; H.B. 504, Laws 1979, effective March 14, 1980.)

§ 132-820

Sec. 5713.041, Classification of property for purposes of tax reduction.—Each separate parcel of real property shall be classified by the county auditor according to its principal current use. Vacant lots and tracts of land upon which there are no structures or improvements shall be classified in accordance with their location and their highest and best probable legal use. In the case of lands containing or producing minerals, the minerals or any rights to the minerals that are listed and taxed separately from such lands shall be separately classified if the lands are also used for agricultural purposes, whether or not the fee of the soil and the right to the minerals are owned by and assessed for taxation against the same person. For purposes of this section, lands and improvements thereon used for residential or agricultural purposes shall be classified as residential/agricultural real property, and all other lands and improvements thereon and minerals or rights to minerals shall be classified as nonresidential/agricultural real property. Each year the auditor shall reclassify each parcel of real property whose principal current use has changed from the preceding year to a use appropriate to classification in the other class. The classification required by this section is solely for the purpose of making the reductions in taxes required by section 319.301 of the Revised Code, and this section shall not apply for purposes of classifying real property for any other purpose authorized or required by law or by rule of the tax commissioner.

equalization of a class or classes of real property. Such studies or other information of the commissioner shall not be applied by the commissioner on a taxing district, countywide, or statewide basis for the purpose of equalization unless the commissioner first finds there are sufficient arms' length sales for a like use included in the sample in a class, or arms' length sales and appraisals conducted by the commissioner for a like use included in the sample in a class, to provide an indication that said sales or sales and appraisals in the class are representative of all parcels in the class.

In addition, the commissioner shall make other studies of the value of real property within the counties which may be used as guidelines, where applicable, in the equalization of a class or classes of real property.

(As enacted by H.B. 531, Laws 1969; as amended by S.B. 455, Laws 1972; S.B. 423, Laws 1974; H.B. 920, Laws 1976; H.B. 260, Laws 1983; H.B. 379, Laws 1984, effective July 2, 1984.)

§ 133-765

Sec. 5715.02. County board of revision; hearing boards; quorum; power to administer oaths.—The county treasurer, county auditor, and the president of the board of county commissioners shall constitute the county board of revision, or they may provide for one or more hearing boards when they deem the creation of such to be necessary to the expeditious hearing of valuation complaints. Each such official may appoint one qualified employee from his office to serve in his place and stand on each such board for the purpose of hearing complaints as to the value of real property only; each such hearing board has the same authority to hear and decide complaints and sign the journal as the board of revision, and shall proceed in the manner provided for the board of revision by sections 5715.08 to 5715.20, inclusive, of the Revised Code. Any decision by a hearing board shall be the decision of the board of revision.

A majority of a county board of revision or hearing board shall constitute a quorum to hear and determine any complaint, and any vacancy shall not impair the right of the remaining members of such board, whether elected officials or appointees, to exercise all the powers thereof so long as a majority remains.

Each member of a county board of revision or hearing board may administer oaths.

(As amended by S.B. 194, Laws 1969, effective November 19, 1969.)

§ 133-785

Sec. 5715.03. Payment of compensation and expenses.—The compensation of the experts, clerks, and other employees of the county boards

of revision shall be paid monthly upon the certificate of the county auditor or board. The contingent expenses of the auditor and board, including postage and express charges, their actual and necessary traveling expenses, and those of their deputies, experts, clerks, or employees on official business outside of the county, when required by orders issued by the department of taxation, shall be allowed and paid as are other claims against the county. The compensation and expenses may be paid from the real estate assessment fund pursuant to section 325.31 of the Revised Code.

(As amended by S.B. 158, Laws 1995, effective May 8, 1996.)

§ 133-805

Sec. 5715.04. Office hours; conditions of employment.—County boards of revision shall, during the time fixed for their sessions, keep their offices open during the business hours on each business day, and their experts, clerks, and other employees shall devote their entire time to their respective duties during their term of office or period of service or employment; provided that boards may, with the approval of the tax commissioner, employ experts, clerks, or other employees with the understanding that such employed persons shall devote only a part of their entire time to their respective employments.

(As amended by H.B. 920, Laws 1976; H.B. 260, Laws 1983, effective September 27, 1983.)

§ 133-820

Sec. 5715.05. Offices; equipment and supplies.—The board of county commissioners shall furnish to the county board of revision and its experts, clerks, and employees suitable office rooms at the county seat, and shall furnish the county auditor for his own office and the county board of revision all maps, plats, stationery, blank forms, books, supplies, furniture, and other equipment necessary for the proper discharge of their duties and the preservation of their books, records, and files. The maps, plats, stationery, blank forms, and other supplies and equipment used by the auditor shall, so far as practicable, be used also by the county board of revision.

§ 133-840

Sec. 5715.06. Number of experts; compensation; civil service.—Each county board of revision shall appoint the number of experts, clerks, and employees that is prescribed for it by the tax commissioner. Such experts, clerks, and employees shall hold their employment for the time that is prescribed by the commissioner. The compensation of such experts, clerks, and employees shall be fixed by the board of county commissioners. No expert, assistant, clerk, employee, or assistant as

CHAPTER 5717—APPEALS

Sec. 5717.01. Appeal from county board of revision to board of tax appeals; procedure; hearing.—An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service, as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service, or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of such notice of appeal, such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

(As amended by H.B. 920, Laws 1976; S.B. 6, Laws 1981; H.B. 260, Laws 1983; H.B. 612, Laws 2000; H.B. 675, Laws 2002, effective March 14, 2003.)

§ 135-101

Sec. 5717.011. Appeals from municipal board of appeal.—(A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by

the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service, as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

(As added by H.B. 95, Laws 2003, effective January 1, 2004.)

§ 135-120

Sec. 5717.02. Appeals from final determination; procedure; hearing.—Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations,

or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall

certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or at any place where the board may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

(As amended by S.B. 174, Laws 1973, H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 351, Laws 1981; H.B. 260, Laws 1983; S.B. 124, Laws 1985; H.B. 321, Laws 1985; S.B. 19, Laws 1994; H.B. 612, and S.B. 287, Laws 2000; S.B. 200, Laws 2002, effective September 6, 2002.)

§ 135-150

Sec. 5717.03 Decisions of the board of tax appeals; certification effect.—(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.011, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of, or, in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation. If that question is in issue, and the board of tax appeals decision and the date when it was filed with the secretary for journalization shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a percent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its

journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditor of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be certified by the board by certified mail to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified, as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

(As amended by H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 95, Laws 2003; effective January 1, 2004.)

§ 135-200
Sec. 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal; certification.—The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin County.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required

to be certified, or by any other person to whom the board certified the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same; but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

(As amended by H.B. 220, Laws 1953; S.B. 174, Laws 1973; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 231, Laws 1987, effective October 5, 1987.)

[§ 135-265]

Sec. 5717.05. Appeal from decision of county board of revision to court of common pleas; notice; transcript; judgment.—As an alternative

to the appeal provided for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code. The county auditor and all parties to the proceeding before the board, other than the appellant filing the appeal in the court, shall be made appellees, and notice of the appeal shall be served upon them by certified mail, unless waived. The prosecuting attorney shall represent the auditor in the appeal.

When the appeal has been perfected by the filing of notice of appeal as required by this section and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.

Within thirty days after notice of appeal for the court has been filed with the county board of revision, the board shall certify to the court a transcript of the record of the proceedings of said board pertaining to the original complaint and all evidence offered in connection with that complaint.

The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of, or if the complaint and appeal is against a discriminatory valuation, shall determine a valuation that shall correct the discrimination, and the court shall determine the liability of the property for assessment for taxation, if that question is in issue, and shall certify its judgment to the auditor, who shall correct the tax list and duplicate as required by the judgment.

In correcting a discriminatory valuation, the court shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a percent or amount that will cause the property to be listed and valued for taxation by an equal and uniform rule.

Any party to the appeal may appeal from the judgment of the court on questions of law as in other cases.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965; H.B. 934, Laws 1988, effective March 17, 1989.)

[§ 135-310]

Sec. 5717.06. Liability for taxes shall relate back.—In case of the institution of an appeal under sections 5717.01 to 5717.04 of the Revised Code,

¶ 135-265 § 5717:05

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NOTES ON DECISIONS AND OPINIONS

BTA 84-G-983 (3-30-87), *Park Place Ltd v Franklin County Bd of Revision*. In valuing a HUD-subsidized apartment building for real property tax purposes, the property owner must take into account the requirements of OAC 5705-3-03(D) and OAC 5705-3-02(A).

5705-3-03 Appraisals

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the commissioner of tax equalization directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5705-3-07 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5705-3-08 of the Administrative Code.

(D) In arriving at his estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach—The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the market approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach—The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5705-3-01 of the Administrative Code, and adding the result to the basic interest and capitalization rate. Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be

used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3) The cost approach—The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtained by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making his appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the commissioner of tax equalization for his approval on an individual basis.

HISTORY: Eff. 11-1-77
Prior BTA-5-03

CROSS REFERENCES

RC 5713.01. County auditor shall be assessor, assessment, procedure, employment and compensation of employees

RC 5715.01. Tax commissioner to direct and supervise assessment of real property, procedures, county board of revision to hear complaints, rules of commissioner

NOTES ON DECISIONS AND OPINIONS

No. 84AP-756 (10th Dist Ct App, Franklin, 3-7-85), *Consolidated Aluminum Corp v Monroe County Bd of Revision*. An appraiser's characterization of property as "special purpose," where the overwhelming weight of evidence indicates that the property is "general purpose," does not render an appraisal based on the costs approach erroneous provided a market analysis is attempted as a check on the cost approach.

No. 84AP-756 (10th Dist Ct App, Franklin, 3-7-85), *Consolidated Aluminum Corp v Monroe County Bd of Revision*. A board of revision's reliance on the cost approach alone in determining the value of realty is unreasonable and unlawful where market opinions based on the land's highest and best use indicate a substantially lower worth.

No. 43969 (8th Dist Ct App, Cuyahoga, 4-8-82), *Coventry Towers, Inc v Cuyahoga County Bd of Revision*. In calculating the fair market value of an apartment complex for tax purposes, according to the "income approach" such calculation may include miscellaneous income from coin-operated washers and dryers.

BTA 85-C-61 and 85-C-62 (11-16-87), *Cowgill v Limbach*. The amount for which a property would sell on the open market between willing parties is the best evidence of its "true value in money" for tax purposes, but when no such data exists, OAC

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

OHIO CONSTITUTION

(Selected Provisions)

Article I

BILL OF RIGHTS

- Const I § 1 Inalienable rights
- Const I § 2 Equal protection and benefit
- Const I § 3 Rights of assembly and petition
- Const I § 4 Right to bear arms
- Const I § 5 Right of trial by jury
- Const I § 6 Slavery and involuntary servitude
- Const I § 7 Religious freedom; encouraging education
- Const I § 8 Habeas corpus
- Const I § 9 Bail; cruel and unusual punishments
- Const I § 10 Rights of criminal defendants
- Const I § 11 Freedom of speech
- Const I § 12 No transportation or forfeiture for crime
- Const I § 13 Quartering troops
- Const I § 14 Search and seizure
- Const I § 15 No imprisonment for debt
- Const I § 16 Redress for injury; due process
- Const I § 17 No hereditary privileges
- Const I § 18 Only general assembly may suspend laws
- Const I § 19 Eminent domain
- Const I § 19a Wrongful death
- Const I § 20 Powers not enumerated retained by people

○ Const I § 1 Inalienable rights

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

○ Const I § 2 Equal protection and benefit

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they

may deem it necessary, and no special privileges or immunities shall ever be granted, that may not be altered, repealed, or repealed by the General Assembly.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

○ Const I § 3 Rights of assembly and petition

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the general assembly for the redress of grievances.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

○ Const I § 4 Right to bear arms

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

○ Const I § 5 Right of trial by jury

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: 1912 constitutional convention, am. eff. 1-1-13
1851 constitutional convention, adopted eff. 9-1-1851

O Const II § 26 . General laws to have uniform operation; laws other than school laws to take effect only on legislature's authority .

All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

0 Const XII § 2 Property taxation by uniform rules; ten-mill limit; homestead valuation reduction; exemptions

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district or when approved by a majority of the electors of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions thereon, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal, and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

of improved properties, there may be little if any question of possible change in the property's use at the date of valuation because the market is significantly built-up and properties are being sold on the basis of their continued use.

In the development of an appraisal, the appraiser must distinguish between highest and best use of the land as though vacant and highest and best use of the property as improved. The appraisal report should clearly identify, explain, and justify the purpose and conclusion for each type of use and, if a separate conclusion of highest and best use of land as though vacant was not made, explain and justify why it was omitted.

To clarify the distinction between the highest and best use of 1) the land or a site as though vacant and 2) property as improved, consider a single-family residential property located in an area zoned for commercial use. If there is market demand for a commercial use, the maximum productivity of the land as though vacant will most likely be based on a commercial use. In this case, the single-family improvements may contribute little if any to the value of the property as a whole. If, however, the market value for residential use is greater than the market value for the permitted commercial use less demolition costs, then the highest and best use of the property as improved will be for continued residential use.

In the analysis of highest and best use of land as though vacant, the appraiser seeks the answers to several questions. First:

Should the land be developed or left vacant?

If the answer to this question is that the land should be developed, a second question is:

What kind of improvement should be built?

The third question the appraiser asks relates to the highest and best use of the property as improved, which is a distinct concept developed by valuation theorists and practitioners to answer an important question that the original concept does not address. This question is:

Should the existing improvements on the property be maintained in their current state or should they be altered in some manner to make them more valuable?

Appraisal theory holds that as long as the value of a property as improved is greater than the value of the land as though vacant, the highest and best use is the use of the property as improved. In practice, however, a property owner who is redeveloping a parcel of land may remove an improvement even when the value of the property as improved exceeds the value of the vacant land. Investors are not likely to pay large sums for the underlying land simply to hold onto the property until the value of the remaining improvement has decreased to zero. The costs of demolition and any remaining improvements

value are worked into the test of financial feasibility for redevelopment of the land.

The timing of a specified use is an important consideration in highest and best use analysis. In many instances, a property's highest and best use may change in the foreseeable future. For example, the highest and best use of a farm in the path of urban growth could be for interim use as a farm, with a future highest and best use as a residential subdivision. (The concept of interim use, which is a special situation in highest and best use analysis, is discussed in more detail later in this chapter.) If the land is ripe for development at the time of the appraisal, there is no interim use. If the land has no subdivision potential, its highest and best use would be for continued agricultural use. In such situations, the immediate development of the land or conversion of the improved property to its future highest and best use is usually not financially feasible.

The intensity of a use is another important consideration. The present use of a site may not be its highest and best use. The land may be suitable for a much higher, or more intense, use. For instance, the highest and best use of a parcel of land as though vacant may be for a 10-story office building, while the office building that currently occupies the site has only three floors.

Testing Criteria in Highest and Best Use Analysis

In addition to being reasonably probable, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. That is, the highest and best use must be

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Maximally productive

These criteria are often considered sequentially.¹ The tests of physical possibility and legal permissibility must be applied before the remaining tests of financial feasibility and maximum productivity. A use may be financially feasible, but this is irrelevant if it is legally prohibited or physically impossible.

¹ Although the criteria are considered sequentially, it does not matter whether legal permissibility or physical possibility is addressed first, provided both are considered prior to the test of financial feasibility. Many appraisers view the analysis of highest and best use as a process of elimination, starting from the widest range of possible uses. The test of legal permissibility is sometimes applied first because it eliminates some alternative uses and does not require a costly engineering study. It should be noted that the four criteria are interactive and may be considered in concert.

ing properties may also provide helpful information. Sometimes income and expense data for income-producing properties is unobtainable. If data on a particular sale is unavailable, assigning rents and expenses "based on market parameters" may be improper, especially for properties with existing leases.

Selecting Units of Comparison

After sales data has been gathered and verified, systematic analysis begins. Because like units must be compared, each sale price should be stated in terms of appropriate units of comparison. The units of comparison selected depend

Table 17.2 Typical Units of Comparison

Property Type	Typical Units of Comparison
Single-family, residential property	Total property price Price per square foot of gross living area
Apartment properties	Price per apartment unit (price per room or price per square foot of gross building area)
Warehouses	Price per square foot of gross building area Price per cubic foot of gross building volume
Factories	Price per square foot of gross building area Price per machine unit
Office properties	Price per square foot of gross building area Price per square foot of net rentable area Price per square foot of usable area
Hotels and motels	Price per guest room
Restaurants, theaters, and auditoriums	Price per seat
Hospitals	Price per square foot of gross building area Price per bed
Golf courses	Price per round (annual number of rounds played) Price per membership Price per hole Price per acre
Tennis and racquetball facilities	Price per playing court
Mobile home parks	Price per parking pad
Marinas	Price per slip
Automobile repair facilities	Price per bay
Agricultural properties	Price per square foot of gross building area Price per acre Price per animal unit (for pastureland) Price per board foot (for timberland)
Vacant land	Price per front foot Price per square foot Price per acre

on the appraisal problem and nature of the property, as illustrated in Table 17.1.

Units of comparison are used to facilitate comparison of the subject and comparable properties. Converting sale prices to size-related unit prices usually eliminates the need to make adjustments for size differences. Differences in size are considered in reconciliation, and the unit (or units) of comparison selected can have a significant bearing on the reconciliation of value indications in this approach. It may sometimes be necessary to adjust for differences in economies of scale. Even if all other property characteristics appear similar, a sale property that is substantially larger or smaller than the subject property may not be a particularly meaningful comparable because the per unit price of the larger property may be lowered by economies of scale. As much as possible, appraisers should try to select comparables in the same size range as the subject so that economies of scale do not enter into the process.

Analyzing and Adjusting Comparable Sales

Ideally, if all comparable properties are identical to the subject property, no adjustments would be required. However, this is rarely the case, especially for nonresidential properties. In this step of the analysis the appraiser adjusts for any differences.

After sales information has been collected and confirmed, it can be organized in a variety of ways. One convenient and commonly used method is to arrange the data on a market data grid. Each important difference between the comparable properties and the subject property that could affect property value is considered an element of comparison. Each element is assigned a row on the grid, and total property prices or unit prices of the comparables are adjusted to reflect the value of these differences. The process is a way for appraisers to model typical buyer actions and to analyze sales data to quantify the impact of certain characteristics on value. (A sample market data grid and the procedures used to make adjustments on such a grid are presented in the next chapter.)

A sale price reflects many different factors that affect a property's value in varying degrees. Qualitative and quantitative techniques are employed to estimate the relative significance of these factors. Appraisers employ mathematical applications to derive quantitative adjustments. When sufficient data to support a quantitative adjustment is not available, appraisers investigate qualitative relationships through direct comparison of market data and analysis of market trends.

Adjustments can be made either to total property prices or to appropriate units of comparison. Often adjustments for property rights conveyed, financing, conditions of sale (motivation), date of sale (market conditions), and expenditures made immediately after purchase are made to the total sale price. The adjusted

OHIO BOARD OF TAX APPEALS

Board of Education of the Columbus City Schools,

Appellant,

vs.

Franklin County Board of Revision,
Franklin County Auditor, and Paul J. Falco, Trust and Donald W. Kelley, Trustee,

Appellees.

CASE NO. 2005-A-163

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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For the Appellee Property Owner - Vorys, Sater, Seymour and Pease LLP
Carol Mahaffey
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Columbus, Ohio 43216-1008

Entered April 7, 2006

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap dissents.

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. In said decision, the board of revision determined the taxable value of the subject property for tax year 2003.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, and the briefs filed by counsel to the appellant and to the appellee property owner. All parties waived their right to appear before this board to present any additional evidence or testimony with regard to the valuation of the subject property.

The subject real property, an apartment complex, is located in the city of Columbus – Columbus City School District taxing district and is identified in the auditor’s records as parcel numbers 010-039557 and 010-017482. The value of the subject, as determined by the auditor and by the board of revision, is as follows:

#010-039557

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 134,400	\$ 47,040
Building	\$ 564,900	\$ 197,720
Total	\$ 699,300	\$ 244,760

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 134,400	\$ 47,040
Building	\$ 306,600	\$ 107,310
Total	\$ 441,000	\$ 154,350

#010-017482

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 20,600	\$ 7,210
Building	\$ 72,900	\$ 25,520
Total	\$ 93,500	\$ 32,730

BOARD OF REVISION			
	TRUE VALUE		TAXABLE VALUE
Land	\$ 20,600		\$ 7,210
Building	\$ 38,400		\$ 13,440
Total	\$ 59,000		\$ 20,650

Appellant contends that the board of revision has undervalued the property in question by relying upon an appraisal of the property and claims the property's total market value is more properly that which the auditor determined, i.e., \$792,800.

In considering the value of any property, we initially note 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.

Since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. A review of the statutory transcript indicates this appeal originated at the board of revision with the property owner, Paul J. Falco Trust, Donald W. Kelley, Trustee, "Falco Trust," filing an original complaint with the Franklin County Board of Revision, seeking to decrease

the subject's total value to \$540,000. S.T., Ex. 1. Later, at the time of the board of revision hearing, based upon the appraisal of the subject, Falco Trust amended the value which it sought to \$500,000. A counter complaint was also filed by the Board of Education of the Columbus City Schools, "BOE," seeking to retain the auditor's valuation of the subject. S.T., Ex. 2.

At the hearing before the board of revision, counsel for the property owner and counsel for the board of education appeared. The property owner offered the report and associated testimony of an appraiser, and based upon such information, the board of revision decreased the subject's value to \$500,000. S.T., Ex. 7.

Thus, the appellee property owner would have us affirm the value determined by the board of revision, which was based upon its appraiser's report. The appellant board of education, however, argues that the appraisal in question does not constitute sufficient, probative evidence of value, and, accordingly, the auditor's valuation determination of the subject must be reinstated.

In considering the parties' respective positions, we first note that 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 case, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the

income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Before the board of revision, Falco Trust offered the summary appraisal and testimony of Patrick J. Kelley,¹ a state-certified general real estate appraiser. Within his report, Mr. Kelley indicated that “[t]he subject property is situated on the southwest side of the City of Columbus within an older established neighborhood along the West Mound Street Corridor. The surrounding area consists primarily of lower end single family homes, two family dwellings and multi-family as well as interspersed commercial and institutional uses.” S.T., Ex. 7 at 2. Mr. Kelley described the subject property as 2.95 acres “improved with thirteen two-story brick four-family buildings and one two-story brick two-family building constructed in 1959 and 1964, containing approximately 39,900 S/F of gross building area. The units consist of 48 two-bedroom garden apartments containing approximately 750 S/F and six one-bedroom garden apartments containing 650 S/F. The apartment buildings are in good condition considering their age. Site improvements include asphalt paved drives and parking area. There are no project amenities.” S.T., Ex. 7 at 2. Mr. Kelley concluded that the highest and best use of the subject would be for a multi-family use, consistent with its current use. S.T., Ex. 7 at 2.

¹ We acknowledge that the property owner’s appraiser, Patrick Kelley, is the son of the subject property’s trustee, Donald Kelley, who is also the owner of the appraisal firm where Patrick Kelley is employed. However, based upon Patrick Kelley’s testimony concerning both his fee arrangement and his father’s compensation as trustee, we are convinced that Patrick Kelley’s appraisal report constitutes an unbiased opinion of the subject’s value. S.T., BOR Audio Tape.

In arriving at an estimate of market value for the subject, Mr. Kelley utilized both the income and market approaches to value. He did not use the cost approach "due to the age of the buildings and corresponding difficulty in accurately measuring accrued depreciation. Moreover, a perspective [sic] buyer would give no consideration to the cost of replacing the improvements." S.T., Ex. 7 at 3.

Under the income approach, Mr. Kelley developed a pro forma income and expense analysis for the subject. Mr. Kelley reviewed the subject's actual income and expenses for 2002 and 2003, as well as its vacancy rates for 2002-2004. Subject rents ranged from \$319-\$329 for the one-bedroom units and \$375-\$385 for the two-bedroom units. As of October 2004, one-bedroom units rented for \$339 and two-bedroom units rented for \$395, in addition to rent concessions of a reduced deposit and one month free rent. Two nearby complexes' rates were also reviewed, and Mr. Kelley concluded to a rate of \$329 for the one-bedroom units and \$385 for the two-bedroom units. He also included \$3,000 in miscellaneous income, based upon the subject's experience. Actual 2003 operating expenses of \$3,200 per unit were also utilized. The subject's vacancy rates varied substantially over the course of 2002-2004, which Mr. Kelley blamed on the type/location of the apartments and the significant number of delinquencies associated with that situation. S.T., BOR Audio Tape. At the end of 2002, the subject's vacancy rate was approximately 15%, compared to 1.9% at the end of 2003. In October 2004, vacancy had increased to 10%, and that is the figure Mr. Kelley utilized for the subject tax year. Basing his capitalization rate on recent sales of larger, older apartment complexes, Mr. Kelley capitalized the net operating income at

10.8%, which included a tax additur, to arrive at a final value, via the income approach, of \$473,000. S.T., Ex. 7 at 3-5.

Using the market approach, Mr. Kelley reviewed the sales of three multi-family units which he felt were "generally similar to [the] subject with respect to age, style, and location." S.T., Ex. 7 at 5. The sales occurred between October 2003 and March 2004, and ranged from \$13.78 per square foot to \$17.44 per square foot. After adjustments were made to the sales comparables, Mr. Kelley concluded to a value for the subject, using the market approach, of \$10,000 per unit, or \$540,000. S.T., Ex. 7 at 5.

After considering the values generated by both the income and market approaches, Mr. Kelley, placing his primary reliance upon the income approach, concluded to a final value for the subject of \$500,000. S.T., Ex. 7 at 6; BOR Audio Tape.

As we review Mr. Kelley's report, we note several significant deficiencies. First, with regard to his income approach, Mr. Kelley employed the subject's actual miscellaneous income amount, vacancy rate and expense rate, yet no correlation between the subject's experience and the general market was offered. For example, the subject's vacancy rate as of October 2004, some 22 months after tax lien date, and the subject's expenses as of December 31, 2003, some 12 months after tax lien date, were used; we cannot determine whether these numbers necessarily reflect the experience of the market, let alone tax lien date 2003 circumstances. As the Supreme Court stated in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*

(1996), 75 Ohio St.3d, 552, 555, when referring to its earlier holding in *Webb Corp. v. Lucas Cty. Bd. of Revision* (1995), 72 Ohio St.3d 36, "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to the market.*" (Emphasis added.) In addition, with regard to the subject's potential rental income, Mr. Kelley claims to have considered the rents of two other complexes near the subject in deriving his figure, yet the rent comparables' rates he used were apparently as of October 2004. What those rates were as of January 1, 2003, and how they compared to the subject's rates at that time, is unknown.

With regard to his market approach, we note that Mr. Kelley compared the subject to three properties he deemed to be comparable. At the outset, we must take issue with the lack of detail in the report concerning the adjustments made to the comparables in deriving value for the subject. Further, we question the use of the sale of the second property. Specifically, the second property was significantly smaller than the subject, i.e., 6,796 square feet as compared to the subject's 39,900 square feet, and significantly newer than the subject, i.e., 1970 construction date as compared to the subject's 1959/1964 construction date. Since there is no detail provided on the adjustments that Mr. Kelley would have had to make to this property to make it truly comparable, we are reluctant to rely upon Mr. Kelley's bare assertions that he made appropriate adjustments, or any adjustments at all. Also, significantly, the second property was sold at sheriff's sale and, as this board has held on many occasions, the price obtained at a sheriff's sale is not necessarily reflective of market value. R.C. 5713.04; *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80

Ohio St.3d 455. There is no information about the circumstances surrounding the sheriff's sale in the record. Thus, without evidence to establish that the price obtained at the sheriff's sale reflects market value, e.g., an appraisal, we are unable to make a judgment regarding market conditions, and thus, determine value based upon such sale price. Further, we question the reliability of the sale of the first property since it occurred at a public auction. Without more specifics about the sale, including the specific methods used to advertise the sale and the number of people who participated at the auction, we are reluctant to rely upon the data generated by it (including the capitalization rate).

The BTA is not obligated to accept the testimony of any appraiser. 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 consideration of the foregoing expressed concerns about the property owner's appraisal report, we find that the board of revision had insufficient evidence before it to justify a reduction in the subject's valuation. In arriving at such conclusion, we are mindful that the property owner had the opportunity to call its appraiser as a witness before this board, but waived its right to do so. As a result, we are constrained to find that based upon the record before us, the property owner did not offer sufficient, probative evidence of the subject's value for the tax year in question. See *Vandalia-*

Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 106 Ohio St.3d 157, 2005-Ohio-4385. Accordingly, we adopt the county auditor's valuation of the subject, as of January 1, 2003, as follows:

	#010-039557	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 134,400	\$ 47,040
Building	\$ 564,900	\$ 197,720
Total	\$ 699,300	\$ 244,760

	#010-017482	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 20,600	\$ 7,210
Building	\$ 72,900	\$ 25,520
Total	\$ 93,500	\$ 32,730

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.

Mr. Dunlap dissenting.

I respectfully disagree with the majority's foregoing conclusions and corresponding decision and order, and, accordingly, dissent.

It is well established a party appealing a decision issued by a county board of revision to this board is required to affirmatively support the value it asserts in its notice of appeal. That is, an appellant is accorded an opportunity to present

evidence in support of the value it alleges correctly represents the value of a subject property.

In this case, hearing before this board was waived. No additional evidence was presented or adduced. I would find appellant board of education has failed to meet its assigned burden of proof.

I disagree with the majority's determination that the evidence submitted to the board of revision is insufficient to support the values found, thereby disregarding that board's resolution and reinstating the county auditor's assigned values. Such a decision ignores the burden of proof assigned the appellant, and, in the alternative, registers a valuation adjudication by default, essentially finding for an appellant that has provided no affirmative evidence of value at any stage of the proceedings.

Such a judgment seems to conflict with the express language and, certainly the spirit of decisions reconfirming the axiom regarding burden of proof, requiring an appellant to provide or present affirmative evidence in support of its challenge to the decision appealed. (citations omitted)

Based upon appellant's inaction, I would confirm the values found by the Franklin County Board of Revision which, upon consideration of the record, do not appear unsupported or unreasonable. It continues to be my view that an appraisal report (accepted into evidence) with corresponding testimony from an acknowledged expert, while possibly manifesting some defects, provides credible, probative evidence of value that a board of revision may choose to rely upon and utilize to determine

valuation, absent any other reliable evidentiary indication of the value of the subject property.

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OHIO BOARD OF TAX APPEALS

Board of Education of the Hilliard City Schools,)
)
)
 Appellant,)
)
 vs.)
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and Sunningdale)
 Corporation,)
)
 Appellees.)

CASE NO. 2005-A-1178
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

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For the Appellee Property Owner - Bruce L. Cameron
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Entered September 1, 2006

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap dissents.

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. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the evidence and testimony presented at the hearing before this board, and the briefs filed by counsel to the appellant board of education ("BOE"), and the appellee property owner.

The property in question is located in the city of Hilliard-Hilliard City School District taxing district and appears on the auditor's records as parcel number 050-003237. Located on the subject parcel, which totals approximately 1.38 acres, is an office/warehouse building containing approximately 14,700 square feet.

The value for the subject parcel for tax year 2004, as determined by the county auditor and by the board of revision, is as follows:

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land \$	113,900	\$ 39,870
Bldg	553,900	193,870
Total \$	667,800	\$ 233,740

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land \$	113,900	\$ 193,870
Bldg	350,100	122,540
Total \$	464,000	\$ 316,410

The appellant board of education contends that the board of revision has improperly reduced the value of the subject parcel by relying upon the valuation testimony and

evidence presented by the property owner at the hearing before the board of revision. Accordingly, the appellant argues that the subject's true value should be that which the auditor previously determined, i.e., \$667,800.

Sunningdale Corporation, ("Sunningdale"), filed an original complaint against the valuation of the subject property with the Franklin County Board of Revision. Sunningdale sought to decrease the subject's value to \$450,000, due to "excessive vacancy" and the "very difficult economic environment for commercial/industrial properties." S.T., Ex. 1. A counter-complaint was filed by the Board of Education of the Hilliard City Schools, which sought maintenance of the auditor's valuation of \$667,800, based upon "size, location and market analysis of similar type properties." S.T., Ex.2.

At the hearing before the board of revision and this board, Sunningdale presented the testimony and report of Stephen Holzer, a licensed real estate broker and owner of Commercial One Realtors. Mr. Holzer prepared and presented both a sales comparison and an income approach appraisal analysis of the subject. Apparently based upon not only the testimony and evidence received, but also the \$400,000 sale price of the subject in February 1999, with 3% appreciation per year, thereafter, the board of revision reduced the subject's valuation to \$464,000. S.T. at Ex.4.

In our review of this matter, we initially note 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.

As we consider the evidence and testimony presented to the board of revision and ultimately to this board, we find that we can accord no weight to the Holzer opinion of value. First, we do not recognize Mr. Holzer as an expert appraisal witness. While we recognize that he has many years of experience in the real estate industry, we find that an insufficient foundation for Mr. Holzer's testimony was laid with regard to his knowledge and experience in real estate valuation. The opinions expressed by Mr. Holzer were in the nature of expert testimony, however, this board does not find that he was so qualified. By not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the derivation of true value for a particular piece of real property, this board does not find his testimony to be probative and will not give said testimony any weight.

Next, Mr. Holzer testified to a value for the subject property as of January 1, 2005, the year after the tax lien date in question. While it is possible that market conditions may not have changed during those months, it remains incumbent upon Mr. Holzer to confirm such an outcome and justify the use of values generated for a date other than the tax lien date in question. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. See, also, *North Olmsted Bd. of Edn. v.*

Cuyahoga Cty. Bd. of Revision (Feb. 2, 1996), BTA Nos. 1994-T-1055, et seq., unreported.

Finally, we have reviewed the information presented by Mr. Holzer and we find that we cannot rely upon the conclusions reached therein for several reasons. In conjunction with his sales comparable approach, he inspected only the exteriors of the alleged comparable sales and made no adjustments to any of the listings, even though building sizes varied from 4,000 square feet to 60,104 square feet, building ages ranged from a low of 9 years to a high of 54 years, and sale dates ranged from April 2000 to February 2005. With regard to his income approach, Mr. Holzer agreed under cross examination that "the income approach to value would have to be revised, at least on these revised figures, because it was based on an average in trends from these three kind [sic] of reports which apparently included expenses that would not qualify as operating expenses." H.R. at 41. Further, within his income approach analysis, he provided no evidence of market rents, vacancy rates, or expenses to substantiate his conclusions, and, as such, we cannot rely upon his bare assertions that the numbers utilized reflect the state of the market as of tax lien date. Quite simply, there is no data provided with Mr. Holzer's calculations to support them, and, as such, we cannot rely upon his opinion.

Thus, since this board is vested with wide discretion in determining the weight to be given to evidence and the credibility of a witness who comes before the board, we choose not to rely upon Mr. Holzer's testimony. *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.

Accordingly, with no evidence of market value before us that we find to be probative and credible, and having found no legitimate basis for the county board of revision's reduction in the valuation of the subject, we are constrained to utilize the county auditor's valuation of the subject. *Bd. of Educ. of the Columbus City School District v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 2001-Ohio-16. Specifically, the value of the subject property, as of January 1, 2004, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land \$	113,900	\$ 39,870
Bldg	553,900	193,870
Total \$	667,800	\$ 233,740

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.

Mr. Dunlap dissenting.

I respectfully disagree with the majority's foregoing analysis and corresponding determination of value, and, accordingly, dissent.

It continues to be my view that a party appealing a decision issued by a board of revision is required to affirmatively establish the values asserted in its notice

of appeal to this board. In support, I note the Ohio Supreme Court's recent decision in *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, citing *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St. 3d 564, 566, wherein the court acknowledged:

“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision.”

In this case, the appellant board of education has elected not to affirmatively proceed in support of its challenge to the decision of the board of revision, thereby failing to meet its assigned burden of proof. That is, appellant has not gone forward with sufficient primary evidence and/or testimony to satisfy its initial burden of persuasion. Therefore, the responsibility to correspondingly respond has not shifted to the appellee property owner.

Additionally, I regard as erroneous, the majority's determination that the appellee's evidence is insufficient to justify the BOR's finding. As is manifested by its decision, the BOR found the property owner's evidentiary presentation to be reliable and probative; essentially the same evidence and testimony was submitted to this board.

In my opinion, it is unreasonable for this board to disregard or totally exclude Mr. Holzer's testimony as unconvincing, mainly because he is not a licensed real estate appraiser. The record establishes that Mr. Holzer's years of experience in real estate have accorded him significant practical knowledge and expertise.

Moreover, there is no dependable evidence contradicting his opinion of value. His testimony is essentially the only valuation information in the record. Even if his opinion of value is based upon an analysis containing some questionable information, I would find his presentation sufficient to support the BOR's determination absent anything substantive to the contrary.

I would affirm the valuation found by the BOR.

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OHIO BOARD OF TAX APPEALS

Board of Education of the Northridge)	CASE NO. 2004-B-35
Local Schools,)	
	)	(REAL PROPERTY TAX)
Appellant,)	
	)	DECISION AND ORDER
vs.)	
)	
Montgomery County Board of)	
Revision, Montgomery County)	
Auditor and CS Hotels Ltd.)	
Partnership,)	

Appellees.

APPEARANCES:

For the Appellant	- Rich, Crites & Dittmer, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215
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
For CS Hotels Ltd. Partnership	- Todd W. Sleggs & Associates Todd W. Sleggs 820 West Superior Avenue Suite 410 Cleveland, Ohio 44113

Entered **JAN 28 2005**

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by the Board of Education of the Northridge Local Schools ("BOE"). The BOE has appealed from a decision of the Montgomery County

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Board of Revision ("BOR") that determined the value of the subject real property for tax year 2002. The property is located in the Northridge taxing district and is identified on the auditor's records as parcel E21-011-03-0086.

The value determined by the Montgomery County Auditor is as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$408,460	\$142,960
Building	\$7,020,010	\$2,457,000
Total	\$7,428,470	\$2,599,960

The value determined by the BOR is as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$408,460	\$142,960
Building	\$5,819,110	\$2,036,690
Total	\$6,227,570	\$2,179,650

In the notice of appeal the appellant has alleged that the correct value is as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$408,460	\$142,960
Building	\$7,020,010	\$2,457,000
Total	\$7,428,470	\$2,599,960

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR, and the briefs filed by the parties. An evidentiary hearing was waived by the parties and briefing dates were assigned. The county appellees did not file a brief in this matter.

The subject property is a Holiday Inn hotel located in Dayton, Ohio. It is located on about 6.077 acres and is improved with a two-story building and a five-story building built in 1961 and 1988 respectively.

At the BOR hearing, CS Hotels ("CS") presented the written appraisal report of Mr. Eric F. Belfrage, MAI, CRE, ISHC, and Mr. Robin M. Lorms, MAI, CRE, which stated that the subject property's "going concern value" was \$5,900,000 as of January 1, 2002. S.T. (unmarked). Neither appraiser was present to testify at the BOR hearing and the BOE objected to the appraisal report being received by the BOR since neither appraiser testified.

Appellant contends that no competent evidence was submitted to the BOR to justify any change to the auditor's value for the subject property.

We agree with the BOE. The board does not find the appraisers' opinion of value presented by CS to be competent and probative of the value for the subject property. The appraisers were not present and did not testify at the BOR hearing, and an evidentiary hearing before this board was waived by the parties. In such a situation, there was no authentication of the appraisal report. Further, without having the author(s) of such report before us, or, at the least, the board of revision, to give testimony about the opinion of value and further explanation about how that value was determined, as well as to be available for cross-examination, we cannot place any reliance upon the conclusions set forth therein. *Cleveland Municipal School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 23, 2004), BTA No. 2002-R-2212, unreported. This is especially

critical in light of the appraisers' use of a controversial deduction for business enterprise value (BEV) which this board has previously rejected. In *Kettering City Schools v. Montgomery Cty. Bd. of Revision* (Oct. 23, 2003), BTA No. 2002-G-1922, unreported, Mr. Belfrage submitted an analysis which also sought to have the business enterprise component deducted from the value of a hotel property. In rejecting that proposal, we stated at 16:

"In determining BEV in the present case, Mr. Belfrage calculated the percentage of revenue attributable to the business value by determining what percentage of reservations were made through the Holiday Inn electronic reservation system, factoring in franchise costs, and then determining what percentage of overall revenue was attributable to the electronic reservation system. Although divergent methods of estimating BEV exist, and no single technique is universally accepted, we are not convinced that the method utilized by Mr. Belfrage is a reliable measuring device. We find it a very speculative means of quantifying BEV at best. Accordingly, we cannot adopt the appraisal amount estimated in the report."

See, also, *Equistar Cleveland Co., LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 6, 2004), BTA No. 2002-J-2430, et seq., unreported.

Therefore, we give no weight to CS's written appraisal report submitted to the BOR.

Based upon the foregoing, this board must find that the value conclusion presented to the BOR did not support the BOR's actions in lowering value. Although the BOE did not present any evidence or testimony itself to establish the subject's value at the BOR, the BOE correctly objected to the BOR's

reliance on the unauthenticated appraisal report submitted by CS as a basis for reducing the subject's fair market value.

The BOE asserts, and we agree, that the BOR cannot reduce the value of the subject based upon the evidence before it. Although the BOR did not adopt the value asserted by the appraiser as the value of the subject on tax lien date, there is no other evidence in the record before the BOR or this board to support any reduction from the auditor's value¹.

In the instant case, the only evidence presented to the BOR to consider was the aforestated written appraisal report. Had that same opinion been presented to this board, we would have rejected it for being unauthenticated and unsupportable. There being no other evidence of the value of the property presented to the BOR, and no additional factual or expert witnesses presented at an evidentiary hearing before this board, we conclude that it was error on the part of the BOR to modify the auditor's value for the subject property.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines that the true and taxable values of the subject property as of January 1, 2002 were:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$408,460	\$142,960
Building	\$7,020,010	\$2,457,000
Total	\$7,428,470	\$2,599,960

¹ There appears to be some additional financial information presumably prepared by "Deloitte & Touche" contained within the statutory transcript. However, we note that the requisite foundational information to accord this document any weight is not available. Therefore, this board accords no weight to said document.

It is the order of the Board of Tax Appeals that the Auditor of Montgomery County list and assess the subject property in conformity with this decision and order, and that the same be carried forward in accordance with applicable law.

BOARD OF TAX APPEALS			
RESULT OF VOTE	YES	NO	DATE
Ms. Jackson	<i>AF</i>		<i>22/29/04</i>
Ms. Margulies	<i>plm</i>		<i>1/4/05</i>
Mr. Eberhart	<i>RZ</i>		<i>1/7/05</i>

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


 Julia M. Snow, Board Secretary

TLW/drr
TLW

OHIO BOARD OF TAX APPEALS

Streetsboro City School District Board	)	CASE NO. 2004-K-601
of Education,)	
	)	(REAL PROPERTY TAX)
Appellant,)	
	)	DECISION AND ORDER
vs.)	
)	
Portage County Board of Revision,)	
Portage County Auditor and Park View)	
Federal Savings Bank,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Britton, Smith, Peters & Kalail Co., LPA David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-2152
For the County Appellees	- Victor V. Vighuicci Portage County Prosecuting Attorney Theresa M. Scahill Assistant Prosecuting Attorney 466 South Chestnut Street Ravenna, Ohio 44266
For the Appellee Property Owner	- No Appearance Park View Federal Savings Bank 30000 Aurora Road Solon, Ohio 44139

Entered June 30, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

On July 13, 2004, appellant, Streetsboro City School District Board of Education, filed an appeal with this board challenging a decision of the Portage County Board of Revision ("BOR"), wherein the BOR determined the value of the subject real property for tax year 2003. The property in issue, which is located in the Streetsboro City/Streetsboro City Schools taxing district, is identified in the records of the Portage

County Auditor ("auditor") as parcel numbers 35-045-00-00-007-006 and 35-045-00-00-042-003.

The values of the subject property as originally determined by the auditor, and subsequently retained by the BOR, for the tax year in question are as follows:

Parcel No. 35-045-00-00-007-006

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$98,300	Land	\$34,410
Building	\$ -0-	Building	\$ -0-
Total	\$98,300	Total	\$34,410

Parcel No. 35-045-00-00-042-003

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$126,300	Land	\$44,210
Building	\$ -0-	Building	\$ -0-
Total	\$126,300	Total	\$44,210

Due to the BOR's decision to leave the auditor's values unchanged, appellant filed the present appeal. The property owner has not entered an appearance or otherwise sought to participate in these proceedings. Although the parties were accorded an opportunity to present additional evidence before this board, they waived hearing, electing instead to file briefs. Therefore, this matter is considered by this board based upon appellant's notice of appeal, the statutory transcript certified by the BOR and the written arguments submitted on behalf of appellant and the county appellees.

In considering appellant's appeal, we first note the standards by which our review is to be conducted. As has been pointed out by the Supreme Court, "[w]hile a determination of the true value of real property by a board of revision is entitled to consideration by the BTA, such determination is not presumptively valid." *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 572, 574. See, also, *Springfield*

Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 495;
Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision (1994), 69 Ohio St. 3d 337, 338.
Nevertheless, it is incumbent upon an appellant challenging the decision of a board of
revision to support its claim. As the court held in *Columbus City School Dist. Bd. of Edn.*
v. Franklin Cty. Bd. of Revision (2001), 90 Ohio St.3d 564:

“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325, 328, ***. The appellant before the BTA must present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, ***.” Id. at 566. (Parallel citations omitted.)

Where parties elect to waive hearing on appeal, as in the present matter, it is particularly important for this board to independently review the record developed by the parties before the county board of revision. In *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, the court held:

“The parties herein apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. The situation faced by the BTA in this case is analogous to that faced by the common pleas court in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St. 3d 11 ***. The court in *Black* had before it an appeal from a board of revision under R.C. 5717.05, the alternative appeal provision to R.C. 5717.01. The only evidence before the common pleas court was the statutory transcript from the board of revision. We stated in *Black* that the common pleas court was not required to hold an evidentiary hearing or a trial *de novo*, but that the common pleas court ‘has a duty on appeal to independently

weigh and evaluate all evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision's determination.' *Id.* at 13-14 ***. Our conclusion in *Black* was that R.C. 5717.05 'contemplates a *decision de novo.*' (Emphasis *sic.*) *Id.* at 14 ***.

"The duty of both the BTA and the common pleas court upon an appeal is to 'determine the taxable value of the property.' See R.C. 5717.03 and 5717.05. We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript." *Id.* at 15. (Parallel citations omitted.)

A review of the record reveals that the instant proceedings were initiated by appellant through the filing of a complaint in which it asserted that the taxable value of the subject property should be increased commensurate with a sale occurring approximately twelve months after tax lien date. In support of its contention, appellant submitted a copy of a real property conveyance fee statement indicating that the property was transferred on January 28, 2004 from Kallstrom Taylor Partnership, LLC to Park View Federal Savings Bank for \$860,000.

R.C. 5713.03 imposes certain requirements upon county auditors, including the following:

"The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***. *In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot*

or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. ***" (Emphasis added.)

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. See, e.g., *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62; *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *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. However, the existence of a recent sale merely creates a rebuttable presumption in favor of it being considered reflective of value. If probative evidence exists which calls into question the reliability of the sale, "the presumption that sale price reflects true value disappear[s]," and the burden shifts back to the proponent of the sale to demonstrate that it should be relied upon. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Franklin App. No. 03AP-106, 2004-Ohio-586.

As reflected initially by the auditor's and BOR's value determinations, and consistent with the property records cards included within the statutory transcript, the subject property was unimproved as of the pertinent tax lien date, i.e., January 1, 2003.

However, the conveyance fee statement relied upon by appellant indicates that when the property transferred more than twelve months later, it had been improved with a building.

At the hearing before the BOR, appellant's counsel was asked about this apparent discrepancy:

"Barrett I just have one question, is the school board under the impression that this sale in 2004, was it a vacant land sale or did it involve an improvement?

"Rose Let me see ... I know that the conveyance fee statement indicates that it comprised

"***

"Warner On number 5 of the conveyance fee it says are there buildings on this land and it says yes.

"Barrett We had a 2002 transaction on these two parcels for approximately \$225,000 and we picked up new construction for January of 2004, during 2003, there's a bank building under construction for 2004. I think it was in the neighborhood of 90% complete. So we have a different value for January of 2004 with that building on there. It will approach the sale price, it may not be quite to the sale price, but it will approach that.

"Rose Board, I can't answer that for sure ...

"Barrett According to the conveyance, that transaction in 2004 included a building, so we're assuming it's the new building that was built during 2003[.]

"Rose I think that is probably fair to assume[.]

"Barrett So, for tax year 2003, though, for the county purposes for tax year 2003, there is no building on the property. We pick them up once a year at the beginning of each year, so for 2004 that building will go on to the record. Prior to that, I

think the land value is almost exactly at the previously 2002 sale for land only, which was \$225,000.

“Rose I can’t say for sure that that building was there as of 1-1-03, so, just leave it to the Board’s discretion to determine what the value should be.” S.T. at Ex. D.

In *Wal-Mart Stores, Inc. v. Medina Cty. Bd. of Revision* (Nov. 9, 1995), BTA No. 1994-T-660, unreported, this board addressed a similar situation, finding a sale to be an unreliable indicator of value where the property had been improved between the tax lien date and the date of sale:

“Upon review of the record, we find the sales price is not reflective of the subject property’s true value as of tax lien date. The subject property was vacant at the time of its purchase. By tax lien date, however, the subject had been improved with a multi-million dollar building. R.C. 5713.03 states that a recent arm’s length sale cannot be considered the true value of a parcel of real property where an improvement has been added to the property. In short, we simply cannot overlook the fact that the condition of the subject property on January 1, 1993, is significantly different than its condition at the time of the sale in question. Consequently, we find that the June 1, 1992, sale is not a reliable indication of land value. See *Groveport-Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 29, 1990), B.T.A. Case No. 88-F-653, unreported (holding that the sale of the property in question was not indicative of value due to the fact that it was subsequently improved). See, also, *Cuyahoga Falls Downtown Development Corp. v. Summit Cty. Bd. of Revision* (Mar. 10, 1995), B.T.A. Case No. 93-T-1015, unreported (Board of Tax Appeals may not accept sales price as best evidence of value where a parcel vacant at the time of sale has been subsequently improved).” Id. at 16.

See, also, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 1, 2002), BTA No. 1999-T-1378, unreported.

Although appellant asserts that the BOR "inexplicably" retained the auditor's original value, the record explains and supports the BOR's, as well as this board's, rejection of the January 28, 2004 sale as a basis for determining the subject's value as of January 1, 2003. Appellant was accorded an opportunity before both the BOR and this board to either "rehabilitate" the utility of the sale or, in the alternative, to present other evidence of value. It elected not to do so.

In the absence of competent and probative evidence indicating a more appropriate value, we find no basis upon which to alter the auditor's and BOR's value determination in this appeal. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 ("Where 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, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of January 1, 2003, are as follows:

Parcel No. 35-045-00-00-007-006

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$98,300	Land	\$34,410
Building	\$ -0-	Building	\$ -0-
Total	\$98,300	Total	\$34,410

Parcel No. 35-045-00-00-042-003

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$126,300	Land	\$44,210
Building	\$ -0-	Building	\$ -0-
Total	\$126,300	Total	\$44,210

It is therefore the order of this board that the Portage County Auditor list and assess the subject property in conformity with our decision as announced herein.

ohiosearchkeybta

OHIO BOARD OF TAX APPEALS

Westlake Board of Education,)	
)	
Appellant,)	
	)	CASE NO. 2004-T-1301
vs.)	
	)	(REAL PROPERTY TAX)
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and	)	DECISION AND ORDER
Sturbridge Square Apartments)	
Investors LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Uimer & Berne, LLP Megan K. Roberts Skylight Office Tower 1660 West 2nd Street Suite 1100 Cleveland, Ohio 44113-1448
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For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
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For Sturbridge Square Apts. Inv., LLC -	Sleggs, Danzinger & Gill, Co., LPA Todd W. Sleggs 820 West Superior Avenue Suite 400 Cleveland, Ohio 44113
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Entered September 1, 2006

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

Westlake Board of Education appeals from a decision of the Cuyahoga County Board of Revision, in which the BOR determined the true value of permanent

parcel number 211-21-014 to be \$15,000,000 for tax year 2003. Westlake claims that the correct true value should be \$15,734,900.

The subject property is comprised of approximately 13.93 acres of land. The land is developed with an apartment complex. The complex, built in 1987, has 270 units contained in twelve buildings. There is a clubhouse building with decking and an in-ground pool. The property also has 130 detached garages, 140 carports, tennis courts, a volleyball court, a gazebo, and improved landscaping.

The auditor valued the subject at \$15,734,900 for tax year 2003. Sturbridge Square Apartments Investors LLC filed a complaint seeking a decrease in the value to \$12,500,000. Sturbridge argued before the BOR that it had purchased the subject in 1999 for \$14,800,000. Sturbridge provided income and expense statements for the subject, which it claimed would demonstrate that the subject's net income had decreased over the period between the sale and tax lien date. Based upon this income stream, Sturbridge argued that its requested decrease was warranted. In response, Westlake argued that the auditor's value should be retained based, in part, on the fact that it represented a modest increase in the four years since the sale. Upon review of the information presented, the BOR voted to decrease the property's value to \$15,000,000.

On appeal to this board, Westlake has presented the testimony and appraisal report of Kathleen M. McGee, an Ohio-certified appraiser. Ms. McGee utilized the market data approach (also known as the sales comparison approach) and

the income approach to determine value. See, generally, Ohio Adm. Code 5703-25-07.

The market data approach derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate (12th Ed. 2001), at 417; Ohio Adm. Code 5703-25-05(G). Ms. McGee analyzed sales of three properties that she found to be similar to the subject.¹ The sales occurred between December 2001 and December 2003 and ranged in price from a low of \$61,585 per apartment unit to a high of \$64,929 per unit. Placing greatest weight on sale number 1, which sold at \$62,295 per unit, she determined a value for the subject of \$62,250 per unit, or \$16,800,000.

In employing the income approach, Ms. McGee found value under the direct capitalization method. Direct capitalization converts a single year's income expectancy into a value by estimating a net income for the property and dividing it by a market-derived income factor, known as an "overall capitalization rate." The Appraisal of Real Estate, at 529.

To arrive at income expectancy, an appraiser reviews the subject property's historical income and expenses. These are then combined with an analysis of typical income and expense levels found for comparable properties. The Appraisal of Real Estate, at 493. To determine an income, Ms. McGee estimated a market rent for the subject by surveying lease rates being asked at the three rental properties used

¹ Sales of vacant land were also analyzed to derive a land only value for the subject. For purposes of the present discussion we shall refer only to the portion of the appraisal that opines value for the entire parcel.

in the market data approach. She then compared this information to the actual rates charged by the subject to derive market rents for each of the subject's apartment types. Ultimately, she concluded that the subject's rents were at market. To this, she added income from garages, carports and "other income" to derive a gross potential income of \$2,771,520. She then deducted a vacancy and credit loss of ten percent. This yielded an effective gross income of \$2,494,368.

From the effective gross income, expenses were deducted to arrive at a net operating income for the subject of \$1,578,093. Expenses included utilities, trash, repairs, administrative costs, payroll, advertising, insurance, management fees, and a reserve-for-replacement fund. Income was capitalized at 9.5%, including tax additur. The overall capitalization rate was derived from the sales used in the market data approach. When applied to the net operating income, this equated to a value under the income approach of \$16,600,000.

In reconciling her two approaches, Ms. McGee placed greatest weight on the income approach. She thus opined a value of \$16,600,000. From this, Ms. McGee took a deduction of \$300,000 for personal property, for a final value of \$16,300,000.²

On cross-examination, however, Ms. McGee admitted to two errors in her income approach. When questioned about her reserve allowance, Ms. McGee admitted that she failed to include a calculation for paving and concrete, although she had considered it appropriate to include. H.R. at 48-49. Second, when asked about the inclusion of turnover expenses, i.e., refurbishment expenses incurred when readying an

² The deduction for personal property was not included in Ms. McGee's appraisal report. See Appellant's Ex.1. She made the deduction during her testimony, representing that it had been inadvertently omitted during her "rush" to get the report delivered for hearing. H.R. at 45.

apartment for a new tenant, Ms. McGee admitted that she had not included those costs in her approach. H.R. at 60. While on the stand, Ms. McGee attempted to rehabilitate her income approach. She adjusted her reserve allowance and then added the refurbishment costs to the expense rate. After these corrections, she determined that her income approach supported a value of the subject property of \$15,400,000, including personal property. H.R. at 61. This would equate to a value of \$15,100,000 after the personal property deduction.

When asked how the new income approach value of \$15,400,000 would reconcile with the market data approach's value of \$16,800,000, Ms. McGee admitted that the difference between the two values "doesn't make sense." H.R. at 62. Nevertheless, she determined that both approaches were still valid. She concluded that the similarity in the complexes used in her market data approach could not be ignored. Thus, "even if you put the most weight on the income approach, you certainly have to take into consideration those factors in the sales comparison approach." H.R. at 62. Consequently, she determined that her report, as a whole, would support a value for the subject property of \$15,800,000. After a deduction for personal property, she therefore opined a final value of \$15,500,000.

We begin our review of this matter by noting that "[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566.

See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059. In determining value, we will 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

Upon review, we conclude that Westlake has failed to meet its burden to prove a right to an increase in the subject's valuation. As to the income approach, we find that the appraiser's admission of mistakes raises additional concerns about the reliability of the approach. Ms. McGee attempted to rehabilitate her income approach but did so under circumstances where she was not able to test the reasonableness of her corrections. Moreover, her errors, and her admitted rush to prepare the report, raise serious questions as to the accuracy and sufficiency of the data she used. The decision to include, omit, or alter income and expense-related data is one of the factors we must weigh when determining the weight to be given to an appraiser's opinion of value. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. Where, as here, we find that the appraiser has admitted to errors, the remainder of the

method employed is suspect in the absence of the appraiser's undertaking a reevaluation of the entire approach.

The admission of error in the income approach also calls into question the probity of the entire opinion of value. Ms. McGee maintains that the market data approach, which found value at \$16,800,000, is still viable and must be taken into consideration with the income approach. However, we note that there is a \$1,200,000 difference in the values found under the two approaches. Clearly, this indicates that an unresolved conflict still exists in the appraisal report. At best, we conclude that the results of the appraisal, as corrected, indicate that more research is needed or that a new analysis should be performed. The Appraisal of Real Estate, at 597. Whether there are additional errors in the income approach that have yet to be identified, or whether there are comparability or adjustment concerns with the market data approach, are questions that remain unanswered.³ Ultimately, we are unable to accept an ambiguity, such as this, that leaves it to this board to determine a value from a report without the ability to clearly identify the key factors that would enable us to reconcile the discrepancies between the approaches. In reaching this determination, we remind the parties that it is within our discretion to accept all, part, or none of an expert's testimony. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155. See, also, *Cardinal*, supra.

³ For example, Julie Sharp, Sturbridge's business manager, testified at the BOR hearing that some of the refurbishment expenses may have related to repairs made after two fires. S.T. at Hearing Record. We do not know how these expenses factor into the matter before us, and Ms. McGee had no opportunity to consider this information when making her original correction on refurbishment costs.

Upon review, we are compelled to find that Westlake has not met its burden of persuasion. *Columbus*, supra, *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. The remaining evidence of value before us is that contained in the statutory transcript, including the property record card, the BOR's hearing notes, and the evidence considered by the BOR, which includes the financial information supplied by Sturbridge. We note, too, that Sturbridge had supplied additional financial statements to this board.

The BOR appears to have accepted the evidence before it. The BOR suggests that it based its valuation upon a review of the financial statements and supporting documentation. We have reviewed all of the evidence submitted to the BOR, and conclude that the income and expense statements do support a value for the subject of \$15,000,000. *Lakota*, supra; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13. Upon review of the evidence as a whole, we therefore conclude that the value of the subject property is \$15,000,000. *Columbus*, supra.

The Board of Tax Appeals finds the true and taxable values of the subject property to be as follows for tax year 2003:

Parcels	211-21-014	TRUE VALUE	TAXABLE VALUE
LAND		\$ 2,194,000	\$ 767,900
BUILDINGS		<u>\$12,806,000</u>	<u>\$4,482,100</u>
TOTAL		\$15,000,000	\$5,250,000

We order the Auditor of Cuyahoga County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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