

ORIGINAL

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin City School District,	:	
	:	Case No. 2012-1432
Appellee,	:	
	:	
v.	:	Appeal from the Ohio Board of Appeals - Case No. 2009-Q-1282 to Case No. 2009-Q-1408
Franklin County Board of Revision and Franklin County Auditor,	:	
	:	
Appellees,	:	
	:	
and	:	
	:	
East Bank Condominiums II, LLC,	:	
	:	
Appellant.	:	

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**MERIT BRIEF OF APPELLEE BOARD OF EDUCATION OF THE DUBLIN CITY SCHOOL DISTRICT**

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## INTRODUCTION

The only significant issue in this appeal is whether an “investment value” appraisal of 21 individual condominium units constitutes competent and probative evidence of the true value of the individual units for real property tax purposes. Appellant’s appraiser, Thomas Horner, prepared an investment value analysis of the condominium units. Mr. Horner’s expressed purpose was to estimate the “net present value” of the property in Appellant’s hands. Mr. Horner never claimed in either his appraisal report or in his BOR or BTA testimony that his “net present value” estimate of Appellant’s property was equivalent to or constituted the market value, fair market value, or true value in money of the property. It is Appellant, and not its appraiser, Mr. Horner, who claims that Horner’s “net present value” estimate was equivalent to the “fair market value” or “true value” of the property (see Appellant’s BTA Brief, p. 1; Merit Brief, p. 5). The BTA correctly rejected Mr. Horner’s appraisal because Mr. Horner’s appraisal was an “investment value” appraisal. According to the BTA, Mr. Horner’s appraisal “arrives at an investment value, rather than real market value” of Appellant’s property (BTA Decision, p. 12). The decision of the BTA was correct in this respect and should be affirmed by this Court.

The investment value appraisal prepared by Mr. Horner has the following essential elements or components:

(A) The purpose of Mr. Horner’s appraisal was to determine the “net present” value of the “cash flow” that Appellant would have in pocket after a sale of the property (App. Tr. p. 79, 80 and 139; Horner’s Report, p. 1, 2, and IV-10; and App. Tr. p. 240; Horner, BTA Tr. p. 42);

(B) Mr. Horner first determined the estimated average sale price of the individual condominium units if placed on the market as of tax lien day. This value represents the “average

price [paid for the individual units] in their present condition on a retail basis if sold to individuals” (App. Tr. p. 71, BOR Tr. p. 6). Mr. Horner called this value the “retail price” of the property (App. Tr. p. 241; BTA Tr. p. 46), and called the estimated sale proceeds the “gross sale proceeds” of the sale of the individual units (App. Tr., p. 240; BTA Tr. p. 42). Mr. Horner estimated that the average retail value or market value of each unit as of January 1, 2008, was \$180.00 per square foot and the average unit-value was \$365,374, which was \$22,000 less than the Auditor’s average per-unit value of \$387,586;

(C) Mr. Horner then took three deductions (also referred by Horner as “discount factors” (App. Tr. p. 72; BOR Tr. p. 7) from the estimated sale price of the individual units to determine the “net present value” of the proceeds of the sale of the units to Appellant based on Appellant’s status as an “investor.” Each deduction is a “deduction from the anticipated retail price” of the units (App. Tr. p. 68; BOR Tr. p. 3). These three deductions were as follows:

(1) Costs of Sales and Holding Costs Deduction - This deduction amounted to five percent of the appraised market value (retail value) or estimated sale price of each unit (App. Tr. p. 137; Horner’s Report, p. IV-8). This deduction includes the “closing costs, sales commissions, holding costs” (App. Tr. p. 247; BTA Tr. p. 70), and “sales costs, legal fees, and holding costs” (App. Tr. p. 247; BTA Tr. p. 70), and “include commissions, legal fees, holding costs” and “real estate taxes” (App. Tr. p. 71; BOR Tr. p. 6).

(2) Time Value of Money Deduction - This deduction is for the “time value of money” (App. Tr. p. 247; BTA Tr. p. 70). The deduction is based on the time it takes to market and sell the property and the lost opportunity costs or lost value of the sale proceeds during this time.

(3) Developer’s Profit or Business Value Deduction - The third deduction is a deduction

from the retail value or gross sale proceeds of the property for some kind of developer's profit. According to Mr. Horner, this profit is "the anticipated profit from management/overhead required in the administration of sales" (App. Tr. p. 136; Horner's Report, p. IV-7).

Mr. Horner combined the Time Value of Money discount, (2) above, with the Developer's Profit discount, (3) above, into one total discount of "20%" per annum (App. Tr. p. 136; Horner's Report, p. IV-7). Mr. Horner claimed that his three deductions or discounts from the estimated gross sale proceeds from the property reduced the net "cash flow" for the estimated sale price of the units by "48 percent" (App. Tr. p. 137; Horner's Report, p. IV-8). The three deductions reduced the "net present value" of the property by a total of \$3,090,297 (App. Tr. p. 137; Horner's Report, p. IV-8).

An investment value analysis is the standard type of appraisal done for a lender in order for the lender to determine whether the estimated "net" sale proceeds in the hands of the owner would be sufficient to support the outstanding loan on the property. Mr. Horner testified that the "lender, you know, uses the net present value as the basis for lending purposes. That's their estimate of what the asset is worth" (App. Tr., p. 241; BTA Tr. p. 49). Mr. Horner testified that he had prepared a prior appraisal of Appellant's property for the Appellant's lender and his BTA appraisal, at issue in the present appeal, was "the same analysis that [he] would present to a lender so that they could use the analysis as part of their lending decisions" (App. Tr. p. 72; BOR Tr. p. 7) and Mr. Horner used "all the same numbers" in his present appraisal that he used in his appraisal for Appellant's lender (App. Tr. p. 246; BTA Tr. p. 67).

As indicated above, the BTA rejected Mr. Horner's investment value appraisal of Appellant's property. Appellant's appraisal is inconsistent with the constitutional definition of

“true value” and the definition of “true value” set forth in the statutes and prior decisions of this Court.

### **STATEMENT OF THE FACTS**

The East Bank Condominium project has a total of twenty-eight units, twenty-one of which are involved in the present appeal (Appellant’s Tr. p. 79; Horner’s Report, p. 1). Appellant describes these units as “luxury” condominiums (App. Tr. p. 224; Horner’s Report, appendix). There are a number of different sizes of units (see App. Tr. p. 134; Horner’s Report, p. IV-4 for the different unit sizes).

The Franklin County Auditor’s appraised values for the condominiums ranged from a low of \$240,000 (with 1,290 square feet of space) to a high of \$533,200 (with 3,087 square feet of space). The average living space in a unit is 2,105 square feet (App. Tr. p. 102; Horner’s Report, p. II-2). For comparative purposes, the Auditor’s average value per-unit was \$387,586 and the average value per-square-foot was \$190.92. Appellant’s appraiser, Thomas Horner, estimated that the market value of each unit as of January 1, 2008, was \$180.00 per square foot and the average unit-value was \$365,374, which was \$22,000 less than the Auditor’s value (\$387,586). Mr. Horner’s value (\$365,374) was what Horner called the “retail value” of the units. He then took the three deductions described above from this retail value to arrive at his estimate of the “net present value” of the sale proceeds of each unit to Appellant.

Three units sold individually during 2007, prior to tax lien day, for an average of \$200 per square foot, which is \$10 per square foot more than the Auditor’s value. At the time of the BOR hearing (June 17, 2009), Appellant was asking “in the neighborhood of \$190 a square foot” (App. Tr. p. 73; BOR Tr. p. 8), which is what the Auditor had appraised the units for as of tax

lien day. Appellant's witness, George Mr. Babyak, testified at the BOR hearing that one unit had recently sold for \$410,000 (App. Tr. p. 74; BOR Tr. p. 9). Appellant had refused prior offers to purchase individual units at "\$170" a square foot (App. Tr. p. 73; BOR Tr. p. 8).

1. Horner's Appraisal Report

As indicated above, Appellant's appraiser, Thomas Horner, concluded that the individual units had an average market value of \$365,374 on January 1, 2008, which was an average value of \$180.00 per square foot. Mr. Horner stated that "[t]his is the average price in their present condition on a retail basis if sold to individuals" (App. Tr. p. 71; BOR Tr. p. 6). Mr. Horner called this value the "retail price" of the property (App. Tr. p. 241; BTA Tr. p. 46), and called the estimated sale proceeds of \$365,374 for the average unit the "gross sale proceeds" (App. Tr. p. 240; BTA Tr. p. 42).

Mr. Horner stated that "[t]he purpose of his appraisal is to estimate the net present market value of [the] 21 units" (App. Tr. p. 79; Horner's Report, p. 1) and his final opinion of value was for the "net present market value \*\*\* as is (21 units)" (App. Tr. p. 139; Horner's Report, p. IV-10). Mr. Horner called his analysis a "cash flow analysis" to the investor (App. Tr. p. 241; BTA Tr. p. 47), and a "discounting cash flow" analysis (App. Tr. p. 69; BOR Tr. p. 4).

2. Mr. Horner's Investment Value Calculations

Mr. Horner's investment value analysis resulted in the following values:

Estimated market value or sale price of individual units (average)	\$365,374
Average deduction to finish units (customer finish)	<u>\$55,217</u>
Average estimated value per unit as unfinished	\$309,157
Horner's average "investment value" deduction per unit	<u>48%</u>
Horner's average "investment value" per unit	\$147,619
Total estimated investment value of 21 units	\$3,090,297

Mr. Horner's investment value analysis, in his own words, "results in a 48 percent

discount from the actual retail price estimate” (App. Tr. p. 241; BTA Tr. p. 47). This 48 percent reduction from the market value of the units was due to the three investment value deductions Mr. Horner took against the estimated sale prices of the individual units. These deductions were described in the Introduction and were the following: (1) costs of sales and holding costs deduction (5%); (2) the time value of money deduction; and the (3) developer’s profit or business value deduction based on “the anticipated profit from management/overhead required in the administration of sales” (see App. Tr. p. 136; Horner’s Report, p. IV-7).

Horner combined the time value of money discount, (2) above, with the developer’s profit discount, (3) above, into one total discount of “20%” per annum (App. Tr. p. 136; Horner’s Report, p. IV-7). Mr. Horner chose not break these two deductions down because “lenders and investors are requiring this as a single item because that is the way the reporting agency currently view this line item” (App. Tr. p. 72; BOR Tr. p. 7). Horner testified that the “time value of money” deduction ranged from “8 to 10%” and the developer’s profit deduction ranged from “10 to 15%” (App. Tr. p. 72; BOR Tr. p. 7). According to Horner, the 20 percent figure is a “blend” of the time value of money and the developers profit discounts (App. Tr. p. 72; BOR Tr. p. 7).

The Board of Revision accepted Mr. Horner’s investment value appraisal based on the following motion by the County Auditor and agreed to by the other members of the BOR:

“\*\*\* Mr. Horner presented an appraisal on his final conclusion of value for all 21 condos combined was \$3,100,000. We were given no additional information on behalf of the counter complainant school board in this matter, and because we recognize Mr. Horner as being an expert in the area of real estate appraisal, the auditor would recommend accepting his final conclusion of value of \$3,100,000 \*\*\*” (App. Tr. p. 76; BOR Tr. p. 11).

The BTA properly rejected Mr. Horner’s “investment value” and ordered the BOR to reinstate the County Auditor’s appraised values for the condominium units.

## LAW AND ARGUMENT

### Appellee's Reply to Appellant's Assignments of Error No. 1, 2, 3, and 4:

An Investment Value Appraisal Does Not Constitute Competent and Probative Evidence of the True Value of Real Property. The BTA Is Not Required to Adopt the Value Set Forth in a Investment Value Appraisal.

Appellant argues that the BTA was required to accept Mr. Horner's investment value appraisal and to value the condominium units using Mr. Horner's three "net present value" deductions and discounts. The BTA rejected Mr. Horner's investment value appraisal, holding that:

"such an analysis arrives at an investment value, rather than real market value. As noted in *The Appraisal of Real Estate*:

"Investment value represents the value of a specific property to a particular investor. As used in appraisal assignments, investment value is the value of a property to a particular investor based on that person's (or entity's) investment requirements. In contrast to market value, investment value is value to an individual, not necessarily value in the market place. '*The Appraisal of Real Estate* (13th Ed. 2008) at 28.'" (BTA Decision, p. 12)

Appellant asks this Court to force the BTA to accept Horner's appraisal despite the fact that this Court has consistently held that it will not act as a "super-BTA." In *DAK, PLL v. Franklin County Bd. of Revision*, 105 Ohio St. 3d 84, 2005 Ohio 573, 822 N.E.2d 790, this Court stated at [P16]: "DAK is asking this court to review the evidence presented to the BTA, act as a super board of tax appeals, and reweigh the evidence. This court does not sit either as a super BTA or as a trier of fact de novo." In *Cambridge Commons Ltd. Partnership v. Guernsey County Bd. of Revision*, 106 Ohio St. 3d 27; 2005 Ohio 3558; 830 N.E.2d 1147, this Court stated that it "is not a super BTA or a trier of fact de novo" and that it "will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the

record that such decision is unreasonable or unlawful” (P17). In *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196 [P31], this Court once again emphasized that the property owner has the burden to prove the true value of the property; that the County Auditor does not have to defend his or her initial value; and that the Auditor’s value is the “default valuation.” The last principle was set forth in paragraph 31 of the Court’s decision, which states, in part, that “\*\*\* the county’s appraised value thus forms in most cases a default valuation that must be preferred and adopted if the appellant at the BTA fails to prove a different value of the property \*\*\*.”

1. Mr. Horner’s Three Deductions from the Market Value of the Property to Determine its Net Present Value or Investment Value Cannot Be Used To Determine True Value.

Mr. Horner’s investment value appraisal of Appellant’s property is not consistent with the constitutional and statutory definition of “true value” for real property tax purposes. Section 2, Article XII of the Ohio constitution states that “[l]and and improvements thereon shall be taxed by uniform rule according to value.” In *State, ex rel. Park Investment Co., v. Board of Tax Appeals* (1964), 175 Ohio St. 410, 412, 195 N.E.2d 908; 25 Ohio Op. 2d 432, this Court held that “true value” was “the amount for which that property would sell on the open market by a willing seller to a willing buyer.” According to this Court:

“In the last analysis the value or true value in money of any property is the amount for which that property would sell on the open market by a willing seller to a willing buyer. \*\*\* Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.”

“True value” is “the amount for which that property would sell on the open market” and, as such, it cannot be the “net present value” of the sale proceeds in the seller’s hands after taking

Mr. Horner's three "investment value" deductions. The statutes and the administrative code rules also make it clear that true value is based on the "price" to be paid for the property and not on the "net" proceeds of the sale which the seller has in pocket after expenses connected with a sale of the property, a time value of money deduction, and developer's profit are deducted from the sale price. R.C. 5713.03 states that the county auditor "shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes." Administrative Code Rule 5703-25-05, a rule of the Tax Commissioner adopted under R.C. 5715.01, states that "'True value in money' or 'true value' \*\*\* is the price at which property should change hands on the open market between a willing buyer and a willing seller \*\*\*." Neither provision would authorize a deduction from the sale price for costs of sale and holding costs, the time value of money, or a developer's profit.

A. Costs of Sale and Holding Costs Deduction

Mr. Horner first deducted five percent from the estimated market value of each condominium for costs of sales, holding costs, real estate commissions, legal fee, and whatnot.

In *Bernard R. Ruben vs. Franklin County Board of Revision, et al.* (November 8, 1996), BTA Case No. 95-P-273, 1996 Ohio Tax Lexis 1346, and in *Buckeye Grove Shopping Center, LLC, vs. Franklin County Board of Revision, et al* (July 12, 2002), BTA Case Nos. 00-R-1552; 00-R-1572; 00-R-1573; 00-R-1614; 00-R-1615, 2002 Ohio Tax Lexis 1259, the BTA rejected the use of a cost of sales deduction from the appraised value or the actual sale price of real property. In *Bernard R. Ruben*, supra, the BTA stated as follows:

"The appraisal takes a deduction \*\*\* for items such as real estate taxes and real estate commissions.\*\*\* These expenses are normally incurred by all property owners. The question becomes: Why should a deduction be allowed from a sales price for items that all property owners are likely to incur? No testimony has been

offered to us on this point. No explanation is given. We fail to understand the justification for reducing a sales price by subtracting real estate taxes, real estate commissions and the like if 'market value' or 'true value' is our required objective. These costs are present within virtually all market transactions. By use of this method the appraisal concludes a value it refers to as the 'present worth of unsold lots.' This value, however, appears to equate more with 'investment value,' not 'true value.' **Investment value is contrasted from market value: 'In contrast to market value, investment value is value to an individual, not value in the marketplace.'** *The Appraisal of Real Estate* (Tenth Edition), page 23. (Emphasis added.)”

#### B. Time Value of Money Deduction

Mr. Horner's deduction for the "time value of money" is also improper. One again, it is the estimated "sale price" of the property that is relevant in determining the true value of real property, and not the "present value" of the proceeds of the sale price discounted back to tax lien day. All property being appraised as of tax lien day is expected to take some time to market and sell. When one property is being appraised, for instance, the time needed to market and sell the property is called either the "marketing period" or the "exposure time" of the property (for definitions of these terms, see App. Tr. p. 140; Horner's Report, p. IV-11). When numerous properties are being offered for sale at the same time, the market period for the set of properties is typically called the "absorption period" (App. Tr. p. 135; Horner's Report, p. IV-6). According to Mr. Horner, "[o]verall, absorption equates to 0.39 units per month, . . . The overall absorption period [of the 21 units] is 4.5 years. *Id.* Therefore, it would appear that according to Mr. Horner, the more units owned by a single entity, the larger the discounts that owner will receive on the gross sale proceeds. Conversely, an entity that only owns 1 unit would have their unit valued with no discounts.

In any case, R.C. 5713.03 provides that the "sale price" of property involved in a sale taking place "within a reasonable length of time, either before or after the tax lien date" is the

“true value” of the property. This statute does not authorize a deduction from the sale price for the time value of money.

Appellant’s appraiser, Mr. Horner, estimated that Appellant could sell all twenty-one individual condominium units within a four and one-half year period after tax lien day. That is “a reasonable length of time \*\*\* after the tax lien date” as set forth in R.C. 5713.03, given that Appellant had placed twenty-one units on the market at the same time. The number of units placed on the market at the same time will have an effect on the market period that it takes to sell all the units (absorption period) but will not necessarily affect the time it takes to sell any one of the individual units which is actually what is supposed to be valued in this case.

Neither one of these deductions is related to the business or investment community in the State of Ohio. All owners of real estate in Ohio incur costs when attempting to sell the property, so all such owners would, under Mr. Horner’s theory, be entitled to a standard costs-of-sales deduction from the appraised true value of their property. All real estate assumed to be placed on the market on tax lien day will take some time to sell and under Mr. Horner’s theory all would be entitled to a time value of money deduction because, in Mr. Horner’s words, the income from the projected sale “is not to be received immediately” – that is, on tax lien day (App. Tr. p. 72; Horner, BOR Tr. p. 7).

### C. Developer’s Profit Deduction

The last deduction against the market value of the condominium units taken by Mr. Horner was his developer’s profit deduction based on “the anticipated profit from management/overhead required in the administration of sales” (App. Tr. p. 136; Horner’s Report, p. IV-7). Mr. Horner does not provide any justification for this kind of deduction. This appears

to be some kind of “business value” component which is claimed to be based on the intangible value of Appellant’s management in place. This kind of deduction from the appraised value of real property is not proper in Ohio.

First, a business-value or business-enterprise value deduction that is based on the management of the property makes little sense because all real estate investments must be managed, including a single family residential home that happens to be rented. If Appellant is entitled to a deduction to reflect the “profit from management/overhead” - whether that management is involved in the sale of the property or the actual operation of the property - then so too is every investor owned property in Ohio. All this would result in, of course, is an automatic 15 percent or so reduction in the appraised value of all investor-owned real property in Ohio. In the absence of a statute providing for any such deduction, no such deduction should be allowed to Appellant.

Second, all components of the “true value” of real property in Ohio must be based on “prudent” management of the property. In *Dublin Senior Community, Limited Partnership, Appellant, vs. Franklin County Board of Revision, et al.* (December 6, 1996), Case No. 95-S-390, 1996 Ohio Tax Lexis 1461 (reversed on other grounds, *Dublin Senior Community Ltd. Partnership v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455, 459, 687 N.E.2d 426), the BTA held that “the true value of property is to be determined based upon a stabilized vacancy with prudent management” [p. 12]. The Tax Commissioner’s rules relating to the true value of real property require that value be based on “typical management in the locality” (Adm. Code Rule 5703-25-11(E)) and “under normal management” (Adm. Code Rule 5703-25-12(D)(1)). One of the standard definitions of market value includes a prudent action

requirement. In *Alliance Towers, Ltd. v. Stark County Bd. of Revision* (1988), 37 Ohio St. 3d 16, 21, 523 N.E.2d 826, 831, this Court cited the definition from *The Appraisal of Real Estate* (8 Ed. 1983) 33, and *The Dictionary of Real Estate Appraisal*, American Institute of Real Estate Appraisers (1984) 195, which states that “market value” the “probable price” agreed to by “a buyer and seller each acting prudently”. Prudent management of the property includes the marketing and management skills that appear to be the basis of Mr. Horner’s deduction of “the anticipated profit from management/overhead required in the administration of sales.” For real property tax purposes, the owner of real property is already entitled to a deduction from gross rental income for an operating expense management fee in an appraisal of the property using an income approach. Therefore, any part of “business value” or “business enterprise value” that is attributable to prudent management is, and always has been, an integral part of “true value” and there is no such thing as a separate “business value” in Ohio that is attributable to the prudent management of the “business” that is said to be conducted on the real property or that is involved in placing the property on the market.

Finally, whatever this “profit from management/overhead” component may be, it is not an asset “that could actually be severed from the real estate and be transferred or retained separately” as required by this Court in *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007 Ohio 5249, 875 N.E.2d 85 [P25]. Appellant was not entitled to have the appraised value of its property reduced because of “the anticipated profit from management/overhead required in the administration of sales”.

D. Bulk Sale Discount Factors - There is a reference in the BTA’s decision to, and much discussion in Appellant’s Merit Brief about, “bulk sale discount factors.” Mr. Horner,

Appellant's appraiser, said his appraisal resulted in a "bulk purchase value" (App. Tr. p. 130, Horner's Report, p. IV-1). However, he used the word "bulk" simply because a single entity owned all twenty-one of the condominium units in question: according to Mr. Horner, "[s]ince **all the units are owned by one entity**, we have applied a bulk discount through the discounting cash flow which I will explain later to come up with the estimated 'as is' value" (App. Tr. p. 69; Horner, BOR Tr. p. 4) emphasis added. It would appear therefore, that if Appellant only owned 1 unit, that Mr. Horner would not have applied any of these discounts resulting in a far higher value for the single unit and consequently a non-uniform value based solely upon the number of units owned.

The "discount" factors to which Mr. Horner referred were specifically the three investment value deductions that Mr. Horner took against the estimate market value of each of the twenty-one condominiums. The three investment value deductions have nothing to do with a "bulk sale" in the ordinary sense. These three deductions were not used to determine what a single buyer would pay for the property as part of a lump-sum purchase of the twenty-one units, but rather what Appellant would have in pocket after the costs of sales, time value of money, and developer's profit deductions. Mr. Horner opined that a purchaser would pay an average of \$365,374 per unit for each of the twenty-one units, for a total of \$7,672,880 (App. Tr. p. 134, Horner's Report, p. IV-5). The three investment value deductions Horner took against this figure reduced the sale proceeds by 48 percent, or by \$3,090,297 (App. Tr. p. 137, Horner's Report, p. IV-8).

For these reasons, the BTA properly rejected Horner's appraisal. The appraisal did not constitute competent and probative evidence of the true value of Appellant's property for real

property tax purposes.

2. The BTA Properly Reversed The Decision Of The Board Of Revision And Reinstated The County Auditor's Appraised Value Of Appellant's Property.

The Franklin County Board of Revision expressly accepted Mr. Horner's investment value as the true value of Appellant's condominiums "because we recognize Mr. Horner as being an expert in the area of real estate appraisal" (App. Tr. p 76; BOR Tr. p. 11). The BOR clearly erred in doing so because Mr. Horner's appraisal did not constitute competent and probative evidence of the true value of Appellant's property. As such, the BTA was required to reverse the decision of the BOR and to reinstate the County Auditor's original appraised values because Appellant failed to carry its burden of proof before the BOR or before the BTA.

A board of revision is a creature of statute and is limited to the powers conferred upon it by statute. *Morgan Cty. Budget Comm. v. Bd. of Tax Appeals* (1963), 175 Ohio St. 225, 24 Ohio Op. 2d 340, 193 N.E.2d 145, paragraph three of the syllabus. A board of revision cannot grant a reduction in value unless it has the lawfully required evidence before it. When a reduction is granted in the absence of any such evidence, the BTA is required to "reinstate" the county auditor's original appraised value for the property. This requirement was recently referred to by this Court in footnote 2 in paragraph 35 of the decision in *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 127 Ohio St. 3d 63; 2010 Ohio 4907; 936 N.E.2d 489, 496-497:

"[2] See *Colonial Vill., Ltd. v. Washington County Bd. of Revision*, 123 Ohio St. 3d 268, 2009 Ohio 4975, P23-24, 31, 915 N.E.2d 1196 (BTA should reinstate the county's valuation of property if the record does not contain affirmative evidence permitting an independent valuation of the property); and in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566-567, 2001 Ohio 16, 740 N.E.2d 276 (BTA may not adopt board of

revision's changes to the auditor's valuation when those changes are not supported by evidence)."

Contrary to Appellant's claim, the BTA did not shift the burden of proof to Appellant because Appellant never satisfied its initial burden to prove that Horner's investment value or net present value appraisal was evidence of the true value of the property. As this Court held in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566, 2001 Ohio 16, 740 N.E.2d 276, a county board of revision must have competent and probative evidence of the true value of the property presented to it before it can reduce the true value of the property, and the BTA cannot affirm a decision of a board of revision "that was not supported by any evidence." Neither the Appellee County Auditor nor Appellee Board of Education had any duty to present appraisal evidence to the BTA and Appellant was not entitled to a reduction in value simply because no such evidence was presented. *DAK, PLL, v Franklin County Board of Revision*, 105 Ohio St. 3d 84; 2005 Ohio 573; 822 N.E.2d 790, and *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, 10 O.O.2d 427, 164 N.E.2d 741.

Appellant cites to the case of *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64, 1999 Ohio 252, 717 N.E.2d 293, for support of its claim that Mr. Horner's net present value or investment value appraisal is valid for real property tax purposes. The issue in *Pingue* was whether the single lump-sum price paid for forty-four condominium units was the true value of the units under the sale price definition of true value set forth in R.C. 5713.03. The issue in the present appeal is entirely different. The issue here is whether Mr. Horner's "net present value" of the projected sale price - as reduced by Mr. Horner's three investment value deductions, which totaled 48 percent of the projected sale price, resulting in a reduction of \$3,090,297 -

constituted the true value in money of the condominiums for real property tax purposes. Mr. Horner's net present or investment value of Appellant's property simply did not constitute the true value of the property. Since there was no single lump sum sale price paid for the 21 units owned by Appellant, *Pingue* simply has no application in this case.

Appellant addresses and attempts to distinguish a previous decision of the BTA, *M/I Homes of Cincinnati, LLC, vs. Warren County Board of Revision and the Warren County Auditor* (September 21, 2010), BTA Case No. 2009-V-3796, 2010 Ohio Tax Lexis 1583. First Appellant attempts to distinguish the collective property owned by *M/I Homes* and the property owned by Appellant. Appellant states: "MI Homes owned 28 individual vacant subdivision lots, whereas East Bank owns a single economic unit containing 21 unfinished units." App. Brief at 13. While Appellant uses different adjectives in an attempt to differentiate *M/I Homes*, the fact of the matter is that the principles are the same in both cases. *M/I Homes* owned 29 individual lots in the same subdivision and was selling them individually. Appellant in this case owns 21 condominiums in the same building and is selling them individually. Appellant's property does not comprise a "single economic unit" just like the lots in *M/I Homes* did not comprise a "single economic unit." Appellant is not *operating* these condominiums in any fashion other than to market them for sale on an individual basis. Appellant makes much of the fact that the condominiums in the present case "are contained in a single building, the units all share the same infrastructure . . . ." However, these factors will remain true after Appellant sells the units to individuals and they certainly could not comprise a "single economic unit" after they are sold to different individuals.

With regard to discounting methods, while the discounting methods used by the

appraisers in *M/I Homes* may have varied somewhat from the discounting methods used by Mr. Horner in the present case, the fundamental ruling in *M/I Homes* still applies here. As the BTA aptly pointed out in *M/I Homes*:

**M/I's argument supports a theory that lacks uniformity: any one of the individual parcels, when held by an entity which owns several more in the same subdivision, should be valued differently because a singular entity holds title.** Koon's correlation of discounts applied to bulk sales stands upon the premise that the more parcels involved in a bulk sale, the greater the discount. Based upon M/I's argued premise on January 1, 2008, parcel 13-34-217-035-0 in the hands of an individual is rightfully valued at \$ 38,000 based on market sales; however, the same parcel in the hands of M/I would be valued at \$ 24,330, given M/I's ownership of 28 other similar parcels and the added inclusion of bulk sale and DCF theories; further, the same parcel would be discounted to \$ 7,600 (80 percent) if M/I had, for example, 100 other parcels in its inventory, after inclusion of bulk sale and DCF theories. See S.T., Ex. B at V-7. Arguably, if its theory holds true, all the vacant parcels in M/I's Warren County inventory (beyond the 29 in Lakeside Landing subdivision) should be valued in bulk and at a discount, given not all could sell on January 1, 2008.

There is simply no legal authority under Ohio's constitutional and statutory requirement to value real property at its "true value" (Article 12, Section 2 of the Ohio Constitution) to support the claim that true value is what the property would sell for in the open market at its "net present value" and subject to "discounts" for: (1) the cost to sell the property or to hold the property, or by sales commissions, and so forth, and (2) by any amount attributable to "the anticipated profit from management/overhead required in the administration of sales". These deductions are not authorized by law.

Appellee's Reply to Appellant's Assignment of Error No. 7:

The BTA Is Not Required to Accept the Opinion of an Appraiser Concerning the Cost to Finish a Condominium Unit without Any Facts or Figures to Support That Opinion or That the True Value of the Unit Must Be Reduced on a Dollar-for-Dollar Basis by the Amount of the Costs to Finish the Unit.

The last argument made by Appellant is that the BTA erred in refusing to reduce the

value of its property on a dollar-for-dollar basis by what its appraiser said was the cost to finish the condominium units. Appellant's witness, George Babyak, a partner in Appellant, testified that each condominium had a certificate of occupancy, which meant that it was capable of being occupied by a resident and could be sold by Appellant (App. Tr. p. 233; BTA Tr. p. 14). However, Mr. Babyak stated that the twenty-one units were "in an unfinished state" (App. Tr. p. 67, BOR Tr. p. 2) in that each needed a standard customer finish, which the buyer was to select upon purchasing a unit. This included wall coverings, floor coverings, kitchen cabinets, and such (App. Tr. p. 74; BOR Tr. p. 9, and App. Tr. p. 234; BTA Tr. p. 20).

Based on "estimated finish costs" given to him by the property owner, Mr. Horner deducted an average of \$56,217 from the value of each unit to account for what he was told would be the cost to finish the units (App. Tr. p. 134; Horner's Report, p. IV-5). This data are set forth on page IV-4 of Horner's appraisal report (App. Tr. p. 133). Mr. Horner reduced his estimate of the value of the units dollar-for-dollar based on the "estimated finish costs." Mr. Babyak, who provided this information to Mr. Horner testified before both the BOR and the BTA on Appellant's behalf. However, he never stated where the "estimated finish costs" came from, or how they were calculated, or whether the value of each unit should be reduced on a dollar-for-dollar basis due to the "estimated finish costs." For instance, Mr. Babyak never stated that the "estimated finish costs" did not include a large amount of profit to Appellant. At the very least, this data show that Appellant's claim that the units were only "50%" or "60%" complete was not correct (see Appellant's Merit Brief, p. 2 and 17). All of the units were substantially complete and had an occupancy permit.

Appellant argued that the BTA was required to deduct the "estimated" costs to finish the

units on a dollar-for-dollar basis from the appraised value of the property. The BTA refused to accept this argument. In citing standard authority, the BTA concluded that Appellant had presented no evidence to show that the true value of the property would be reduced on a dollar-for-dollar basis by the “estimated finish costs” given by Appellant to Mr. Horner. Cases cited by the BTA were *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 1996 Ohio 226, 661 N.E.2d 1095; and *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, 1997 Ohio 376, 683 N.E.2d 1076; as well as several of its own decisions (see BTA Decision, p. 14). In *General Motors Corp. v. Cuyahoga County Bd. of Revision*, 74 Ohio St. 3d 513, 515; 1996 Ohio 287; 660 N.E.2d 440, 443, this Court affirmed the BTA’s refusal to find that “the cost here must be deducted on a dollar-for-dollar basis without any supporting evidence on its effect on market value.” In *Hotel Statler v. Cuyahoga County Bd. of Revision*, 79 Ohio St. 3d 299, 303, 1997 Ohio 388, 681 N.E.2d 425, 429, this Court affirmed the BTA’s decision that there was no “one-to-one relationship between the cost” to finish a property “and the value of the real property.” In *Bd. of Educ. v. Montgomery County Bd. of Revision*, 106 Ohio St. 3d 157, 2005 Ohio 4385, 833 N.E.2d 271, this Court stated that “[t]he BTA’s decision in a valuation case such as this will be undone by this court ‘only when it affirmatively appears from the record that such decision is unreasonable or unlawful.’”

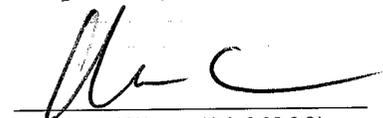
Had Appellant come before the BTA demanding a reduction in the true value of each condominium unit by \$56,217 based solely upon the testimony of Mr. Horner and “estimated finish costs” he said he was given by Appellant, the BTA would certainly have rejected that claim. The BTA would have demanded some evidence showing that the data given to Mr. Horner were accurate and how the data were calculated. The BTA was simply not required to

accept Mr. Horner's hearsay testimony relating to the "estimated finish costs" and or to accept the \$56,217 per-unit deduction. The Franklin County BOR may have accepted Horner's claim because it appears to have accepted Horner's appraisal of the property in its entirety without giving sufficient attention to the lack of any credible data that supported the \$56,217 deduction on per-unit basis. Appellant had the duty to prove that the \$56,217 deduction it demanded was correct and it failed to do so.

**CONCLUSION**

For the reasons set forth herein, this Court is respectfully requested to affirm the decision of the Board of Tax Appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Brief of Appellee was served upon Marion Little, Zeiger, Tigges & Little, 41 South High Street, Suite 3500, Columbus, Ohio, 43215 and upon Paul M. Stickel, Assistant Prosecuting Attorney, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio, 43215, and upon Mike DeWine, Ohio Attorney General, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215, by regular US mail, postage prepaid, on day of this 22 day of January, 2013.



Mark H. Gillis  
Attorney for Appellee  
Board of Education

Page's Ohio Revised Code Annotated:  
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Current through Legislation passed by the 129th Ohio General Assembly  
and filed with the Secretary of State through File 157 and 189  
\*\*\* Annotations current through September 28, 2012 \*\*\*

CONSTITUTION OF THE STATE OF OHIO  
ARTICLE XII. FINANCE AND TAXATION

**Go to the Ohio Code Archive Directory**

*Oh. Const. Art. XII, § 2 (2013)*

§ 2. Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money 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 voting on such proposition, or when provided for by the charter 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 therefrom, 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.

## **5713.03 [Effective Until 3/27/2013] County auditor to determine taxable value of real property.**

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and 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. The auditor 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 may 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. The auditor 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.

Amended by 129th General Assembly File No. 127, HB 487, § 101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

See 129th General Assembly File No. 127, HB 487, §757.51.

## **5713.03 [Effective 3/27/2013] County auditor to determine taxable value of real property**

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and 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. The

auditor 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 may 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:

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Amended by 129th General Assembly File No. 186, HB 510, § 1, eff. 3/27/2013.

Amended by 129th General Assembly File No. 127, HB 487, § 101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

See 129th General Assembly File No. 186, HB 510, §3.

See 129th General Assembly File No. 127, HB 487, §757.51.

## **5703-25-05 Definitions.**

As used in rules 5703-25-05 to 5703-25-17 of the Administrative Code:

(A) "True value in money" or "true value" means one of the following:

(1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.

(2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property.

(B) In compliance with the provisions of sections 5713.01, 5713.03, 5715.01 and 5715.24 of the Revised Code, the "taxable value" of each parcel of real property and the improvements thereon shall be thirty-five per cent of the "true value in money" of said parcel as of tax lien date in the year in which the county's sexennial reappraisal is or was to be effective beginning with the tax year 1978 and thereafter or in the third calendar year following the year in which a sexennial reappraisal is completed beginning with the tax year 1978.

(C) "Computer assisted appraisal systems" – A method in which the value of a property is derived by any or all of the following computerized procedures:

(1) Multiple regression analysis using sales to form the data base for valuation models to be applied to similar properties within the county.

(2) Computerized cost approach using building cost and other factors to value properties by the cost approach as defined in this rule.

(3) Computerized market data approach where a subject property is valued by adjusting comparable sales to subject by adjustments based on regression or other analyses.

(4) Computerized income approach using economic and income factors to estimate value of properties.

(5) Computerized market analysis to provide trend factors used by appraisers as basis of market valuation.

(D) "Cost approach" – A method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements: deducting therefrom the estimated physical depreciation and all forms of obsolescence if any; and then adding the market value of the land. This approach is based upon the assumption that the reproduction cost new normally sets the upper limit of building value provided that the improvement represents the highest and best use of the land.

(E) "Effective tax rate" – Real property taxes actually paid expressed as a percentage rate in terms of actual true or market value rather than the statutory rate expressed as mills levied on taxable or assessed value. In Ohio four factors must be considered in arriving at the effective tax rate:

(1) The statutory rate in mills;

(2) The composite tax reduction factor as calculated and applied under section 319.301 of the Revised Code;

(3) The percentage rollback prescribed by section 319.302 of the Revised Code;

(4) The prescribed assessment level of thirty-five per cent of true or market value.

(F) "Income approach" – An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

(1) The reasonableness of the estimate of the anticipated net annual incomes;

(2) The duration of the net annual income, usually the economic life of the building;

(3) The capitalization (discount) rate;

(4) The method of conversion (income to capital).

(G) "Market data approach" – An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

(1) The degree of comparability of each property with the property under appraisal;

(2) The time of sale;

(3) The verification of the sale data;

(4) The absence of unusual conditions affecting the sale.

(H) "Replacement cost"

(1) The cost that would be incurred in acquiring an equally desirable substitute property;

(2) The cost of reproduction new, on the basis of current prices, of a property having a utility equivalent to the one being appraised. It may or may not be the cost of a replica property;

(3) The cost of replacing unit parts of a structure to maintain it in its highest economic operating condition.

Eff 10-20-81; 9-18-03

## **5703-25-11 Valuation of land.**

(A) General – All land shall be appraised at its true value in money as of tax lien date of the year in which the appraisal or update of values is made. In arriving at the true value in money the county auditor shall consider, along with other factors, not only the present use of the land but also its highest and best probable legal use consistent with existing zoning and building regulations. The requirement that land be classified under rule 5703-25-10 of the Administrative Code according to its principal use shall not affect the requirement of this rule that it be appraised at its highest and best probable legal use. The present improvements to the land, the demand and supply of land, the demand and supply of land for such use, financing method, the length of time until developed and the cost of development are factors that should be considered in determining the highest and best probable legal use of the land.

(B) All relevant facts tending to influence the market value of land should be considered, including, but not limited to, size, shape, topography, soil and subsoil, drainage, utility connections, street or road, land pattern, neighborhood type and trend, amenities, zoning, restrictions, easements, hazards, etc.

(C) Land may be valued by four principal methods:

(1) The preferred method is the market data or comparative process requiring the collection and analysis of actual arms-length sales and other market information on comparable sites made within a reasonable time of the date of the appraisal with adjustments for variations. This method should be used except in unusual circumstances.

(2) The allocation method in which the land value is estimated by subtracting the value of the improvements from a known sale price. This is primarily used in an area where there are very few sales of vacant land and the improvements to land are of a generally uniform type.

(3) The land residual method estimates land value by capitalizing the residual income imputable to land as derived from actual or hypothetical new improvements assuming highest and best use. This method is useful in arriving at land value when there are few or no sales or as a check against the market approach.

(4) The development method can be used in valuing land ready for development by estimating value as fully developed and subtracting the development, administrative and entrepreneurial costs.

(D) 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 public highway as provided in section 5713.04 of the Revised Code.

(E) Agricultural – Agricultural lands shall be classified and valued according to their characteristics and capabilities for use, based primarily on what they will produce under average conditions and typical management in the locality. Assessors should obtain and use information available relating to soil classification, land capabilities, land use and soil maps, production records, price records and other information from the Ohio state university, Ohio agricultural research and development center, county A.S.C., soil conservation service, soil and water conservation districts and other sources. All agricultural lands shall first be valued according to their true value. Then if the owner applies to have the land valued according to its current value the land has for agricultural use the land may be valued according to rules 5703-25-30 to 5703-25-36 of the Administrative Code.

(F) Industrial – Additional factors that shall be considered in valuing industrial land are the convenience of location to shipping and labor sources as well as the proximity to related industries. Land not used in manufacturing shall be valued according to its value for use as parking lots, storage, waste or dump area, or other uses both present and probable.

(G) Commercial – In the valuation of commercial sites the location in the trading area, the purchasing power of the entire area, and the relative availability of sites shall be considered in addition to previously mentioned factors.

(H) Residential – Residential sites located in suburban and rural areas shall be valued by using the same factors that are used in valuing urban residential lands with the same facilities and amenities.

(I) Coal, mineral deposits, oil and gas – Coal and minerals shall be valued in the same manner and on the same price level as other real property. Some of the factors that shall be considered in valuing coal and mineral deposits are the quality and extent of the deposit, the active working area which at current production will be mined within five years, active reserves that will not be worked for five to ten years, inactive reserves that will not be worked until after ten years, and mined out or depleted areas.

Separate oil and gas rights shall be valued in accordance with the annual entry of the tax commissioner in the matter of adopting a uniform formula in regard to the valuation of oil and gas deposits in the eighty-eight counties of the state.

When rights to coal, minerals, oil and gas have not been separated from the fee, the value of the mineral deposits shall be added to the value of the surface.

(J) Pricing units and preparation of land unit price schedules, and depth tables. Land unit prices (price per acre, square foot or front foot) used shall be those appropriate and typically used in the market in pricing similar land. Generally per acre prices shall be used in pricing agricultural lands. Large industrial, commercial or residential tracts may be priced by the use of per acre or square foot prices. Front foot prices shall be used, generally, for the pricing of residential and commercial lots and lands in congested areas. Regardless of the pricing unit used, the result shall be the true value in money of the land.

(K) Each county auditor shall prepare, or have prepared, under the auditor's direction and supervision:

(1) Land schedules, setting forth land unit prices to be used in appraising the different classes of land.

(2) Tables, where applicable, showing depth, corner and alley influence factors, etc., to be used in conjunction with the unit prices.

(3) Tax maps that shall accurately indicate the area, acreage or dimensions of each lot, tract, or parcel of land in the county, together with the name of the owner, if possible, and the lot section, or survey number, showing the unit price used in pricing the various types of land.

One set of all land unit price schedules, depth, corner and alley influence tables, and tax maps with unit prices shall be kept on file in the county auditor's office, open for public inspection during regular office hours.

Eff 12-28-73; 11-1-77; 10-20-81; 9-18-03

## **5703-25-12 Valuation of buildings, structures, fixtures and improvements to land.**

(A) General - The true value of improvements may be determined by either the market data, income or cost approach. Regardless of the approach used the total of the depreciated value of the improvements to land and the "true value" of the land should be the "true value" of the property as a whole, as defined in rule 5703-25-05 of the Administrative Code. While the cost approach will generally be used one of the other approaches should be used as a check on whether the determination of depreciation or obsolescence is correct.

In arriving at the value of the depreciated improvements by the market data approach the value of the entire property is estimated by the use of comparable sales after allowing for variations. The land value determined according to rule 5703-25-11 of the Administrative Code is then subtracted to arrive at the value of the improvements in their present or depreciated condition.

The building residual technique is used to estimate improvement values by the income approach. After land value is arrived at the value of the improvements is estimated by capitalizing the net income remaining after deduction for all expenses including interest on the land value.

In the use of the cost approach to estimate improvement value the replacement cost new is first estimated. From the cost new deductions are made for depreciation including physical deterioration, functional and economic obsolescence to arrive at the value of the improvements in their present condition.

(B) When a general sexennial reappraisal is being made by the county auditor under the provisions of section 5713.01 of the Revised Code, all prices used in determining the replacement cost of buildings, structures, fixtures and improvements to land shall be prices prevailing during the year immediately preceding the tax lien date of the year the reappraisal is to be effective for tax purposes.

The county auditor is directed and ordered to prepare, or have prepared under the auditor's supervision schedules of all building costs that will be used in appraising buildings, structures, fixtures and improvements to land in the county. The auditor shall prepare separate schedules for residential, commercial, industrial and farm buildings. Building cost schedules shall be based on the prices of labor, materials, architects' or engineers' fees, plus contractors' overhead and profit, and other charges for the class, type or grade of building in the area to be appraised prevailing during the period specified by the preceding paragraph.

Residential building cost schedules shall include at least six grades of construction, ranging from very cheap to very expensive; namely, very cheap, cheap, ordinary or average, good, extra good or expensive, very expensive. Each grade shall be identified by number or letter. Additional grading may be obtained by adding or deducting a percentage for each grade by using a plus or minus sign, followed by the per cent used.

Farm building cost schedules shall include all farm buildings (exclusive of the farm dwelling which shall be priced according to the residential schedule) including general and special type barns, milk houses, machinery sheds, grainaries, corn cribs, silos, hog houses, and other miscellaneous farm buildings.

The various schedules are to be used in estimating the replacement cost of each building, fixture or improvement to land thereto. In the third calendar year following the sexennial reappraisal each value shall be updated, either by percentage or otherwise so that it accurately reflects current

market value in the county as of January of the current tax year. The selection of the method of updating values will depend on the manner in which the triennial update or equalization of true and taxable values required by rule 5703-25-06 of the Administrative Code is performed. The method selected should be one that will insure that the taxable values of new buildings, etc. will equal thirty-five per cent of the current true value in the same uniform manner as all other real property.

One set of all building schedules of every class, type and grade shall be kept on file in the county auditor's office and open for public inspection during the regular office hours

(C) Building inspection – Each building shall be measured to determine the number of square or cubic feet it contains, and a sketch shall be drawn on the property record card. Major buildings such as dwellings and barns shall be sketched on the property record card with other minor buildings to be numbered, the number encircled to appear in the space for the sketch of buildings in its proper relation to the dwelling and barn, etc.

The exterior, and if possible, the interior of each building shall be inspected with notations being made on the record card of construction features, physical conditions, and other factors that would affect value. Each building shall be graded according to quality of construction.

Each county auditor shall describe in detail on the record card or sheet, and shall itemize, the precise industrial and commercial property that the auditor is valuing as "real property" as distinguished from "personal property." In questions of the classification of property as real or personal the county auditor shall be guided by rule 5703-3-01 of the Administrative Code.

(D) Estimation of depreciation and obsolescence – When the cost approach is used in appraising the buildings an estimate shall be made of depreciation including all types of obsolescence that must be deducted from replacement cost new of the improvements so that the total value of depreciated improvements and the land shall be equal to the true value of the entire property as defined in rule 5703-25-05 of the Administrative Code.

(1) In arriving at the true value, among other factors, the utility of the improvements to the land shall be considered. In the appraisal of commercial or investment type property the county auditor is directed to consider the terms of all outstanding leases and the amount, quality, and durability of income that the property would produce under normal management and the actual amounts being currently returned on similar investments, and to reflect these factors in the final determination of true value in money in any uniform logical way that the auditor may see fit.

(2) Depreciation and obsolescence shall depend upon the following three factors:

(a) Physical depreciation is a loss in value resulting from physical deterioration due to age, wear and tear, disintegration, and the action of the elements. The amount deducted for physical depreciation shall reflect loss in value due to general deterioration and the need for rehabilitation.

(b) Functional obsolescence is a loss in value resulting from poor planning, overcapacity or undercapacity, due to age, size, style, technological improvements or other causes within the property. There are two types of functional obsolescence:

(i) Curable functional obsolescence which may be estimated at the amount it would cost to modernize the improvements.

(ii) Incurable functional obsolescence which may be estimated by considering the amount it would cost to replace the improvements with a modern structure suitable for the same purpose, or by the

capitalization of the loss of income due to the degree of in-utility or extraordinary operating costs related to the structure.

(c) Economic obsolescence is a loss due to external economic forces, such as changes in the use of land, location, zoning or legislative enactments that might restrict or change property rights and values and other similar factors.

(3) In arriving at the rate of depreciation and obsolescence to be applied to buildings, structures, fixtures, and improvements to land, the auditor shall consider, among other things, the following:

(a) The rental income and sale prices in the current market for properties of similar type and condition.

(b) Type of construction.

(c) Type and extent of replacements, restorations, or modernizations

(d) Type and extent of replacements, restorations, or modernizations.

(e) Age.

(f) Actual use compared to use for which constructed.

(g) Location.

(h) Rapidly changing technological improvements in construction methods.

(i) Rapidly changing technological changes in manufacturing processes.

(j) Changes in consumer demand and other external economic forces.

(k) Any other recognized factor which may have a particular applicability in a given case.

Eff 12-28-73; 11-1-77; 9-18-03