

IN THE SUPREME COURT OF OHIO

Lutheran Services of Central Ohio Village Housing :
Inc. and Lutheran Social Services, et. al.

Appellee,

v.

Board of Education of the South-Western
City Schools,

Appellant,

Franklin County Board of Revision, and
Franklin County Auditor,

Appellees.

: Case No. 2014-1032
:
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: Appeal from the Ohio Board of
Tax Appeal - Case Nos. 2012-386
and 2012-387
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**MERIT BRIEF OF APPELLANT BOARD OF EDUCATION OF THE
SOUTH-WESTERN CITY SCHOOL DISTRICT**

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STATEMENT OF THE CASE AND FACTS

This is an appeal from the Board of Tax Appeals (BTA) for tax year 2008, involving the determination of the true value of two separate properties located in the South-Western City School District, which were joined together into one decision by the BTA.

The two properties involved in this appeal are rent subsidized housing projects for the elderly. The properties were built in 2000 and 2002 and are “in good condition.” The property owner presented an appraiser, Donald Miller, to the Board of Revision and Miller literally gutted the value of the two properties by valuing them at about \$17,500 per unit; thereby cutting the Auditor’s value almost in half. The only possible way an appraiser could do that is to value the two properties by using comparable sales and rental properties that were not similar to the subject properties in any possible way. That is precisely what Miller did. Miller used five sales to value the subject properties that were 30-40 years older than the subject properties, and that even he admitted were “inferior” to the subjects in all respects, and then by making **no net adjustment** to the sale prices of the old properties. Likewise, Miller’s most comparable rental property, which he used to estimate market rents for the subjects, was a 288 square-foot, prefabricated “efficiency” Cardinal apartment unit built in 1982.

The Franklin County Board of Revision rejected Miller’s two appraisals and left the values unchanged. To ensure that the BTA would not blindly accept Miller’s appraisals, the Board of Education provided the BTA with the testimony of an independent fee appraiser, Thomas Sprout, who testified that none of Miller’s comparables were remotely similar to the two properties in question. Sprout also testified that Miller failed to value the substantial common areas within each of the properties. Sprout provided the BTA with better sale and rental comparables than those used by Miller that fully supported the Auditor’s and BOR’s values. For

good reason, the property owner did not have Miller testify before the BTA in defense of his values.

In an absolutely extraordinary decision, the BTA nonetheless accepted Miller's values for the two properties with its now standard routinely issued one-line decision that simply proclaimed that "we find the [Miller] appraisals to be competent and probative evidence and the value conclusions reasonable and well-supported." There is no evidence that the BTA read the briefs of the Board of Education, or was even aware that Tom Sprout had testified before the BTA, or that it bothered to read the Miller appraisals. The BTA made no reference to any of these facts or issues in its decision.

Village Place – BTA Case No. 2012-386

This property (parcel number 570-242616) is a 44-unit apartment complex for the elderly, located on 3.3 acres of land. The property is referred to as Village Place, and is located about a mile north of I-270 off Harrisburg Pike. The units have one bedroom, one bath, and a full kitchen, and 560 square-feet of space. The apartment complex was built in 2000 and is "in good condition." (Village Place Appraisal p. 1, BTA Tr. p. 19, Supp. 1, 35.)

According to the property's owner's appraiser, Donald Miller, the building contains a large amount of "common area," which takes up almost 30% of the space in the building. The building itself contains a total of 34,784 square-feet of space, but the units occupy only 24,640 square-feet of space. (Village Place Appraisal p. 1, Supp. 1.) As is typical, Miller would not describe the common areas, but these areas were described by Tom Sprout in his BTA testimony as including a "gathering area, a community room, exercise room, another community room, [and] a library." (BTA Tr. p. 8; Supp. 32.) Miller testified at the Board of Revision hearing that he placed little or no value on any of these common areas. In both his income and sales

comparison approach, Miller valued the property on per-unit basis, specifically based on the size of the unit, and made no adjustments to either his sales or rents for the presence of the common areas.

The Franklin County Auditor appraised the property for tax year 2008 at \$1,250,000. Tax year 2011 was a year of a six-year reappraisal in Franklin County and the Auditor reappraised the property for \$1,340,000 for tax year 2011, which was slightly higher than the 2008 value. These values included the value of the common areas in the building (see property record cards). On the other hand, Miller valued the property at only \$810,000 for tax year 2008. (Village Place Appraisal p. 1, Supp. 1.) After hearing the matter, the Board of Revision (BOR) made no change in value in its two decisions dated November 9, 2011 – in one decision the BOR made no change for tax years 2008 to 2010 and in a second decision made no change for tax year 2011. The property owner then appealed these decisions to the Ohio Board of Tax Appeals.

Stratford Place – BTA Case No. 2012-387

This property (parcel number 570-170045) is a 46-unit apartment complex for the elderly. The property is referred to as Stratford Place. This property is also located on the west side of Columbus, being south of West Broad Street off Norton Road. This property has one two-bedroom unit and 45 one-bedroom units, each with one bath and a full kitchen. The apartment complex is located on 3.9 acres of land and was built in 2002, and is “in good condition.” (Stratford Place Appraisal, p. 1, Supp. 5.)

According to Miller, the building contains a large amount of “common area”, which takes up 31% of the space in the building. The building itself contains a total of 36,194 square-feet of space, but the units occupy only 24,980 square-feet of space. (Stratford Place Appraisal, p. 1, Supp. 5.) As usual, Miller did not describe the common areas, but these areas were described by

Tom Sprout to be the same as in the Village Place project, referred to above. (BTA Tr. p. 8, Supp. 32.) Miller testified at the Board of Revision hearing that he placed little or no value on any of these common areas as well.

The Franklin County Auditor appraised the property for tax year 2008 at \$1,456,400. Tax year 2011 was a year of a six-year reappraisal in Franklin County and the Auditor reappraised the property for \$1,390,000 for tax year 2011. These values included the value of the common areas in the building (see property record cards). On the other hand, Miller valued the property at only \$730,000. (Stratford Place Appraisal p. 1, Supp. 5.) After hearing the matter, the Board of Revision made no change in value for tax years 2008 to 2010 in a decision dated November 9, 2011. In a second decision dated November 9, 2011, the BOR made no change in the value for tax year 2011. The property owner then appealed these decisions to the Ohio Board of Tax Appeals.

Miller's Appraisal

To appraise both properties, which were built in 2000 and 2002, and in order to arrive at a value of only \$16,000 to \$18,000 per unit, Miller used the actual unadjusted sale prices of five properties that were 30-40 years older than the two subject properties.¹ The five sales that Miller used were of properties built in 1973, 1963, 1964, 1972, and 1968, and Miller actually used the unadjusted sale prices to value the two subject properties. (Village Place Appraisal, p. 35, Stratford Place Appraisal, p. 36, Supp. 4, 13.) Not only did Miller use these five sales of properties that were 30-40 years older than the subject in his market approach, but he used these

¹ Miller did make adjustments, but for each and every comparable sale, Miller's net adjustment was \$0. (Village Place Appraisal p. 35, Stratford Place Appraisal p. 36, Supp. 4, 13.) This is the exact same result in 2 other cases pending before this Court in 2014-0882 and 2014-0884. It is utterly ridiculous and completely unheard of for every sale comparable in 5 separate appraisals having a net adjustment of \$0.

same sales to determine the capitalization rate he used in his income approach thus infecting both approaches with the sale prices of these old deteriorating properties. (Village Place Appraisal, p. 27, Stratford Place Appraisal, p. 28, Supp. 3, 12.) It is unlikely that reasonable appraiser would conclude that the properties that were 30-40 years old than the subject property were in any way comparable to the subject property, but that is the only way that Miller could produce values that were as low as his. If evidence be needed of this point, Tom Sprout testified that Miller's comparables were not similar to the subject properties and that there were better sales of newer properties that should have been used to value the properties, and Sprout provided the BTA with these sales and rentals. (Sprout Review of Miller's Appraisals, p.3; BTA Tr. p. 36; Supp. 16, 39.)

Sprout even found sales of properties that were just as old as Miller's comps (forty years older than the subject properties) but which sold for **twice** what Miller's old properties sold for. For instance, Sprout's Comparable Sale No. 4 was built in 1964 and was in the same area as the subject properties and in a "similar location" (BTA Tr. p. 34, Supp. 39.), and "was in fair to average physical condition," while the subject properties were in "good physical condition" (BTA Tr. p. 7, Supp. 32.) This property sold for \$34,375 per unit, essentially twice what Miller's old properties sold for. Not only did Miller select properties that were 30-40 year old years older than the subject properties, but he selected those sales from the class of older properties that were significantly inferior to the subject in order to guarantee that a low value would result.

Miller attempted to justify his use of the actual (unadjusted) sales prices of the five sales that were 30-40 years older than the subject properties by claiming that "financing is not as easily attainable as it was 1 to 3 years ago" (Village Place Appraisal, p. 35, Stratford Place Appraisal, p. 36, Supp. 4, 13), and by the fact that several of the old properties had larger units

than the subject. One of Miller's sales took place in November, 2007, just **45 days prior to tax lien day**. Miller took his financing adjustment against the sale price of this property, which means that he thought that the market for apartment complexes collapsed in the **45-day period** between this sale and January 1, 2008. Tom Sprout testified that all of this was essentially nonsense. He testified that January 1, 2008, the apartment market in Columbus was very strong: according to Sprout, "the apartment sales during that period before and after tax lien date was just unprecedented in Central Ohio at that point in time" and that this period of time had the "lowest cap rates that somebody would pay." (meaning that values were the highest) (BTA Tr. p. 27, and 31, Supp. 37, 38.) Sprout also testified that the size adjustments Miller referred to failed to take into account that the two subject properties had a very large amount of common space which made them comparable to larger units in apartment complexes without any common areas. (BTA TR. p. 31, Supp. p. 38.)

The rent comps Miller used to value the Village Place property were just as absurd as Miller's five sale comps: five of Miller's rent comps were 25-30 years older than the subject property, being built in 1975, 1961, 1971, 1972, 1974. Sprout testified that "all five of these projects *** they're all inferior to the subject property" (BTA Tr. p. 22, Supp. 36), and even Miller acknowledged that these five rent comps were "inferior in condition when compared to the subject." (Village Place Appraisal, p. 24, Stratford Place Appraisal, p. 25, Supp. 2, 11.) The sixth rent comp Miller used in the Village Place appraisal was built in 1995 and was being rented for only \$425 per month. Miller stated on this comp as being "similar in condition when compared to the subject." (Village Place appraisal, p. 24, Supp. 2.) However, Sprout testified that he had actually appraised this property for the owner and that it was a **LIHTC** property: "it was a low income tax credit deal with restricted rents" and "that's why you have a newer

property that *** was leasing its one-bedrooms for \$425. It was a restricted income property.” (BTA Tr. p. 20, Supp. 35.) Sprout testified that this rent could not be used to value the subject properties. (BTA Tr. p. 20-21, Supp. 35.) *See also, Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, 902 N.E.2d 984; *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16; 523 N.E.2d 826 (1988).

Sprout agreed that there were “newer rent comparables within the proximity of the subject property that should have been used” to value the subject, rather than Miller’s 25-30 year old properties, and in fact, Sprout noted that there was a good rent comp just across the street from the subject property that Miller had failed to use in his report. (BTA Tr. p. 25, Supp. 36.) Of course, these properties had much higher rental rates than the old and admittedly inferior properties that Miller used to value the two subject properties.

To give this Court some idea as to the utter lack of any credibility in Miller’s appraisals, Miller claimed that the most comparable rental property to the Village Place property was a 288 square foot, one room “efficiency” Cardinal apartment, which is a prefabricated unit that is brought to the site and bolted to a slab foundation. This apartment complex had no common areas and was 20 years older than the subject property. (Village Place Appraisal, p. 24; Supp. 2.) This one-room 288 square-foot “efficiency” unit rented for \$439 a month and Miller used \$432 per month as his market rent for the Stratford Place property and \$450 per month for the Village Place property. In Miller’s opinion, then, the subject properties, built in 2000 and 2002, having one-bedroom and with a substantial amount of additional amenities and common areas within the buildings, and with 550 square feet of space in each unit, are worth the same as a prefabricated, one-room, 288 square-foot efficiency apartment unit with no common areas and that is 20-years older than the subject properties.

In the case of the Stratford property, Miller also used other rent comparables that were also “significantly older” than the subject property, being built in 1974 to 1989 (BTA Tr. p. 30-31, Stratford Place Appraisal, p. 20-24; Supp. 38, 6-10.) Tom Sprout testified that as to Miller’s rent comps, “[t]he subject property is superior to all those apartment units” (BTA Tr. p. 11, Supp. 33), and that all five of Miller’s comps “were all inferior conditionally to the subject.” (BTA Tr. p. 13-14, Supp. 33-34.) Sprout found a number of different rent comps “within the vicinity of the subject property” that were closer in age to the subject, that is, being built from 1990 to 1999. (BTA Tr. p. 10, Supp. 33.) These properties were, of course, being rented for significantly more than the comps used by Miller, and Sprout testified that even compared to the better rental comparables that he found, the subject property was “superior” to the comparables and “in better physical condition, and its **secured access.**” (BTA Tr. p. 11, Supp. 33.) Sprout noted that the rent comp “closest in size” to the Stratford Place units were being rented for \$509 and \$579 per month, which were not anywhere as low as Miller’s estimate of \$430. (BTA Tr. p. 10-11, Supp. 33.) Sprout testified that Miller’s rent estimate for the properties was “about 20 percent” below market rents for the properties. (BTA Tr. p. 16, Supp. 34.)

Miller also failed to realize that in the case of four of the five rental comparables he used the tenant pays for the water and in the subject properties the landlord would pay for the water and then add that to the rent and that the market rent being used to value the property must be increased by \$10 to \$15 per month. Sprout testified that:

A. *** Four of the five comparables here [that Miller used], the tenant is paying – reimbursing the landlord for water. So on top of the rent that’s listed in here, you would have to add \$10 to \$15 a month for water because the water would be taken care of within the Stratford Place project.

Q. And Mr. Miller did not do that, did he?

A. Not to my knowledge, he did not. (BTA Tr. p. 14, Supp. 34.)

Sprout also testified that the common areas within the two properties were quite larger than in a typical apartment complex and that the large common area “becomes an extension of the square footage that is within each one-bedroom unit within the building.” (BTA Tr. p. 10, Supp. 33.)

BTA Appeals and BTA Decision

The property owner presented no evidence at the BTA hearing. The Board of Education presented the testimony of Thomas Sprout and submitted briefs on the legal and appraisal issues involved in the appeal. In its BTA briefs, the Board of Education addressed in detail the fact that the property owner’s appraiser, Don Miller used comparable sales and rental comparables that on their face were not remotely comparable to the subject properties, and that if this point needed to be proved, the testimony and appraisal data submitted by Tom Sprout to the BTA clearly demonstrated that Miller’s appraisals could not be relied on and were not competent and probative evidence in any respect. The BOE also pointed out that Miller failed to place any value on the extensive common areas and other amenities that are an integral part of the property. Furthermore, the BOE pointed out that the BTA had already rejected an appraisal report like Miller’s for precisely these reasons by citing previous BTA decisions on point.

The BTA decided the present appeals on May 23, 2014, using its new standardized template form decision in which the BTA literally decides all issues involved in the appeal in just one single sentence, in which the BTA declares that:

Upon review of property owner’s appraisal evidence, which provides opinions of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisals to be competent and probative and the value conclusion reasonable and well supported.” (BTA Decision and Order, p. 2, Appx. 11.)

While the BTA does refer in its decision to the “property owner’s appraisal evidence” (and the owner’s appraiser did not even testify before the BTA), the BTA did not even refer to the Board of Education’s appraisal evidence or the fact that its appraiser, Tom Spout, did testify before the BTA and completely refuted the probativeness of both Miller appraisals. This would appear to reflect a pre-determined attitude to reject any evidence from a board of education, or a policy to grant a property owner a reduction in value regardless of the evidence, or a simple failure on the BTA’s part to read the briefs, read the transcript of the BTA’s hearing, and to pay any attention to any of the evidence submitted to it. The BTA did not address a single issue raised by the Board of Education in its briefs and, in its apparent rush to judgment, the BTA does not appear to have been aware of its own prior precedent or that of this Court, or at least it did not acknowledge the existence of the precedent and explain its departure from it. In any event, there can be no reasonable account for the BTA’s decision in these two cases and its decision is not consistent with a proper judicial approach to deciding the issues before it.

The Board of Education filed an appeal with this Court on June 20, 2014.

LAW AND ARGUMENT

Introduction

To decide the appeals before it, the BTA is now regularly issuing its standardized template form decision that has only one or two boilerplate operative sentences by which the BTA purports to resolve all of the issues involved in an appeal. The use of this new template form decision by the BTA is per se unreasonable and unlawful for a number of reasons. In the standardized template decision form used by the BTA to decide the present appeal, the BTA:

- (1) Adopted the property owner’s appraisal in one sentence using three specific criteria that literally have nothing to do with the probative nature of the appraisal evidence presented to the BTA;

- (2) Made no findings of fact, and especially none that are essential to the lawful determination of the true value of the property, and did not even identify or otherwise describe the property;
- (3) By refusing to address any issues raised by the Board of Education, the BTA refused to acknowledge its own prior precedent and the precedent established by this Court, which required the BTA to reject the property owner's appraisal; and
- (4) Deprived the Board of Education of its statutory right to be a "party" to the BTA proceeding by failing to address a single issue raised by a Board of Education or to refer to and properly analyze the board's appraisal evidence submitted to the BTA at its hearing.

The consequence of the BTA's use of its new standardized template form decision is to transfer to this Court the BTA's statutory duty to determine the facts upon which true value must be based. This Court must now perform the BTA's duty to determine what facts that are relevant to a determination of the true value of the property in accordance with the statutes and administrative code rules; and it must perform the BTA's duty to "determine the [true] value of the property" in accordance with the facts. Finally, this Court must decide the issues raised by the BOE without the benefit of having the BTA even comment on, let alone decide, those issues, because the BTA now refuses to do so.

It is difficult to see how this Court can perform its duty to determine whether the BTA's decision is "reasonable and lawful" under R.C. 5717.04, when there is not a single fact set forth in the BTA's decision that shows how the BTA determined the true value of the property. For these reasons, Appellant respectfully requests this Court to hold that the BTA's use of its new standardized template form decision in which the BTA purports to resolve all issues before it one or two boilerplate sentences, fails to set forth a single fact upon which it relied to determine the true value of the property, and fails to address a single issue raised by the Board of Education, is per se illegal and unreasonable and unlawful.

Proposition of Law No. 1:

The BTA cannot accept an appraisal report as evidence of the true value of real property when the appraisal does not constitute probative evidence of true value and when the report is not consistent with the laws governing the determination of true value under the “uniform rule” of valuation set forth in Article XII, Section 2, of the Ohio Constitution, and codified by R.C. 5715.01, and the Administrative Code Rules adopted thereunder.

The BTA could not legally overrule the decisions of the Franklin County Board of Revision in these two cases and summarily accept Miller’s appraisals because on their face those appraisals were not probative evidence of the true value of the properties in question, and because Miller’s two appraisals violated the “uniform rule” of valuation set forth in Article XII, Section 2, of the Ohio Constitution, and the provisions R.C. 5715.01 and the Administrative Code Rules adopted thereunder. R.C. 5715.10 states that “[t]he county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.” (Appx. 19.)

Miller’s appraisals could not be accepted by the BTA for two reasons. First, Miller’s refusal to place any value on the large common areas in each of the two properties violated Article XII, Section 2 of the Ohio Constitution, which states that “[l]and and improvements thereon shall be taxed by uniform rule according to value.” (Appx. 12.) The common areas in each property were “improvements” under this provision and under the statutes and Miller provided no justification whatsoever for failing to value these areas. Second, Miller’s appraisals do not constitute probative evidence of the true value of the properties because Miller compared the two properties built in 2000 and 2002 to properties that were 30-40 years older than the subjects, and which not remotely similar to the subjects in terms of condition, age, or construction. The testimony of Tom Sprout, MAI, confirmed that Miller’s sales and rental comparables were not similar or comparable to the subject properties, and that other comparable

sale and rental properties existed that Miller did not use and which would have provided a substantially higher value than the values given by Miller, and Sprout provided the BTA with those other sales and rentals. Furthermore, Miller's determined that the most comparable rental property to the subject properties was a prefabricated, one-room, 288 square-foot efficiency Cardinal apartment unit with no common areas and that was 20-years older than the subject properties. Tom Sprout testified that Miller's rental comps were not similar to or comparable to the two subject properties and provided the BTA with better rent comps that should have been used to value the property. Sprout testified that Miller's market rent estimates were 20% below the correct market rents for the property. For these reasons, it was unreasonable and irrational for the BTA to summarily accept Miller's appraisals because they do not constitute probative evidence of the true value of the properties.

There is simply no rational basis for the BTA's decision to adopt Miller's appraisals. R.C. 5715.01 implements the constitutional "uniform rule" requirement by instructing the Tax Commissioner to "adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule." (Appx. 18.) Under both R.C. 5715.01 and Adm. Code Rule 5703-25-06(A), the essential or fundamental requirement of the "uniform rule" is that true value must be based on the "facts *** that tend[] to prove [true] value" and the "facts tending to indicate the" true value of the property. In addition to these general references to the "facts" required by the "uniform rule," these two provisions, as well as other provisions, describe a large number of specific "facts" upon which true value must be based.

Adm. Code Rule 5703-25-05(F) states that "[t]he reliability of [the income approach] is dependent upon *** [t]he reasonableness of the estimate of the anticipated net annual incomes." (Appx. 21.) (emphasis added.) This provision is binding on the BTA as a matter of law. It was,

therefore, the BTA's duty to determine whether Miller's rental comparables and his market rent estimates were "reasonable." There is no rational basis for determining that the market rents, and thus the "reasonableness of the estimate of the anticipate net annual incomes" for the two properties involved in this appeal, could be based on the rents for a prefabricated, one-room, 288 square-foot efficiency Cardinal apartment unit with no common areas and that was 20-years older than the subject properties. There is, likewise, no rational basis for determining that market rents for the subject properties could likewise be determined by using rents from other properties that were 25-30 years older than the subject properties. For these reasons, there is no rational basis for concluding that Miller's income approaches for the two properties provided any "reasonable *** the estimate of the anticipated net annual incomes" that must be used to value the properties under R.C. 5715.01 and Adm. Code Rule 5703-25-05(F)(1).

Adm. Code Rule 5703-25-05(G) states that "[t]he reliability of [the market data approach] is dependent upon ***[t]he degree of comparability of each property with the property under appraisal." (Appx. 22.) (emphasis added.) This provision is binding on the BTA as a matter of law. It was, therefore, the BTA's duty to determine whether Miller's sales comparables were reasonably similar or comparable to the two properties in question. There is no rational basis for determining that the true value of the subject properties could be based on the sales of properties that were each 30-40 years older than the subject properties and that no net adjustments would end up being made to the sale prices of these properties in order to value the subject properties. Miller admitted in his appraisal report, and Sprout testified before the BTA, that all of these comparables were inferior in all respects to the subject properties (see Facts – Miller's Appraisal). There is no rational basis for determining that these comparables have any

“degree of comparability” to the two subject properties such as to allow anyone to determine that Miller’s sales comparison approach was a “reliable” indicator of the true value of the property.

As to the Miller’s sales comparison approach, the Appellee property owner will no doubt argue that Miller did not rely on his sales or market approach to value the two subject properties. However, Miller did rely upon these sales to determine his capitalization rate for this income approach and there is no evidence to suggest that Miller’s sales were reliable for that purpose any more than for any other purpose. Furthermore, the incredible and obviously unreliable aspects of Miller’s sales comparison approach demonstrate that his income approach undervalued the properties and prove that his estimates of market rents for the two properties were substantially incorrect. Whether Miller relied on his sales approach or not, the actual sales data in Miller’s appraisal show that the subject properties were clearly worth substantially more than Miller’s \$16,000 to \$18,000 per-unit value, which was the same value produced by his bogus income approach. Miller’s sales comparison approach and income approach produced the same values (\$810,000 and \$780,000 in Village Place appraisal, and \$730,000 and \$740,000 in the Stratford Place appraisal).

The Appellee property owner, as the appellant before the BTA, had the burden to prove that Miller was correct in refusing to assign any value to the common areas in the subject property. The units in an elderly housing project are typically smaller than the units in a standard apartment complex, but the small size of the units is intentionally offset by the fact that the building itself will contain large amounts of common areas and other amenities that can be used and enjoyed by the residents. The BOE’s appraiser, Tom Sprout, testified at the BTA that the large common areas and other amenities in the two subject properties provided an “extension” of the living space within each of the units. The term “common area” is defined to be “[t]he total

area within a property that is not designated for sale or rental, but is available for common use by all owners, tenants, or their invitees.” *Dictionary of Real Estate Appraisal* (1984) at 62. (Appx. 26.) An “amenity” is defined to be “[a] tangible or intangible benefit of real property that enhances its attractiveness or increases the satisfaction of the user.” *Dictionary of Real Estate Appraisal* (1984) at 12. (Appx. 25.)

There is no evidence in the record to show, for instance, that the existence of the large common areas in the building would not “enhance[] its attractiveness or increase[] the satisfaction of the user” and there is no evidence in the record to show that any potential tenant of Appellee’s property, whether the tenant is elderly or not, would not pay additional rent for Appellee’s units because of the large amounts of common areas and amenities that are found within the building.

The common areas and other amenities in the two subject properties are “improvements” and are subject to taxation. Article XII, Section 2 of the Ohio Constitution requires “improvements” to be “taxed by uniform rule according to value.” (Appx. 12.) R.C. 5713.01(B) states that all “improvements” on the land must be “appraised at its true value in money” and R.C. 5713.03 states that the “county auditor, shall determine *** the true value *** of buildings, structures, and improvements located” on the land. (Appx. 15, 17.) R.C. 5709.01(A) states that “[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” (Appx. 14.) No part of an elderly housing project, whether federally subsidized or not, can be exempt from taxation. *NBC-USA Hous., Inc.- Five v. Levin*, 125 Ohio St.3d 394, 395; 2010-Ohio-1553, 928 N.E.2d 715. Miller provided no evidence of any kind to support his conclusion that the common areas of the subject property have little or no value.

Contrary to Miller’s opinion, the BTA has previously held that the “common areas” that

are part of a federally subsidized housing project for the elderly, have value for real property tax purposes. To reflect that value, any appraiser valuing this type of real property for tax purposes must appraise the property using either: (1) sales and rental data taken directly from similar non-subsidized elderly housing projects; or (2) if the appraiser uses simple apartment complexes as comparable data, the appraiser must make the necessary “adjustments” to the data to account for the large amounts of “common space” and other amenities found in the elderly housing project. In *Cambridge Arms Ltd., v. Hamilton Cty. Bd. of Revision*, BTA Nos. 90-M-1352 and 90-M-1353, 1992 Ohio Tax LEXIS 1365 (Oct. 30, 1992), the BTA dealt with a 215-unit federally “subsidized housing project for elderly and handicapped occupants” *Id.* at *3. The property owner’s appraiser valued the property using comparable sales and market rental comparables that did “not have amenities commonly built into newer apartment units constructed specifically for the elderly and handicapped.” *Id.* at *5. According to the BTA:

Further, while adjustments downward were made for amenities such as a club room, in no case were adjustments upwards made based upon the fact that the subject property appears to be newer and appears to have amenities desired by the elderly and necessary for the handicapped. Therefore, this Board finds that the market rent comparable of \$375.00 per one bedroom unit and \$575.00 per two bedroom unit is not supported by the evidence. *Id.* at *11.

The BTA’s decision was affirmed by this Court in *Cambridge Arms, Ltd v. Hamilton Cty. Bd. of Revision*, 69 Ohio St.3d 337, 632 N.E.2d 496 (1994). The BTA repeated this conclusion in several cases decided after the original *Cambridge Arms* decision in *Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision*, BTA No. 94-P-1129, 1996 Ohio Tax LEXIS 1281 (Nov. 1, 1996), and in *Cambridge Arms II, Ltd. v. Hamilton Cty. Bd. of Revision*, BTA No. 94-P-1130, 1996 Ohio Tax Lexis 1282 (Nov. 1, 1996).

The property owner had the burden to prove its right to a reduction in the true value of its property. There is no evidence in the record to prove the claim by the property owner’s appraiser

that the common areas in the subject property had little or no value. As such, the BTA erred in accepting an appraisal that placed little or no value on a significantly large part of the property involved in this appeal.

Proposition of Law No. 2:

A decision of the Board of Tax Appeals must be based on probative evidence that is sufficient to prove the true value of the property.

As indicated in the Introduction, the BTA's new standardized template form decision used in this appeal contains only one sentence that is relevant to its determination of the true value of the property. In this one sentence, the BTA accepts and adopts the property owner's appraisal with the following proclamation:

Upon review of property owner's appraisal evidence, **[1] which provides opinions of value as of tax lien date, [2] was prepared for tax valuation purposes, and [3] attested to by a qualified expert, we find the appraisals to be competent and probative and the value conclusions reasonable and well supported.**" (BTA Decision and Order, page 2, Appx. 11.) (brackets added).²

On its face, this sentence clearly violates well-settled principles of law that require a property owner to present "competent and probative" that proves the true value of the property. Probative evidence that is sufficient to "prove" the true value of the property consists of

² A nearly identical operative phrase can be found in the BTA decisions in at least 7 other cases currently pending before this Court. See *Sears Roebuck & Co. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0722; *Board of Edn. of the Columbus City Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0723; *Board of Edn. of the Dublin City Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0881; *Board of Edn. of the Groveport Madison Local Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0882; *Board of Edn. of the South-Western City Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0884; *Board of Edn. of the Columbus City Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2014-0885; *Dayton-Point West Real Estate Assoc., LLC*, S. Ct. Case No. 2014-0927. All of the cases were decided by the BTA in 2014. Compare the BTA decision rendered in *Board of Edn. of the Columbus City Sch. v. Franklin Cty. Bd. of Revision*, S. Ct. Case No. 2013-0449 also pending before the Court. That decision was a well-reasoned 16-page decision issued on Feb. 20, 2013. It is now clear that the BTA will continue to summarily declare a value without performing any of the legally required analysis until specifically instructed otherwise.

appraisal-related facts or market data. Obviously, none of the BTA's three criteria, identified by the brackets in the quotation set out above, have anything to do with the "probative" nature of the appraisal evidence, nor are they even relevant in deciding whether an appraisal is "reasonable and well-supported."

The requirement to present the BTA with "probative" evidence means that the evidence must "prove that the value that [the property owner] proffers is correct." *Dak, PLL v Franklin Cty. Bd. of Revision*, 105 Ohio St.3d 84, 2005-Ohio-573; 822 N.E.2d 790, ¶13. The property owner before the BTA must "prove a right to a reduction in value." *Westlake Med. Investors, L.P. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 547, 549, 660 N.E.2d 467 (1996). "The taxpayers had the obligation to prove their right to a reduction in value." *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision*, 37 Ohio St.3d 318, 319; 526 N.E.2d 64 (1988). The property owner must "prove its right to an increase or decrease from the value determined by the board of revision" (*Board of Edn. of the Columbus City Sch. Dist. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566, 740 N.E.2d 276, 279 (2001)). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." (*Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 628 N.E.2d 1365 (1994)).

The three factors that the BTA cited as justification for its acceptance of the Miller appraisal report (a correct "as of" date; "attested to by a qualified expert;" and an appraisal prepared for tax purposes) have nothing to do with the "probative" nature of the evidence and do not in any manner "establish" or "prove" the true value of the property involved in this appeal. Indeed, these criteria have nothing at all to do with the true value of the property. The first and third requirements (a correct "as of" date and "attested to by a qualified expert") obviously have nothing to do with the question of whether any appraisal evidence is "probative" or whether the

appraiser's conclusions are "reasonable and well-supported." These two factors relate only to the legally competent nature of the appraisal as evidence before the BTA, not to the probative nature of the appraisal evidence itself. The second requirement (an appraisal prepared for tax purposes) likewise only pertains to the competency of the appraisal, but says nothing regarding its probativeness in proving the true value of the subject property. Just because an appraisal meets the minimum requirements to be considered competent evidence does not mean that it does not contain errors within the report that render it not probative of value.

This Court's review of this single sentence, which is the only sentence in the BTA's decision that relates to the valuation of the property, should be sufficient to justify a reversal of the BTA's decision. What this Court said in *Colonial Vill., Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196, at the head of ¶ 28, is applicable here:

C. On remand, the BTA has authority to determine the probative value of the evidence before it for each tax year, and the county does not have the burden to prove the accuracy of the appraisal upon which it relies.

The BTA not only "has the authority to determine the probative value of the evidence" but it is required to do so by the constitutional "uniform rule" and the statutes implementing that rule.

Proposition of Law No. 3:

The BTA must determine the facts upon which the true value of the property must be based in accordance with the provisions of both R.C. 5715.01 and the administrative code rules adopted under that section, and the BTA must set forth the relevant facts in its decision.

The BTA's use of its new standardized template form decision to decide appeals before it was per se "unreasonable and unlawful" because the BTA does not identify a single fact upon which it relied to determine the true value of the property, and because the BTA refused to

address even a single issue raised by the BOE in its briefs. This Court has held numerous times that it is impossible for it to review the BTA's decision as required by R.C. 5717.04 when the BTA fails to set forth the facts upon which its decision is based. As part of the requirement to state the facts upon which it relies is the requirement to address the issues raised by the BOE in its briefs.

This Court has stated numerous times that the BTA is required to identify and set forth the relevant "facts" in its decision. This requirement has been referred to as the *Howard* rule or standard, after *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988), in which this Court stated the following:

This court is unable to perform its appellate duty when it does not know which facts the BTA selected in rendering its decision. We now require it to state what evidence it considered relevant in reaching its value determinations. Accordingly, the decision of the BTA is reversed and the cause is remanded for reconsideration in conformity with this opinion.

The "facts" upon which the BTA must base its determination of true value are set forth in the Revised Code and the Administrative Code Rules adopted by the Tax Commissioner. Article XII, Section 2, of the Ohio Constitution states that "[I]and and improvements thereon shall be taxed by uniform rule according to value" and the first sentence of this section refers to "true value in money" as the criterion of "value." (Appx. 12.) R.C. 5715.01 implements the constitutional "uniform rule" requirement by instructing the Tax Commissioner to "adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule." (Appx. 18.) These two provisions set forth both the general "facts" and a large number of specific "facts" upon which true value must be based. R.C. 5715.01 sets forth the "facts" that "shall be used" to determine true value:

The uniform rules shall prescribe methods of determining the true value and taxable value of real property *** which method shall reflect standard and

modern appraisal techniques ***. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. (Appx. 18.)

Adm. Code Rule 5703-25-06(A) implements the statutory requirements set forth above by stating the following:

“True value in money” shall be determined *** on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. (Appx. 23.)

In *Porter v. Bd. of Revision*, 50 Ohio St.2d 307, 311, 364 N.E.2d 261 (1977), this Court held that the BTA was subject to these requirements: “In determining [true value], this court has held on several occasions that, for tax assessment purposes, all facts and circumstances which may affect the value of the property must be taken into consideration.”

The general holdings of this Court that require the BTA to set forth the facts that it relies on to justify its acceptance of an appraisal report are set forth in *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, 903 N.E.2d 1179, in citing from *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988), ¶ 34 (“the BTA has the duty to state what evidence it considered relevant in reaching its determination”); *Cleveland v. Budget Comm.*, 47 Ohio St.2d 27, 31, 350 N.E.2d 924 (1976) (the BTA’s decision must “set out adequate reasons, supported by the evidence, for its finding”); and *Board of Edn. of the Columbus City Sch. Dist. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 565, 740 N.E.2d

276 (2001) (“We also require the BTA to state what evidence it considers relevant in reaching a value determination”).

The BTA cannot satisfy the *Howard* standard by simply proclaiming that it has found an appraisal to be “competent and probative evidence,” as is now routinely done by the BTA in its new standardized template form decision. In *Dublin Senior Community L. P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 462, 687 N.E.2d 426 (1997), this Court stated the “BTA must analyze the appraisal and set forth its reasons for accepting or rejecting it” and the BTA’s conclusory statement does not constitute any analysis of the Miller appraisal or state the “reasons for accepting or rejecting it.” According to this Court:

If the BTA considered, but did not accept, Swift’s appraisal, it should have set forth that fact in its decision, along with its reasons for not accepting the appraisal. In *Howard v. Cuyahoga County Board of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988), we stated, “This court is unable to perform its appellate duty when it does not know which facts the BTA selected in rendering its decision. We now require it to state what evidence it considered relevant in reaching its value determinations.” Before we can rule on the BTA’s decision concerning Swift’s appraisal, the BTA must set forth its determination thereon. On remand, the BTA must analyze the Swift appraisal and set forth its reasons for accepting or rejecting it. *Id.* at 462.

The requirement to state the “facts” based on a thorough analysis of the appraisal means that the BTA must provide this Court with a “detailed explanation” of the specific appraisal data or market data that it relies on to justify its opinion of value. The details of the data to be identified by the BTA in its decision are described in *Villa Park Ltd. v. Clark Cty. Bd. of Revision*, 68 Ohio St.3d 215, 218-219, 625 N.E.2d 613 (1994); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555, 664 N.E.2d 922 (1996); and in *General Motors Corp. v. Cuyahoga Cty. Bd. of Revision*, 67 Ohio St.3d 310, 617 N.E.2d 1102 (1993). In the *Villa Park Ltd.* decision, *supra*, the Court reversed a BTA decision because it did not make

specific findings of fact of the specific rents and expenses that it relied on to determine the true value of the property:

The decision of the BTA is reversed and remanded to the BTA with instructions to (1) review and reconsider the record, (2) make factual findings, that are supported by the record, of the appropriate economic or market rents and expenses to be used in the income approach to value, and (3) indicate the specific calculations the BTA uses to determine the fair market value or the “true value in money.” *Id.* at 218-219.

The extent of the detailed “facts” required to be set forth by the BTA in its decision was given and described in *General Motors Corp. v. Cuyahoga Cty. Bd. of Revision*, *supra*, where this Court stated the following:

Howard v. Cuyahoga Cty. Bd. of Revision (1988), 37 Ohio St.3d 195, 197, 524 N.E.2d 887, 889, requires that the BTA ‘state what evidence it considered relevant in reaching its value determinations.’ In *Gen. Motors, supra*, 53 Ohio St.3d at 235, 559 N.E.2d at 1330, to the same effect, we said: ‘We can perform our duty to affirm reasonable, and to reverse unreasonable, determinations only when the BTA sets forth its findings and the basis therefor.’ **We meant what we said.** In our earlier remand, we intended for the BTA, **in conformity with the Howard standard**, and in compliance with our admonition for ‘clarification,’ **to spell out the steps it took to arrive at the true value of GM’s real property for the years in question.** This clarification includes **(1) what amounts or percentages it used for its computation of true value, and the evidence of record supporting them; (2) what evidence it relied on in determining depreciation or obsolescence; and, finally, (3) why it made the particular selections in preference to some other approach, depreciation factor, obsolescence factor or appraiser which opposed that which was chosen by the BTA, and how and why it might have deviated from the amounts or percentages used by appraisers whose testimony was presented.** Only after seeing this detailed explanation can we be assured that the BTA possessed and used the ‘experience’ and ‘expertise’ that it claimed for itself, and that its decision was not unreasonable or unlawful. *Id.* at 311. (emphasis added.)

The BTA’s decision in the appeal at hand was unreasonable and unlawful because the BTA failed to identify a single appraisal-related fact upon which it relied to justify its acceptance of the Miller appraisals and its determination of the true value of the properties. The BTA’s purely conclusory statement that “we find the appraisals to be competent and probative and the

value conclusion reasonable and well-supported” does not satisfy any of this Court’s requirements to state the facts upon which the BTA justifies its decision and is not consistent with the provisions of the Constitution and R.C. 5715.01.

Proposition of Law No. 4:

The BTA is required to address and decide issues raised by a statutory party that directly relate to the proper determination of the true value of real property.

The BTA was required to address and decide the issues raised by the BOE in its brief because the BOE was a statutory “party” to the BTA’s proceeding. By refusing to address even a single argument made by the BOE, the BTA essentially deprives the BOE of its statutory rights. Upon the filing of its counter-complaint, the BOE was made a statutory party to both the BOR proceedings and to the BTA’s proceedings under R.C. 5715.19(B). This provision states that “[u]pon the filing of a [counter] complaint under this division, the board of education or the property owner shall be made a party to the action.” R.C. 5717.01 states that an appeal shall be “heard on the record” by the BTA and the requirement to hear an appeal includes the requirement to consider the arguments made by the parties and to address those arguments in the decision. (Appx. 20.)

In its brief before the BTA, the Appellants raised several important issues that the BTA did not refer to, address, or decide in addition to the fact that the BTA failed to even mention the testimonial and documentary evidence submitted at the BTA hearing. One such issue was that the property owner’s appraiser failed to make any net adjustments to his comparable sales or rent comparables to account for the fact that the property had a substantial amount of common area that was not found in the comparables. In *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio-2844, 972 N.E.2d 559, ¶ 29, this Court stated that “[w]hen the BTA’s decision is ‘silent on the subject’ of potentially material evidence, that silence makes the

court ‘unable to perform its appellate duty,’ with the result that the proper course is to remand so that the BTA may *afford the taxpayer the review of the evidence that is its due.*” (emphasis added.) As a statutory party to the BTA proceedings, the BOE was entitled to have the BTA address its issues and to resolve them in its decision. Not only was the BTA silent on the arguments raised in its brief, but it was also silent on the testimonial and documentary evidence presented to the BTA at the hearing.

In *RDSOR v. Knox Cty. Bd. of Revision*, 5th Dist. Knox No. 07-CA-12, 2008-Ohio-897, ¶ 26, the Court of Appeals stated that “[t]he court’s hearing of the appeal necessarily contemplates the duty to allow the parties to be heard, and the trial court erred in issuing its decision without providing the parties an opportunity to present their respective arguments relative to the appeal.” The right of public officials to file a brief in an administrative appeal was also recognized by the Montgomery County Court of Appeals in *Borgerding v. City of Dayton*, 91 Ohio App. 3d 96, 97, 631 N.E.2d 1081 (2nd Dist.1993). The right to submit a brief to the BTA is rendered worthless unless there is evidence to show that the BTA actually read the brief and this can occur only when the BTA addresses and decides each of the arguments and issues raised in said brief.

The BTA’s decision was unreasonable and unlawful because the BTA failed to address a single argument made by the BOE or address the evidence presented to it at the BTA hearing.

CONCLUSION

For the reasons set forth herein, this Court is respectfully requested to reverse the decision of the Board of Tax Appeals and to reinstate the Franklin County Auditor’s original appraised value of \$1,250,000 for the Village Place property (BTA Case No. 2012-386) and \$1,456,400 for the Stratford Place property (BTA Case No. 2012-387) because no competent and probative evidence exists which proves that the properties have a lower or different value, or in

the alternative to remand these appeals back to the BTA with instructions that it address the specific issues raised and evidence presented by Appellant in each appeal and that it specifically determine the relevant facts of the matter, and that it set forth those facts in its decision. Finally, Appellants request this Court to hold that the BTA's use of its new template form decision with the one sentence referred to by Appellants in their Brief is per se unreasonable and unlawful for the reasons set forth herein.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on the following by email transmission and/or regular U.S. mail this 27th day of April 2015.

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IN THE SUPREME COURT OF OHIO

Lutheran Social Services of Central Ohio Village
Housing, Inc., et al.

Appellant,

v.

Board of Education of the South-Western City
Schools

Appellee,

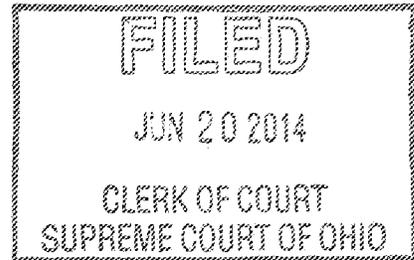
v.

Franklin County Board of Revision and
Franklin County Auditor,

Appellees.

Case No. **14-1032**

Appeal from the Ohio Board of
Tax Appeals - Case Nos. 2012-386
and 2012-387



NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE
SOUTH-WESTERN CITY SCHOOLS

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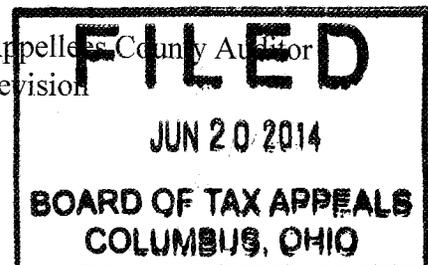
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and Board of Revision



IN THE SUPREME COURT OF OHIO

Lutheran Social Services of Central Ohio Village :
Housing, Inc., et al.

Appellant,

v.

Board of Education of the South-Western City :
Schools

Appellee,

v.

Franklin County Board of Revision and :
Franklin County Auditor,

Appellees.

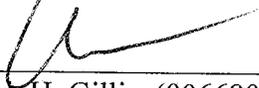
Case No. _____

Appeal from the Ohio Board of
Tax Appeals - Case Nos. 2012-386
and 2012-387

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE
SOUTH-WESTERN CITY SCHOOLS

Now comes Appellant, the Board of Education of the South-Western City School District, and gives notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of *Lutheran Social Services of Central Ohio Village Housing, Inc. and Lutheran Social Services v. Franklin County Board of Revision, Franklin County Auditor, and Board of Education of the South-Western City Schools*, BTA Case Nos. 2012-386 and 2012-387, rendered on May 23, 2014, a copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,



Mark H. Gillis (0066908)
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Attorneys for Appellant Board of Education of the
South-Western City Schools

EXHIBIT A - STATEMENT OF ERRORS

(1) The Ohio Board of Tax Appeals (BTA) erred in holding that an appraisal is competent and probative evidence of value merely because: (1) “It provides an opinion of value as of tax lien date; (2) “was prepared for tax valuation purposes;” and (3) was “attested to by a qualified expert.”

(2) The BTA erred by failing to conduct a de novo review of the evidence in the record;

(3) The BTA erred by failing to specifically state the facts and figures upon which its decision is based.

(4) The BTA erred by failing to independently determine the true value of the subject properties.

(5) The BTA erred in accepting appraisal reports as the true value of the subject properties when said reports failed to value all of the real estate.

(6) The BTA erred in accepting appraisal reports as the true value of the subject properties when none of the appraiser’s sale comparables or rent comparables included age-restricted properties such as the subject properties and all were decades older than the subject properties.

(7) The BTA erred in accepting appraisal reports in which none of the sale comparable properties or rent comparable properties contained therein were designed or used for the same purpose as the subject property and no adjustments were made to account for the differences between the properties.

(8) The BTA erred by failing to even acknowledge let alone specifically address any of the evidence and arguments presented by the Board of Education that demonstrated the flaws in and insufficiency of the evidence presented by the property owners and the case law rejecting similar appraisal reports.

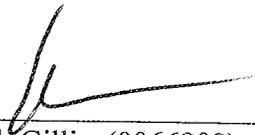
(9) The BTA erred in accepting appraisal reports in which all of the sale comparables were admittedly inferior to the subject property and did not contain the same types of common areas and other amenities that the subject property contains.

(10) The BTA erred by failing to accept the Auditor's original value as the default value of the subject property because the record is devoid of competent and probative evidence to support a reduction in value for the subject property.

(11) The BTA erred in holding that Lutheran Social Services of Central Ohio Village Housing, Inc. and Lutheran Social Services sustained their burdens of proof to prove that the subject properties were over-valued and further failed to prove the true value of the subject properties.

PROOF OF SERVICE ON THE OHIO BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.



Mark Gillis (0066908)
Attorney for Appellants

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served on the following by certified mail, return receipt requested, with postage prepaid, this 20 th day of June, 2014.

Timothy A. Pirtle, Esq.
2935 Kenny Road, Suite 225
Columbus, Ohio 43221

Mike Dewine
Appellee Ohio Attorney General
30 East Broad Street, 17th Floor
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Columbus, Ohio 43215



Mark Gillis (0066908)
Attorney for Appellants

IN THE SUPREME COURT OF OHIO

Lutheran Social Services of Central Ohio Village :
Housing, Inc. :

Appellant,

v.

Board of Education of the South-Western City :
Schools :

Appellee,

v.

Franklin County Board of Revision and :
Franklin County Auditor, :

Appellees. :

Case No. _____

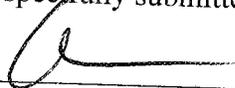
Appeal from the Ohio Board of
Tax Appeals - Case Nos. 2012-386
and 2012-387

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellant, who has filed a notice of appeal with the Supreme Court, makes this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case *Lutheran Social Services of Central Ohio Village Housing, Inc. and Lutheran Social Services v. Franklin County Board of Revision, Franklin County Auditor, and Board of Education of the South-Western City Schools*, BTA Case Nos. 2012-386 and 2012-387, rendered on May 23, 2014, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



Mark Gillis (0066908)
Rich & Gillis Law Group, LLC
Attorneys for Appellant Board of Education

OHIO BOARD OF TAX APPEALS

Lutheran Services of Central Ohio Village Housing Inc.,)	CASE NO(S). 2012-386 and 2012-387
)	
Appellant(s),)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Franklin County Board of Revision, et al.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Timothy A. Pirtle, Esq. 2935 Kenny Road, Suite 225 Columbus, OH 43221
For the County Appellees	-	Ron O'Brien Franklin County Prosecuting Attorney William J. Stehle Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, OH 43215
For the Board of Education	-	Rich & Gillis Law Group, LLC Jeffrey A. Rich 6400 Riverside Drive, Suite D Dublin, OH 43017

Entered **MAY 23 2014**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals decisions of the board of revision (“BOR”) which determined the value of the subject properties, parcel numbers 570-242616 and 570-170045, for tax years 2008, 2009 and 2010. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01 and any written argument submitted by the parties. For tax year 2008, the subject properties were initially assessed \$1,250,000 for parcel number 570-242616 and \$1,456,400 for parcel number 570-170045. Decrease complaints were filed with the BOR seeking reductions to the subject properties’ values. The affected board of education (“BOE”) filed counter-complaints objecting to the requests. The BOR issued decisions maintaining the initially assessed valuations, which led to the present appeals.¹

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135

¹ The BOR also issued decisions for tax year 2011; however, those decisions are not the subject of these appeals.

Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, “[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Such is the case in these matters, as the records do not indicate that the subject properties “recently” transferred through qualifying sales. Upon review of property owner’s appraisal evidence, which provides opinions of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisals to be competent and probative and the value conclusions reasonable and well-supported.

It is therefore the order of this board that the subject properties’ true and taxable values, as of January 1, 2008, January 1, 2009 and January 1, 2010, were as follows:

PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
570-242616	\$810,000	\$283,500
PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
570-170045	\$700,000	\$245,000

It is the order of the Board of Tax Appeals that the subject properties be assessed in conformity with this decision and order.

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.



A.J. Groeber, Board Secretary

ty days for persons to change residence in order to be eligible for election.

The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

(1967)

CONTINUATION OF PRESENT DISTRICT BOUNDARIES.

§14 The boundaries of House of Representatives districts and Senate districts from which representatives and senators were elected to the 107th General Assembly shall be the boundaries of House of Representatives and Senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.

(1967)

SEVERABILITY PROVISION.

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

ARTICLE XII: FINANCE AND TAXATION

POLL TAXES PROHIBITED.

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

LIMITATION ON TAX RATE; EXEMPTION.

§2 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.

(1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)

AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION; PROCEDURES.

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section.

The classes shall be:

(a) Residential and agricultural land and improvements;

(b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are subject to the limitation that the sum of the amounts of all taxes charged for current expenses against the land and improvements thereon in each of the two classes of property subject to taxation in cities, townships, school districts, counties, or other types of taxing districts, shall not be less than a uniform per cent of the taxable value of the property in the districts to which the limitation applies. Different but uniform percentage limitations may be established for cities, townships, school districts, counties, and other types of taxing districts.

(1980)

5709.01 Taxable property entered on general tax list and duplicate.

- (A) All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.
- (B) Except as provided by division (C) of this section or otherwise expressly exempted from taxation:
- (1) All personal property located and used in business in this state, and all domestic animals kept in this state and not used in agriculture are subject to taxation, regardless of the residence of the owners thereof.
 - (2) All ships, vessels, and boats, and all shares and interests therein, defined in section [5701.03](#) of the Revised Code as personal property and belonging to persons residing in this state, and aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with sections [4561.17](#) to [4561.21](#) of the Revised Code, are subject to taxation.
- (C) The following property of the kinds mentioned in division (B) of this section shall be exempt from taxation:
- (1) Unmanufactured tobacco to the extent of the value, or amounts, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof.
 - (2) Spirituous liquor, as defined in division (B)(5) of section [4301.01](#) of the Revised Code, that is stored in warehouses in this state pursuant to an agreement with the division of liquor control.
 - (3) Except as otherwise provided in section [5711.27](#) of the Revised Code, all other such property if the aggregate taxable value thereof required to be listed by the taxpayer under Chapter 5711. of the Revised Code does not exceed ten thousand dollars.
 - (a) If the taxable value of such property exceeds ten thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt.
 - (b) If such property is located in more than one taxing district as defined in section [5711.01](#) of the Revised Code, the exemption of ten thousand dollars shall be applied as follows:
 - (i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;
 - (ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;
 - (iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized.
- (D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property.

Effective Date: 07-01-1997

5713.01 County auditor shall be assessor - assessment procedure - employees.

(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, or as provided in section [7.16](#) of the Revised Code for the two 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 tax commissioner shall

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 [5713.31](#) 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.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 08-19-1992; 06-30-2005

Related Legislative Provision: See 129th General Assembly File No. 117, HB 508, §757.10.

5713.03 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:

(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. 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

Related Legislative Provision: See 129th General Assembly File No. 186, HB 510, §3

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

5715.01 Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision.

(A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section [5713.31](#) of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section [5713.03](#) of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections [5713.01](#) to [5713.26](#) , 5715.01 to [5715.51](#) , and [5717.01](#) to [5717.06](#) of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections [5713.03](#) and [5713.31](#) of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section [5713.31](#) of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

Effective Date: 09-27-1983; 06-30-2005

5715.10 Valuation of real property - county board of revision may summon and examine persons as to property.

The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

Effective Date: 10-01-1953

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, facsimile transmission, electronic transmission, or by 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. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. 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. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeal qualifies under that section.

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.

Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Effective Date: 03-14-2003

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

Rule promulgated under: RC [5703.14](#)

Rule authorized by: RC [5703.05](#)

Rule amplifies: RC [5713.01](#) , [5715.01](#)

Replaces: 5705-3-01

R.C. [119.032](#) review dates: 09/18/2008

5703-25-06 Equalization procedures.

(A) "True value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in the county on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The assessor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality.

(B) At least once each six-year period the county auditor of each county, in conformity with the provisions of section [5713.01](#) of the Revised Code, shall view and appraise each parcel of real property and the improvements thereon in the county and this appraisal shall reflect the one hundred per cent true value in money of each parcel appraised, and the auditor shall place each parcel of real property on the tax duplicate at its "taxable value" which is thirty-five per cent of its true value in money.

(C) In the update year the county auditor shall determine whether each parcel of real property and the improvements thereon is appraised at its true value in money, as defined in paragraph (A) of rule 5705-25-05 of the Administrative Code, as of tax lien date of said year. If the auditor finds that there has been either an increase or decrease in value, the auditor shall adjust the tax records to show the true value in money of each parcel and the improvements thereon as well as the "taxable value" thereof, which "taxable value" shall be thirty-five per cent of the true value in money thereof as redetermined by the county auditor as of tax lien date.

(D) In making this triennial update of the true value in money and the "taxable value" of each parcel of real property, the county auditor shall be guided by sales of comparable property for a like use; the sales ratio and other related studies compiled by the tax commissioner for the three calendar years immediately preceding the update year; by the increase or decrease in current building costs and changes in construction technique both after the proper application of depreciation and obsolescence; by the increase or decrease in the net rental income, expenses, and services for comparable property since the year in which the preceding sexennial reappraisal had been completed; and such other indications of increase or decrease in value as may be pertinent, such as test or sample appraisals on a current basis, where sales of real property are limited or in question.

(E) In implementing any increase or decrease in valuation of real property pursuant to this rule or ordered by the tax commissioner pursuant to section [5715.24](#) of the Revised Code, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county. 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 and section 2, Article XII, Ohio Constitution, and sections [5713.03](#) and [5715.01](#) of the Revised Code, and this rule.

(F) In determining the true value in the year of the sexennial reappraisal or update year of any tract, lot, or parcel of real estate 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:

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

(2) An improvement is added to the property.

(G) The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first.

(H) When the county auditor revalues real property, notifications of the change in value shall be made as provided in section [5713.01](#) of the Revised Code.

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

Rule promulgated under: RC [5703.14](#)

Rule authorized by: RC [5703.05](#)

Rule amplifies: RC [5713.01](#) , [5715.01](#)

Replaces: 5705-3-02

R.C. [119.032](#) review dates: 09/18/2008

amenity

(GPM); reverse annuity mortgage (RAM); variable-rate mortgage (VRM).

amenity

1. A pleasant quality.
2. A tangible or intangible benefit of real property that enhances its attractiveness or increases the satisfaction of the user, but is not essential to its use. Natural amenities may include a pleasant location near water or a scenic view of the surrounding area; man-made amenities include swimming pools, tennis courts, community buildings, and other recreational facilities. [3]

American bond. A masonry process in which every fifth, sixth, or seventh course of bricks is laid with the length perpendicular to the wall as a header course.

American Institute of Real Estate Appraisers (AIREA). The organization dedicated to the development of excellence in the real estate appraisal profession. The Appraisal Institute has been a pioneer in appraisal education and is the foremost publisher of appraisal literature. The Institute confers the MAI designation on individuals who demonstrate the knowledge, experience, and judgment necessary to appraise all types of real property and the RM designation on those who demonstrate the ability to value one- to four-family residences.

American Society of Real Estate Counselors (ASREC). The organization of professionals qualified to provide real estate advice and guidance on a fee basis. The Society confers the CRE designation.

American standard. A system for measuring office areas in buildings which was established by the American National Standards Institute.

AMI. *See* alternative mortgage instrument.

AMO®. ACCREDITED MANAGEMENT ORGANIZATION®. *See also* Institute of Real Estate Management (IREM).

amortization. The process of retiring a debt or recovering a capital investment through scheduled, systematic repayment of principal; a

commitment fee. A fee paid by a borrower to a lender who agrees to make funds available at a future date; frequently expressed as a percentage of the expected loan. [5]

committee deed. A deed by a committee or commission appointed by a court to sell a property.

common area. The total area within a property that is not designed for sale or rental, but is available for common use by all owners, tenants, or their invitees; e.g., parking and its appurtenances, malls, sidewalks, landscaped areas, recreation areas, public toilets, truck and service facilities. [14]

common area charges. Income collected from owners or tenants for the operation and maintenance of common areas. [14]

common base. In construction, a single-member base, usually from four to six inches high.

common costs. Costs for items that benefit more than one portion of a project or more than one project within a development, e.g., hallways and elevators in a condominium, streets, parking areas, amenities. [5]

common law

1. The body of customs, usages, and practices developed by the Anglo-Saxons; English law as distinguished from Roman law, canon law, and other legal systems.
2. An ancient, unwritten body of law founded on customs and precedents, as distinguished from statute law.
3. A system of elementary rules and judicial principles that are continually expanded, adapting themselves to changes in trade, commerce, arts, inventions, and the needs of society.

common property. Land in general or a tract of land that is considered public property, in which all persons enjoy equal rights; property not owned by individuals or government, but by groups, tribes, or formal villages. In law, the incorporeal, heritable right of one person in the land of another, e.g., of estovers, of pasture, of piscary.