

**IN THE SUPREME COURT OF OHIO**

**ORIGINAL**

Board of Education of the Groveport-  
Madison Local School District

Case No.: 2014-0882

Appellant,

v.

Appeal from Board of Tax Appeals

Franklin County Board of Revision,  
Franklin County Auditor,  
Lutheran Social Services of Central Ohio  
Groveport Housing, and the  
Tax Commissioner of Ohio

Appellees.

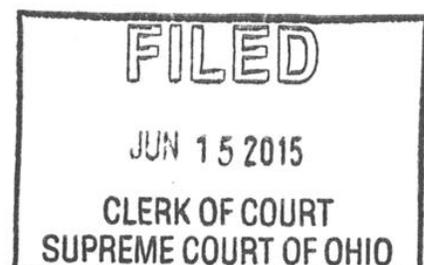
**MERIT BRIEF OF APPELLEE LUTHERAN SOCIAL SERVICES OF  
CENTRAL OHIO GROVEPORT HOUSING**

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## STATEMENT OF THE CASE AND FACTS

This is an appeal from a Board of Tax Appeals (BTA) decision for tax year 2009, BTA case 2012-146. This property, parcel number 185-001833, is owned by Lutheran Social Services of Central Ohio Groveport Housing. The property is a 48 unit apartment building with all one bedroom units. The units were built in 1998. It is a senior housing complex, operating under the capital advance program. The apartment complex is located on 3.1 acres of land. It is referred to as Greenfield Place. (Appraisal, p. 1) The 48 units total 26,880 rentable square feet, while the building itself contains a total of 40,534 square- feet of space. (Appraisal, p. 14)

At the BOR hearing Don Miller, MAI, presented his appraisal and testified. The BOE presented no evidence. The BOR found value consistent with Miller's appraisal, \$1,130,000. The BOE appealed the BOR's decision to the BTA. At the BTA, the BOE presented no evidence. The BTA found value consistent with Miller's appraisal, \$1,130,000. The BOE then appealed the BTA's decision here.

Because Miller's appraisal was competent and probative, the BOR and BTA found value per Miller's appraisal. The BOE presented no evidence to counter Miller's appraisal.

### **Proposition of Law No. 1:**

The decision of the Board of Tax Appeals was based on probative evidence that is sufficient to prove the true value of the property.

Miller, an MAI appraiser, testified at the BOR regarding his appraisal. Miller prepared an income capitalization approach and a sales comparison approach. Miller states at page 5 of his appraisal "As is the case with any income producing property, the income capitalization approach is the most appropriate valuation tool for the subject. The sales comparison approach is also used, but has limited applicability."

The appraiser used 5 rent comparables, listed at pages 19 to 23 of his report, and determined the pro forma rent on page 24 of his report. He then determined a vacancy rate. Market expenses were then developed, followed by the pro forma operating statement. The capitalization rate was applied to the net operating income. A value of \$1,130,000 was determined. The appraiser also prepared a sales comparison approach, but this was used as a check to confirm the income approach. (Appraisal, p. 5)

In its BTA brief, the BOE claimed Miller compared the subject to “older and inferior apartment buildings that did not have the extensive common areas seen at elderly housing complexes such as the Subject Property.” BOE BTA brief, page 1. The subject property is in Groveport. Three of the 5 rent comparables are in Groveport. The other two are in Canal Winchester and Columbus. They were built from 1957 to 2009. The subject was built in 1998. While the BOE claims Miller used older buildings as comparables, two of the five are newer. From the comparable’s build dates, it is clear Miller was not looking for older properties. The BOE brief criticizes Miller for using old properties as comparables and then criticizes him for using new properties, because the new properties are in the “start-up phase.” While a new property may take a while to get 100% occupancy, there is nothing in the record to indicate the rental rate charged is less than market. Miller chose the best comparables he could find. The map on page 18 of the appraisal shows that the rent comparables are in close proximity to the subject. The subject is a subsidized property. Subsidized properties are typically built in less affluent parts of town, as is the subject. There is not a large population of upscale rent comparables in the subjects’ neighborhood.

The BOE BTA brief criticizes the market rent Miller used. Reviewing the chart on page 24, Miller used a rent per square foot higher than any of his comparables and 13% higher than the average.

Miller states at page 24 of his appraisal that each of the rent comparables is located in a superior location than the subject. Two of the comparables are in superior condition, two are in inferior condition. The statement that Miller compared the subject to older and inferior buildings is simply not accurate.

The BOE brief criticizes the sales comparables used by Miller. As set forth above and in the appraisal report more than once, the income approach is used to value the property. The sales comparison approach is used as a check to verify the income approach.

The 48 units total 26,880 rentable square feet and the total square footage of the building is 40,534 square feet. Virtually all common housing has common areas. While the BOE criticizes the appraisal for improperly accounting for the common area, they do not indicate if the subject's common area is similar or dissimilar to the rent comparables. Three of the five rent comparables have clubhouses, comps 1, 2 and 5. See appraisal pages 19 to 23. This would be a significant amount of common area. Three of the rent comparables have fitness centers, comps 1, 2, and 5. This would again account for a significant amount of common area. It appears the rent comparables have significant common area. Nowhere does the BOE explain how the appraisal is specifically in error. To do so would require an analysis of what common area the subject has, and what common area the comparables have. This is not typically done in appraisals, for good reason.

The BOE states at page 6 of its brief "Probative evidence that is sufficient to 'prove' the true value of the property consists of appraisal-related facts or market data." Miller's appraisals and testimony are full of facts and market data.

The BOE states at page 7 of its brief:

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).

Each of these case citations supports the BTA’s decision. The BTA was presented with evidence proving the value set forth in the appraisal was correct. Specifically, Miller’s testimony and his appraisal report include market data, analyzed by Miller, an MAI appraiser.

The BOE argues the language the BTA uses in its decision is somehow inadequate. The BTA does not need to state “the evidence proved the value to us” because that is clear from the decision. Because Miller’s appraisals and testimony were the only evidence in the record, and the BTA found value consistent with Miller’s appraisals, there was no reason for the BTA to explain that they followed Miller’s appraisals as this was clear from the BTA decision. Because the BTA does not list each element of its thought process in its decision does not mean the owners did not prove the values.

### **Proposition of Law No. 2**

When the only evidence in the record is the property owner’s appraisal and appraiser’s testimony, and the evidence is competent and probative, the BTA does not need to detail their analysis in its decision.

The BOE cites *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988) as support for its position that “the BTA is required to identify and set forth the relevant ‘facts’ in its decision.” However, in *Howard* there were two appraisers and evidence of a recent sale. The BTA would have needed to indicate which appraiser they were

relying upon and why and any weight placed on the sale. In the instant matter the situation is different. In the instant matter the only evidence is the property owner's appraisal. The BTA found value consistent with the property owner's appraisal. When the only evidence in the record is the property owner's appraisal, and the BTA finds value consistent with the appraisal, there really isn't a question what the BTA relied upon in finding value. Because the BTA finds value consistent with the appraisal and the appraisal is the only evidence in the record, they must have relied upon the appraisal. There is no competing evidence to compare, contrast and analyze. The BTA does not need to state "we relied upon the Miller appraisal and his testimony" when they find value consistent with his appraisal and there is no other evidence in the record.

In *Howard*, this Court stated:

"Surprisingly, though, the BTA's valuation is \$741,000 higher than the purchase price of a sale of the property that occurred after the valuation date. The BTA did not explain this discrepancy, and we are unable to understand how such a value can be found."

In the instant matter, considering the BTA decision, the Court can "understand how such a value can be found." There are no discrepancies to explain and no competing appraisals to analyze or sales to analyze. There is one appraisal and the BTA found value consistent with it. That the BTA found value based upon Miller's appraisal is intuitively obvious, and this Court is "able to understand how such a value can be found."

In *Howard*, this Court stated:

"4. The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and this court will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful."

In the instant matter, it does not “affirmatively appear from the record that such decision is unreasonable or unlawful.” We have an MIA appraiser’s testimony and his appraisal report. Therefore, this Court should “not disturb a decision of the Board of Tax Appeals with respect to such valuation.”

The BOE at page 9 of its brief discusses RC 5715.01 and sets forth the rule implementing the statutory requirements. The Miller appraisal does what is required by this rule. The appraisal discusses the physical nature and construction of the property and its purpose. (Appraisal, p. 1) The appraisal discusses the cost, determining the cost is not relevant in valuing the property. (Appraisal, p. 5-6, 17, 37) The appraisal discusses the income producing capacity. (Appraisal, numerous pages) The BOR and BTA were both persuaded after reading these items in the appraisal report and hearing Miller’s testimony on these items that the appraisal fairly valued the property.

The BOE at page 10 of its brief cites *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009 -Ohio-584, 903 N.E.2d 1179, wherein the decision referenced *Howard*, discussed above. *HealthSouth Corp.* is a complex Tax Commissioner case concerning reduction in the taxable value of personal property in 19 Ohio taxing districts with considerable evidence. In the instant matter, the only evidence in the record was Miller’s testimony and Miller’s appraisal, and the BTA found value consistent with the appraisal. There is no need for the BTA to state they relied upon Miller’s appraisal when it is obvious that is what they did. There was no competing evidence to analyze and discuss.

The BOE next cites *Dublin Senior Community Ltd. Pshp. v. Franklin Cnty Bd. of Revision*, 80 Ohio St.3d 455, 462, 687 N.E.2d 426 (1997) for the proposition that “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.” *Dublin Senior* was a case with a purchase of a note and mortgage and a separate and distinct transaction during a pending foreclosure, a sheriff’s sale with a sheriff’s deed, and competing appraisals by Swift and Pickering. To understand a decision in that case, an explanation would be necessary. In contrast, in the instant matter, the only evidence in the record was Miller’s testimony and Miller’s appraisal. The BTA found value consistent with the appraisal. There is no need for the BTA to state they relied upon Miller’s appraisal and specific items in the appraisal when it is obvious that is what they did.

The BOE also cites *Villa Park Limited v. Clark Cty. Bd. of Revision*, 68 Ohio St.3d 215, 218-219, 625 N.E.2d 613 (1994). In *Villa Park* the value of an 11 acre apartment complex was at issue. There were two appraisers. The decision states:

At the hearing before the BTA, Villa Park’s appraiser, John R. Garvin, used the income and the cost approaches. Garvin found no comparable sales with a similar apartment mix in the Springfield area, so he did not use the market-data approach. Appellee’s appraiser, Gerald Tipton, used all three approaches, but chose a value derived from a market approach that compared properties based on ratios of sales prices to potential gross rental income.

One appraiser used the income and cost approach, the other used primarily the market approach. In such a case, it would require an explanation to determine how a decision was arrived at. But in the instant matter, the only evidence is Miller’s appraisal and Miller’s testimony and the BTA found value consistent with this. The BTA does not need to discuss in its decision what it relied upon when Miller’s evidence was the only evidence it could have relied upon. That is all there was.

The BOE relies upon *General Motors Corp. v. Cuyahoga Cty. Bd. of Revision*, 67 Ohio St.3d 310, 617 N.E.2d 1102 (1993). Again, this was a very complicated case with considerable conflicting evidence, not at all like the instant matter.

In the instant matter, the only evidence in the record was the Miller appraisal and the Miller testimony. The BOR and BTA found value consistent with the Miller appraisal. There was no other evidence to compare and contrast, so there was no need to go into great length about why the BTA did what they did.

### **Proposition of Law No. 3**

The common areas in any housing project are valued in conjunction with the living units and do not need a separate valuation.

The subject property has common area. The rent comparables have varying amounts of common area, such as hallways, stairwells, elevators, laundry rooms, clubhouses, fitness centers, pools and playgrounds. See appraisal rent comparables. (Appraisal, p. 19-23) Some rent comparables appear to have more common area than the subject, some appear to have less. There is discussion above regarding clubhouses and fitness centers.

When you rent an apartment, you pay one monthly rent charge. There is not a separate charge for your room and the hallways, stairwells, elevators, laundry rooms, clubhouses, fitness centers, pools, lakes, playgrounds, and car washes. The common area does not generate distinct revenue, although it may impact what you will pay in rent for your room.

Appraisers do not value common areas separately unless it is something unique. If your rental at an apartment complex included the use of an 18-hole golf course, it would be reasonable to place a separate value on the golf course. That is a unique and distinct common area. However, it is unreasonable to place a value on hallways or stairwells. Adjustments can

be made to the rent comparables to arrive at a value for the subject property based upon common area if the appraiser deems it necessary.

The BOE believes the common area has value. That is certainly correct. If the common areas did not have value the common areas would not have been built. But the common area should not be valued separately. Nearly all common housing has common areas. While the BOE criticizes the appraisals for improperly accounting for the common area, they do not indicate if the common area in the subject is similar or dissimilar to the comparables. Here, three of the five rent comparables have clubhouses. This would be a significant amount of common area. Nowhere does the BOE explain how the appraisal is specifically in error. To do so would require an analysis of what common area the subject has, and what common area the comparables have. This is not typically done in appraisals, for good reason. The rent comparables are the best the appraiser could find. The BOE did not present an appraisal with alternate rent comparables.

The BOE argues that the subject property's common area gives reason to increase its value. However, because the subject does not have a clubhouse, and three of the five rent comparables do, the common area issue is actually a reason to decrease the value of the subject, relative to the comparables.

Under the BOE's theory, at what point is common area separately valued? If you have a subject property with a certain common area, and a rent comparable with similar common area, why would anyone go to the trouble of separately valuing the common area? Its value is included in the value of the rented space, as the common area is available for common use by all tenants and enhances the attractiveness to users.

Also, an appraiser could not get comparable rental data on common areas. Comparable rental data for a hallway or a stairwell is not available, because no one rents out stairwells or

hallways. At page 12 of its brief, the BOE claims that Miller indicated the common area had little or no value. This is out of context. An interior hallway in an apartment building with interior entrances clearly has value, for without it the only way a tenant could get into their apartment would be to climb through a window. But the hallway could not be separately rented. It has to be available for use by all. The charge for the use of the hallway is built into the rent. The rent comparables chosen also have units where the “cost” of their hallway is built into the rent. This cost is factored into the value calculation. To separately value the hallway would make no sense.

The appraiser finds the best comparable properties he can and determines their rent. He then makes adjustments based upon differences between the subject and the comparable. If the comparable has common area, any charge for that is built into the rent. Because the subject has common area, and the comparables have common area, it is an apples to apples comparison. If one had extensive common area and the other had none, we may need to make an adjustment. But when the subject has common area and the comparables have common area, we are comparing apples to apples and there is no common area adjustment needed or reason to separately value the common area. The value of the common area is factored into the calculation.

#### **Proposition of Law No. 4**

The BTA is not required to address each issue raised by a party.

The BTA cannot be required to address each and every point raised in a party’s brief. The BTA can determine what needs to be addressed and what does not. If the BTA does not address a point raised in a party’s brief, that does not indicate that the BTA did not read the brief.

In *Board of Edn. of the South-Western City Sch. Dist. v. Franklin Cty. Bd. of Revision*, 14AP-729, 2015 Ohio 1780 (Ohio App. Tenth District, May 12, 2015), the Court stated:

{¶ 13} R.C. 5717.01 governs proceedings before the BTA in an appeal from the BOR. *Coventry Towers, Inc. v. Strongsville*, 18 Ohio St.3d 120, 122 (1985). The statute gives the BTA three options when hearing an appeal: the board may confine itself to the record and the evidence certified to it by the BOR, hear additional evidence from the parties or may make such other investigation of the property as is deemed proper. *Id.*

Because the BTA has the option to “confine itself to the record and the evidence certified to it by the BOR” they do not have to entertain briefs. Because they do not have to entertain briefs, they may elect not to address issues raised in briefs in the BTA decisions.

### **CONCLUSION**

For the reasons set forth herein, this Court is respectfully requested to affirm the decision of the Board of Tax Appeals because competent and probative evidence was presented to the BOR and the BTA which proves value, and the BOE presented no evidence of value.

Respectfully submitted,



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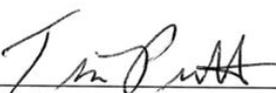
## CERTIFICATE OF SERVICE

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 16th day of June 2015.

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