

ORIGINAL

**IN THE SUPREME COURT OF OHIO**

Board of Education of the South-Western  
City Schools

Case No.: 2014-1032

Appellant,

v.

Appeal from Board of Tax Appeals

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

Appellees.

**MERIT BRIEF OF APPELLEES LUTHERAN SOCIAL SERVICES OF  
CENTRAL OHIO VILLAGE CITY HOUSING, INC.  
AND  
LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO**

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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 2008. The decision was issued for BTA cases 2012-386 and 2012-387, involving the determination of the true value of two separate apartment complexes. In both cases, the BTA found value consistent with the property owner's appraisal.

### **BTA Case No. 2012-386**

This property, parcel number 570-242616, is owned by Lutheran Social Services of Central Ohio Village Housing, Inc. The property is a 44 unit apartment building with all one bedroom units built in 2000. It is a senior housing complex, operating under the capital advance program. The apartment complex is located on 3.34 acres of land. It is referred to as Village Place. (Village Place appraisal, p. 1; Supp. p. 2) The 44 units total 24,640 rentable square feet, while the building itself contains a total of 34,784 square- feet of space. (Village Place appraisal, p. 13)

At the BOR hearing Don Miller, MAI, presented his appraisal and testified. The BOE presented no evidence. The property owner appealed the BOR's decision to the BTA. Because the property owner's appraisal and testimony were in the record, this evidence was not repeated at the BTA. The BOE presented testimony of appraiser Tom Sprout. The BTA found value consistent with Miller's appraisal, \$810,000. The BOE then appealed the BTA's decision here.

Because Miller's appraisal was competent and probative, the BTA found value per Miller's appraisal.

### **BTA Case No. 2012-387**

This property, parcel number 570-170045, is owned by Lutheran Social Services of Central Ohio. The property is a 46 unit apartment building with one and two bedroom units built

in 2002. (There is only one two bedroom unit) It is a senior housing complex, operating under the capital advance program. The apartment complex is located on 3.93 acres of land. It is referred to as Stratford Place. (Stratford Place appraisal, p. 1; Supp. p. 16) The 46 units total 24,980 rentable square feet, while the building itself contains a total of 36,194 square- feet of space. (Stratford Place appraisal, p. 14)

At the BOR hearing Don Miller, MAI, presented his appraisal and testified. The BOE presented no evidence. The property owner appealed the BOR's decision to the BTA. Because the property owner's appraisal and testimony were in the record, this evidence was not repeated at the BTA. The BOE presented testimony of appraiser Tom Sprout. The BTA found value of \$700,000. The BOE then appealed the BTA's decision here.

Because Miller's appraisals were competent and probative, the BTA found value consistent with Miller's appraisals. The BOE presented evidence, but no appraisal, 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 properties.

In both cases, Miller, an MAI appraiser, prepared appraisals and testified at the BOR regarding his appraisals. The BTA found the appraisals probative and competent.

Village Place is a 44 unit apartment complex in a two story building with all one bedroom units. Each unit is 560 sf. The property is in good condition. (Village Place Appraisal, p. 1, 13; Supp. p. 2)

The Miller appraisal includes the income and sales comparison approaches to value. The appraisal states at page 5, "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.” Miller repeats this on page 16 of his appraisal. The BOE brief focuses on alleged problems with the sales comparison approach, even though the income capitalization approach is primarily used.

In the income approach to valuation, 6 comparable properties are presented. They surround the subject as indicated in the map on page 17 of the appraisal. The subject units are all 560 square feet. The 6 rent comparables listed on pages 18 to 23 have one bedroom comparables that are all very close in size to the subject, 500, 377, 650, 565, 542 and 610 square feet. The rent comparables are in close proximity to the subject and are of very similar size.

Market rent is developed at page 24. The chart on that page shows the subject units are just above the average size of the comparable units surveyed in the market. Therefore, a rental rate just above the average rental rate of the range is considered appropriate. Rent comparable 5 has a slightly smaller one bedroom unit size that rents for \$425/month. The average rental rate of the comparables is \$434/month. A rate slightly above this rate is appropriate. A rental rate of \$450/month is selected as the subject’s market rent for the one bedroom units. This is within market parameters on a monthly and per square foot basis. (Village Place appraisal, p. 24; Supp. p. 10)

A vacancy rate of 10% is calculated and explained at page 24 of the appraisal. Operating expenses were derived from a survey of comparable properties. (Village Place appraisal, p. 25; Supp. p. 11) Miller testified at the BOR hearing that the expense comparables were all from his appraisal work during cross examination by the BOE counsel. The chart on page 26 of the appraisal shows that after deducting the reserve expense from the pro forma number (2756-250 = 2506), which is not included in the comparable historical numbers, the pro forma expense

number is below the average of the comparable historical operating expenses, 2553. The expenses are market. The pro forma operating statement is developed at page 26, and the capitalization rate is calculated at page 27 of the appraisal. A value of \$810,000 is developed using the income approach to valuation.

The sales comparison approach is also used, but has limited applicability. (Village Place appraisal, p. 5, 16) It begins on page 29 of the appraisal. Five comparable sales are used, with their relevant data appearing at pages 30 through 34 of the appraisal. A chart is included at page 35 comparing the properties to the subject. Miller submitted a corrected page 35 to the BOR after the hearing, and a copy of this corrected page was also provided to the BTA and is in the record.

Miller comments at page 36 of his appraisal that each comparable sale is inferior in quality and condition when compared to the subject. The map on page 29 shows that the sales comparables are in close proximity to the subject. The BOE argues that because the sales comparables are older that they are of limited use. However, Miller accounts for age in the chart on page 35 of the appraisal. Miller analyzes many factors including date of sale, property rights conveyed, financing terms, conditions of sale, market conditions, location, size, and age. Age is just one factor.

Sales per unit ranged from \$13,333 to \$23,611. The appraiser's analysis is on pages 35 to 36 of the appraisal. He finds that a value within the range is appropriate, but the low end and upper end are not appropriate. Using a value per unit value of \$17,731 yields a total value of \$780,000. The factors used to adjust the comparables are discussed at pages 35 to 36 of the appraisal.

Because the appraiser relied upon the income approach to value, and the sales

comparison approach supported this value, he determined a final value of \$810,000.

In its brief, the BOE raises several purported criticisms of the appraisal report that upon further inquiry are without merit. The BOE states that Miller used older rent comparables. The map on page 17 of the appraisal (Village Place appraisal, p. 17; Supp. p. 3) indicates that all comparables are in close proximity to the subject, and Miller states this at page 24 of his report. This is not an area of Columbus that has had much new building since 2000, the year the subject was built. While the subject was built in 2000, the newest rent comparable was built in 1995. However, the subject is a federally subsidized property. Lutheran Social Services mission is to help people through food pantries, homeless shelters, senior living residences, affordable housing communities and other services. The people needing these services do not live in the better parts of town with new construction. The best rent comparables in close proximity to the subject are not newly constructed buildings. As the map on page 17 of the appraisal indicates, the rent comparables are close to the subject. They are therefore not newly constructed buildings.

The BOE discusses that Sprout selected three additional rent comparables, but none of them were newer than the subject, supporting that newer comparables are not to be found. Miller picked the best comparables he could find in physical proximity to the subject. Miller discusses that the comparables are inferior at page 24. (Village Place appraisal, p. 24; Supp. p. 10) He was aware of this and took it into account when determining his market rent. The BOE witness indicated he would use many of the same comparables as did Miller. (BTA HR page 23, BOE Supp. Page 36)

The BOE criticized Miller for using sales comparables that were too old. As Miller states in his appraisal at page 5, "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.”

In the chart on page 35 of his report, Miller compared many attributes of the subject and sales comparables, including rights conveyed, financing terms, conditions of sale, market conditions, location, unit size, age and quality. That is what appraisers do. They take the subject, find comparables, and compare them to the subject. That is what Miller did. And again, Miller states the sales comparison approach has “limited applicability.”

Miller prepared a capitalization rate at page 27 of his report. (Village Place appraisal, p. 27; Supp. p. 13) Appraisers may have differences of opinion. Sprout may calculate his capitalization rate differently than does Miller. Sprout used the Korpacz data. Korpacz is a national survey. At page 28 of the BTA hearing record, page 37 of the BOE supplement, Sprout discusses that he looks at data from “across the country.” Investors in Columbus, OH do not care what the capitalization rate is across the country. Miller used central Ohio data because that is what purchasers of property in Columbus, OH are concerned with. While Korpacz was one of the items used by Miller, he used other data to come to the best conclusion of the capitalization rate.

Sprout testified to some general conclusions about the common area. But he did not discuss any specifics. What is the hallway area in the subject and the comparables, what is the elevator area in the properties, what is the stairwell area in the properties, what is the community room area, what is the fitness room area, what is the laundry area, etc. There is no data. What is minimal, what is average? We do not know from Sprout’s testimony.

Both the subject properties have 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. (Village Place

appraisal, p. 18-23; Supp. p. 4-9)(Stratford Place appraisal, p. 20-24; Supp. p. 18-22) Some rent comparables appear to have more common area than the subject, some appear to have less.

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, and playgrounds. 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 it 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 two subjects is similar or dissimilar to the comparables. In Village Place, three of the six rent comparables have clubhouses. This would be a significant amount of common area. Nowhere does the BOE explain how the appraisals are specifically in error. To do so would require an analysis of what common area the subjects have, and what common area the comparables have. This is not typically done in appraisals, for good reason.

The BOE argues that the subject properties common areas give reason to increase their value. However, because the subjects do not have clubhouses, and some of the rent comparables

do, the common area issue is actually a reason to decrease the value of the subjects relative to the comparables.

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. In 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 of the separate units. 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 comparable has common area, we are comparing apples to apples and there is no common area adjustment needed or reason to separately value the common area.

Stratford Place is a 46 unit apartment complex in a two story building with 45 one bedroom units and one two bedroom unit. The 46 units total 24,980 rsf on 3.94 acres. The one bedroom units are 540 sf and the two bedroom unit is 680 sf. The property is in good condition. (Stratford

Place appraisal, p. 1, 15; Supp. p. 16)

The Miller appraisal includes the income and sales comparison approaches to value. The appraisal states at page 5, “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.”

In the income approach to valuation, 5 comparable properties are presented. They are in close physical proximity to the subject and are included in the map on page 19 of the appraisal. (Stratford Place appraisal, p. 19; Supp. p. 17) The subject units are 540 square feet, and the rent comparable one bedroom units are 650, 600, 639, 710 and 576 square feet. (Stratford Place appraisal, p. 25; Supp. p. 23) They are within the same range and slightly larger. Market rent is developed at page 25. (Stratford Place appraisal, p. 25; Supp. p. 23) Because the subject units are smaller than units surveyed in the market, a rental rate near the low end of the range is considered appropriate. A rental rate of \$430/month is selected as the subject’s market rent for the one bedroom units. This is within market parameters on a monthly and per square foot basis. (Stratford Place appraisal, p. 25; Supp. p. 23) Miller also develops rent for the one two bedroom unit. A vacancy rate of 10% is calculated and explained at page 26 of the appraisal. Operating expenses were derived from a survey of comparable properties. (Stratford Place appraisal, p. 26; Supp. p. 24) Miller testified at the BOR hearing that the expense comparables were all from his appraisal work during cross examination by the BOE counsel. The chart on page 27 (Stratford Place appraisal, p. 27; Supp. p. 25) shows that after deducting the reserve expense from the pro forma number, which is not included in the comparable historical numbers, the pro forma number is below the average of the comparable historical operating expenses. The pro forma operating statement is developed at page 27, and the capitalization rate is calculated at page 28 of

the appraisal. A value of \$730,000 is developed using the income approach to valuation.

The sales comparison approach is also used, but has limited applicability. Appraisal, p. 5. It begins on page 30 of the appraisal. Five comparable sales are used, with their relevant data appearing at pages 31 through 35 of the appraisal. A chart is included at page 36 comparing the properties to the subject. Sales per unit ranged from \$13,333 to \$23,611. The appraiser discusses his analysis on pages 36 to 37 of the appraisal. He analyzes many factors including date of sale, location, physical and economic attributes, financing and age. He finds that a value within the range is appropriate, but the low end and upper end are not appropriate. Using a value per unit value of \$16,000 yields a total value of \$740,000.

Because the appraiser relied upon the income approach to value, and the sales comparison approach supported this value, he determined a final value of \$730,000.

In its brief, the BOE states that Miller used older rent comparables. The map on page 19 of the appraisal (Stratford Place appraisal, p. 19; Supp. p. 17) indicates that all comparables are in close proximity to the subject, and Miller states this at page 25 of his report. This is not an area of Columbus that has had much new building since 2002, the year the subject was built. The BOE discusses that Sprout selected four additional rent comparables, but the newest was 3 years older than the subject, supporting that newer comparables are not to be found. Miller picked the best comparables he could find in physical proximity to the subject. Miller discusses that the comparables are inferior and older at page 25 of his appraisal. He was aware of this and took it into account when determining his market rent. The BOE witness indicated he would use many of the same comparables as did Miller. (BTA HR page 13, BOE Supp. Page 33) (BTA HR page 23, BOE Supp. Page 36)

The BOE criticized Miller for using sales comparables that were too old. As Miller states

in his appraisal at page 5, “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.”

In the chart on page 36 of the Stratford Place appraisal report, Miller compared many attributes of the subject and comparables, including rights conveyed, financing terms, conditions of sale, market conditions, location, unit size, age and quality. He took the subject, found comparables, and compared them to the subject. Miller discusses the age and condition of the comparables at page 37 of his report. He took this information into account. And again, Miller states the sales comparison approach has “limited applicability.”

Sprout testified to some general conclusions about the common area of Stratford Place, and that issue is discussed above.

The BOE brief discusses Sprout’s testimony and argues that it contradicts Miller’s appraisal. However, Sprout indicated that he would have used many of the same rent comparables and the additional ones he did find were older than the subjects. Since Sprout went to the trouble of looking up various comparable properties and prepared exhibits and written comments and testified at the BTA, it seems he would have come up with a specific value, as did Miller. However, rather than finding value, the BOE is trying to use this information to discredit the property owners appraisals.

Sprout testified at page 7 of the BTA hearing record, referring to Miller’s appraisals, “The appraisal addresses both properties thoroughly.” (BOE Supp. P. 32) Sprout prepared his Exhibit 1 that he presented at the BTA. This relates to Stratford Place. At page 12 of the BTA hearing record (BOE Supp. P. 33) Sprout discusses it. What he did was divide the gross area of the subject building by the 46 units to get a square footage of 790 per unit and use this to calculate a rental rate per square foot. He decides the subject units are now 790 square feet instead of 540 square feet.

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 BOE’s brief states at page 7 “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.” The Stratford Place appraisal lists the five rent comparables at pages 20 through 24. (Stratford Place appraisal, p. 20-24; Supp. p. 18-22) For each comparable, Miller lists all units by number of bedrooms and size. Rent comparable 5 has efficiency and one and two bedroom apartments, so Miller lists them all for information purposes. The 288 square foot apartment is an efficiency unit, therefore having no separate bedroom. Miller does not use this 288 square foot unit as a comparable as it is not a one bedroom unit. The chart on page 25 (Stratford Place appraisal, p. 25; Supp. p. 23) of the appraisal lists the comparables by size and rent. Please note that the smallest rent comparable is 576 square feet, exactly twice the size of the 288 square foot unit. The size range of the one bedroom comparable properties in the chart on page 25 of the appraisal is 576 – 710 square feet, as supported by the pages 20 to 24 of the appraisal. Miller clearly did not use the 288 square foot unit in his calculation.

Also problematic with the BOE brief is the emphasis on Miller’s sales comparison approach, when Miller states repeatedly in his appraisal reports that it is secondary to the income capitalization approach and of limited use, as discussed above. Although, perhaps it makes sense to attack the sales comparison approach when the best argument you have against the income capitalization approach is to attack a 288 square foot one bedroom rent comparable that does not exist and is half the size of the smallest one bedroom comparable actually used.

For both properties, Miller used rent comparables in close proximity to the subject properties. He discussed the condition and location of the comparables in each of the appraisals. Miller's BOR testimony where he discussed his appraisals was in the record before the BTA. As this Court reviews the appraisals and testimony, it will be clear why the BTA found value consistent with Miller's appraisals.

The BOE states at page 18 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 19 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 values set forth in the appraisals were correct. Specifically, Miller's testimony and his appraisal reports including market data, analyzed by Miller, an MAI appraiser.

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 because there is only one appraisal for each property. The BTA found value consistent with the property owner’s appraisals. The BOE had an appraiser prepare evidence and testify at the BTA hearing, but he did not prepare an appraisal. If he believed Miller’s values were wrong, why did he not give us his, after all that work?

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 in each case and the BTA found value consistent with them. That the BTA found value based upon Miller’s appraisals 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 reports.

Therefore, this Court should “not disturb a decision of the Board of Tax Appeals with respect to such valuation.”

The BOE at page 22 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, Miller’s appraisals are the only appraisals in the record, and the BTA found value consistent with the appraisals. There is no need for the BTA to state they relied upon Miller’s appraisals when it is obvious that is what they did. There were no competing appraisals 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 appraisals in the record were Miller’s. The BTA found value consistent with the appraisals. There is no need for the BTA to state they relied upon Miller’s appraisals 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 appraisals are Miller's and the BTA found value consistent with these. The BTA does not need to discuss in its decision what it relied upon when Miller's appraisals were the only appraisals it could have relied upon.

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.

Miller's appraisals and testimony are competent and probative evidence that is reasonable and supports the values opined.

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 the BTA decision is reasonable and lawful. It should not be disturbed.

**Proposition of Law No. 2**

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 BTA which proves 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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