

ORIGINAL

IN THE SUPREME COURT OF OHIO

Boards of Education of the Columbus City
Schools and the South-Western City Schools

Case No.: 2014-0884

Appellant,

v.

Appeal from Board of Tax Appeals

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

Appellees.

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

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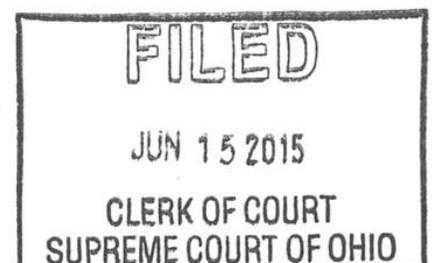


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STATEMENT OF THE CASE AND FACTS

This is an appeal from a Board of Tax Appeals (BTA) decision for tax year 2008. The decision was issued for BTA cases 2012-144 and 2012-145, involving the determination of the true value of two separate properties located in two school districts, South-Western and Columbus City Schools.

BTA Case No. 2012-144

This property, parcel number 040-001519, is owned by Lutheran Social Services of Central Ohio Grove City Housing, Inc. The property is a 71 unit apartment building with all one bedroom units. Fifty-five units were built in 1994, and 16 were added in 1998. It is a senior housing complex, operating under the capital advance program. The apartment complex is located on 3.36 acres of land. It is referred to as Grovewood Place. (Grovewood appraisal, p. 1)

The 71 units total 39,760 rentable square feet, while the building itself contains a total of 43,941 square- feet of space. (Grovewood appraisal, p. 14) The common area is thus 9.5% of the total area.

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, \$1,890,000. 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, \$1,890,000. 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.

BTA Case No. 2012-145

This property, parcel number 010-021378, is owned by Lutheran Social Services of

Central Ohio, Inc. The property is a 44 unit apartment building with all one bedroom units, built in 1998. It is a senior housing complex (ages 62 and over), operating under the capital advance program. The property is referred to as Little Brook Place. The apartment complex is located on 5.86 acres. (Little Brook appraisal, p. 1) The building itself contains a total of 35,570 square-feet of space, with 24,640 square-feet of rentable space (Little Brook appraisal, p. 14)

At the BOR hearing the appraisal of Don Miller, MAI, was presented. The BOE presented no evidence. The BOR found value consistent with Miller's appraisal, \$1,100,000. 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, \$1,100,000. The BOE then appealed the BTA's decision here.

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

Miller's appraisals and testimony were the only evidence in the record, and the BTA found value consistent with Miller's appraisals. If there had been competing evidence in the record, the BTA may have discussed the competing evidence and how it arrived at its decision. But here, there was no reason for the BTA to explain that they followed Miller's appraisals as this was clear from its decision.

While the BOE implies in its brief that Miller did not value common area, the rent comparables Miller chose also had common area, so the market rent developed from the rental comparables included a rental charge for the common area which was included in the calculation determining value.

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.

In both cases, Miller, an MAI appraiser, prepared appraisals and testified at the BOR regarding his appraisals. Both the BOR and the BTA found the appraisals probative and competent. The BOE presented no evidence of value.

For the Grovewood Place property, Miller's appraisal included an income capitalization approach and a sales comparison approach. In his income capitalization approach, the appraiser used 5 rent comparables, 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, determining the value of \$1,890,000. The appraiser also prepared a sales comparison approach, but this was used as a check to confirm the income approach.

In its BTA brief, the BOE claimed Miller compared the subject to "older and inferior apartment buildings that did not have the extensive common area seen at elderly housing complexes such as the Subject Property." BOE BTA brief, page 1. All 5 rent comparables are in Grove City, as is the subject. They were built from 1983 to 1999. The subject was mostly built in 1994. While the BOE claims Miller used older buildings as comparables, they are in close proximity in age, and one is newer. While the BOE claims the subject has extensive common area, it only has 9.5%. 9.5% is not "extensive." The BOE offers no data indicating what is "average" common area and what is "extensive" common area.

For the Little Brook Place property, Miller's appraisal included an income capitalization approach and a sales comparison approach. In his income capitalization approach, Miller used 5 rent comparables, 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,

determining a value of \$1,110,000. The appraiser also prepared a sales comparison approach, but this was used as a check to confirm the income approach.

In its BTA brief, the BOE claimed the appraiser valued the property “as if it were an older and inferior apartment building with little to no common areas.” BOE BTA brief, page 1. The subject was built in 1998. The rent comparables were built in 2005, 2001, 1991, 1976 and 1970. Two are newer than the subject. From the comparable’s build dates, it is clear Miller was not looking for older properties. He chose the best comparables he could find. Miller states at page 24 of his appraisal that each of the rent comparables is located in a similar location compared to the subject. The map on page 18 of the appraisal confirms this. One of the comparables is in superior condition and one is in similar condition. (Little Brook appraisal, p. 24) The statement that Miller compared the subject to older and inferior buildings is simply not accurate.

For both properties, Miller used rent comparables in close proximity to the subject properties. Some were newer, some were older. He discussed the condition and location of the comparables at page 24 of 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 BOR and BTA found value consistent with Miller’s appraisals.

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 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 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 appraisals. The BTA found value consistent with the property owner's appraisals. 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 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 9 of its brief discusses RC 5715.01. At page 10 of the brief they set forth the rule implementing the statutory requirements. The Miller appraisals do what is required by this rule. The appraisals discuss the physical nature and construction of the properties and their purpose. (Groveswood appraisal, p. 1)(Little Brook appraisal, p. 1) The appraisals discuss the cost, determining the cost is not relevant in valuing the property. (Groveswood appraisal, p. 5, 17, 37)(Little Brook appraisal, p. 6, 17, 38) The appraisals discussed the income producing capacity. (Groveswood appraisal, numerous pages)(Little Brook 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 appraisals, 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 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 appraisals. 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 evidence is Miller’s appraisals 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 two case records was the Miller appraisals and the Miller testimony. The BOR and BTA found value consistent with the Miller appraisals. 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 properties have common area. The rent comparables have varying amounts of common area, such as hallways, stairwells, elevators, laundry rooms, clubhouses, fitness centers, pools, lakes, playgrounds, and a car wash. See appraisal rent comparables. (Groveswood appraisal, p. 19-23)(Little Brook appraisal, p. 19-23) 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, 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 they 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 Grovewood, two of the five rent comparables have clubhouses. In Little Brook, three of the five 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. Here, five of the ten rent comparables have clubhouses, and the subjects do not. 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 properties common areas give reason to increase their value. However, because the subjects do not have clubhouses, and half the rent comparables do, the common area issue is actually a reason to decrease the value of the subjects relative to the comparables.

Furthermore, Grovewood has a common area of 9.5% and Little Brook has a common area of 30%. 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 15 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 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.

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:

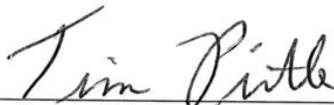
{¶ 13} R.C. 5717.01 governs proceedings before the BTA in an appeal from the BOR. *Coventry Towers, Inc. v. Strongsville*, 18 Ohio St.3d 120, 122 (1985). The statute gives the BTA three options when hearing an appeal: the board may confine itself to the record and the evidence certified to it by the 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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