

**OHIO BOARD OF TAX APPEALS**

Board of Education of the )  
Hilliard City School District, )  
 ) CASE NO. 2003-R-1430  
 )  
 Appellant, )  
 ) (REAL PROPERTY TAX)  
 )  
 vs. )  
 ) DECISION AND ORDER  
 )  
 Franklin County Board of Revision, )  
 Franklin County Auditor, and )  
 Mulberry Apartments of Hilliard, Ltd., )  
 )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant Board of Education	- Rich, Crites & Dittmer, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, OH 43215-3704
For the County Appellees	- Ron O'Brien Franklin County Prosecuting Attorney Paul A. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, OH 43215-6310
For the Appellee Property Owner	- Todd W. Sleggs & Associates Todd W. Sleggs 820 West Superior Avenue, Suite 410 Cleveland, OH 44113

Entered July 15, 2005

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap dissents.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by the Board of Education of the Hilliard City School District ("BOE"). The

BOE appeals from a decision of the Franklin County Board of Revision (“BOR”), in which it determined the taxable value of the subject property for tax year 2002. The property is identified on the auditor’s records as parcel number 050-003234.

The Franklin County Auditor determined the true and taxable values of the subject property for 2002 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 277,200	\$ 97,020
Building	<u>\$1,356,300</u>	<u>\$ 474,710</u>
Total	\$1,633,500	\$ 571,730

After consideration, the BOR reduced the true and taxable values of the subject property for 2002 to:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 277,200	\$ 97,020
Building	<u>\$1,162,800</u>	<u>\$ 406,980</u>
Total	\$1,440,000	\$ 504,000

The BOE objects to the BOR’s determination of value for the subject property and asserts that the value should be as determined by the auditor.

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified by the BOR, and the briefs of counsel. Although offered the opportunity for a hearing, the parties waived hearing in this matter and requested a briefing schedule.

## **I. A PRELIMINARY MATTER**

Before considering the merits of this appeal, we must first address a motion included by the property owner in its brief, which requests this board to strike various certified documents that are attached to appellant's brief. The property owner submits that since the documents were never disclosed to the appellee and were not discussed in appellant's brief, they should be stricken.

Absent an agreement of the parties to an appeal, documents presented to this board that are not made part of the evidentiary record generally cannot be considered as evidence by this board due to the inherent difficulty in determining credibility and reliability of such documents. *American Voice Mail, Inc. v. Lawrence* (July 23, 1999), BTA No. 1999-K-344, unreported. In *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, the parties apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. After the BTA hearing, Nestle submitted a copy of a resolution and quitclaim deed by the Franklin County Commissioners. The Supreme Court of Ohio held that because these documents were not part of the original record from the BOR and were submitted after the BTA hearing, they must be disregarded by the BTA. *Id.* at 16-17. Further, as this board held in *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported:

“Appellants’ Notice of Appeal is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations. Evidence presented at a hearing is accepted only upon conditions designed to insure its reliability. Appellants must first be sworn on oath. Their sworn testimony is then scrutinized and subjected to cross-examination. Documentary evidence is

also subjected to the scrutiny of the parties and their counsel.” Id. at 3. (Citing *Peach Grove Manor, Ltd. v. Limbach* (Dec. 22, 1989), BTA No. 1988-F-689, unreported.)

See, also, *Trans Healthcare of Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision* (May 16, 2003), BTA No. 2002-R-2563, unreported (striking documents submitted after the parties waived hearing); *A & J Food Mart, Inc. v. Zaino* (Aug. 17, 2001), BTA No. 1999-S-1608, unreported; *ARV Assisted Living, Inc. v. Hamilton Cty. Bd. of Revision* (Interim Order, July 30, 1999), BTA No. 1998-N-168; and *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported (holding that documents submitted outside hearing would not be considered as evidence).

The board finds that the documents attached to appellant’s brief are evidentiary in nature. The parties waived hearing before the BTA. However, although the documents may have been self authenticating because they were certified under Evid.R. 902(4), opposing counsel was not able to contest their submission into evidence on other grounds, such as relevancy. Consequently, the board may not consider these documents in its review of the merits. *Columbus Bd. of Edn*, supra.

Therefore, based upon the foregoing, the property owner’s motion to strike the documents attached to the appellant’s brief is granted, and these documents will not be considered by the board.

## II. THE MERITS

The subject property consists of 3.994 acres and is improved with a sixty-unit apartment complex constructed in 1984. Of the sixty units, six are studio or efficiency units, forty-two are one-bedroom units, nine are two-bedroom units with one bath, and three are two-bedroom units with two baths. The property is located at 4070 Leap Road in Hilliard, Franklin County, Ohio.

We begin our analysis by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, and *Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence

presented. *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609; *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

At the BOR hearing, the property owner submitted the testimony and appraisal report of Ronald P. Davis, an MAI appraiser. He estimated the property's value using the income and market approaches to value.

His income approach estimated the market rents for the six studio apartments at \$460 per month, producing a total of \$33,120. His estimate of the market rent for the forty-two one-bedroom apartments was \$530 per month, for a total of \$267,120. He estimated that the market rent for the nine two-bedroom, one-bath units was \$630 per month, or \$68,040. For the three two-bedroom, two-bath units, Mr. Davis estimated the rent at \$640, or \$23,040. These estimates resulted in a potential gross income of \$391,320. After deducting \$39,132 for a ten-percent vacancy rate and credit loss and adding \$20,000 in other income, Mr. Davis arrived at an effective gross income of \$372,188.

Then, Mr. Davis reviewed the operating expenses of the subject property, finding that they had been running between \$2,678 and \$2,712 per unit in 2000 and 2001. This equates to forty-two to forty-four percent of effective gross income. Mr. Davis determined that expenses should be \$2,700 per unit, for a total of \$162,000. He deducted this from the effective gross income, as well as \$15,000 for reserve for replacement, yielding a net operating income of \$195,000.

He estimated the capitalization rate to be 11.5 percent, to which he included a tax additur of 2.23 percent, producing an overall capitalization rate of 13.73 percent. Capitalizing the net operating income of \$117,308 at 13.73 percent produced a rounded value of \$1,420,000. From this Mr. Davis deducted \$50,000 for deferred maintenance, including roof, painting, and replacement of patio fencing, etc. Therefore, Mr. Davis opined an indication of value using the income method of \$1,370,000.

His market approach examined eight sales that occurred between June 1998 and September 2001. These sales ranged from \$17,500 per unit to \$25,000 per unit, with most of the larger projects ranging from \$18,000 per unit to \$21,500 per unit. Because of the good location of the subject property, Mr. Davis estimated that the market rate for the subject was \$23,000 per unit, or a value of \$1,380,000 via the market approach.

In correlating the two approaches, Mr. Davis concluded that the value of the subject property as of January 1, 2002 was \$1,375,000.

The board finds Mr. Davis' appraisal flawed in several respects. As to the income approach, there is no indication in Mr. Davis' report of the source of these rental rates. A review of these rental rates indicates that they do not relate to rental rates of the comparable properties Mr. Davis used in his sales comparison approach, and there are no comparable leases presented from the Franklin County area to verify that these rates indeed represent the market.

Mr. Davis chose to use the actual expenses for the subject property. However, there is no evidence in the appraisal report that he made an examination of any comparable properties to determine whether his estimates reflected market expenses.

Mr. Davis suggests that the capitalization rates vary from eleven to thirteen percent. However, there is nothing in the submitted appraisal report to indicate how those rates were derived. There is no information as to whether the selected sales were truly comparable to the subject property, either in age, amenities, or net income. Further, it is unknown whether these capitalization rates include the tax additur.

Examining his sales comparison approach, we find that seven of the eight sales used in Mr. Davis' market approach were located outside Franklin County. The comparable sale from Franklin County that he did use was for \$800,000 in December of 2000. However, this property also sold subsequently in April of 2003, for \$1,080,000, which Mr. Davis did not discuss. Mr. Davis made no adjustments to the comparable sales for location, time of sale, condition, amenities, etc.

Based upon the foregoing, the board is unable to rely on Mr. Davis' opinion of value. Thus, the board must conclude that the property owner failed to meet its burden in proving by competent and probative evidence that the value of the property is other than that established by the BOR, and that the value conclusion presented to the BOR did not support the BOR's actions in lowering value. Although the BOE did not present any evidence or testimony itself to establish the subject's

value at the BOR, the BOE correctly objected to the BOR's reliance on the brief testimony and appraisal data submitted by the property owner's appraiser as a basis for reducing the subject's fair market value. The BOE asserts, and this board agrees, that the BOR should not have reduced the value of the subject property based upon the evidence before it. Although the BOR did not adopt the value asserted by the appraiser as the value of the subject on tax lien date, there is no other evidence in the record before the BOR or this board to support any reduction from the auditor's value.

In the instant case, the only evidence presented to the BOR to consider was the appraiser's testimony and incomplete report. Had that same opinion been presented to this board, we would have rejected it as unsupported. With no other evidence of the value of the property presented to the BOR, and no additional factual or expert witnesses presented at an evidentiary hearing before this board, the board concludes that it was error on the part of the BOR to modify the auditor's value for the subject property.

Therefore, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows as of January 1, 2002:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 277,200	\$ 97,020
Building	<u>\$1,356,300</u>	<u>\$ 474,710</u>
Total	\$1,633,500	\$ 571,730

Accordingly, the Franklin County Auditor is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

Mr. Dunlap dissents.

I must respectfully dissent from the majority opinion regarding the valuation of the subject property.

It is my view, given the particular circumstances of this case, the appellee-property owner has submitted sufficient probative, factual evidence to support the valuation determination of the BOR.

A full appraisal report prepared by an MAI certified appraiser with corresponding supporting testimony, even if flawed or deficient in some respects, has adequate probative value and is entitled to weight in an appeal to this board when no evidence to the contrary is presented by an appellant assigned the burden of going forward.

This failure by the appellant-BOE to meet its initial burden on appeal distinguishes this case from previous determinations.

Accordingly, I would find the decision of the BOR reasonably reflects the value of the subject property as of the tax lien date.

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