

Hadcock Development,)	CASE NO. 95-B-1018)
)
Appellant,) (REAL PROPERTY)
)
vs.) DECISION AND ORDER
)
Medina County Board of)
Revision and the Medina)
County Auditor,))
)
Appellees.)

APPEARANCES:

For the Appellant - Karen H. Bauernschmidt
 Arter and Hadden
 1100 Huntington Building
 Cleveland, Ohio 44115-1475

For the County Appellees - Dean Holman
 Medina County Prosecuting
 Attorney
 By: Michael K. Lyons
 Assistant Prosecuting
 Attorney
 60 Public Square
 Bank One Building
 Medina, Ohio 44256

Entered: July 17, 1998

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed by appellant, Hadcock Development. Appellant appeals a decision of the Medina County Board of Revision ("BOR") in which that Board determined the taxable value of the subject property as of the tax lien date, January 1, 1994.

'Upon review of appellant's notice of appeal and the statutory transcript, an apparent typographical error in the BOR decision was noticed by the Board. The BOR decision made the following determination:

"The Medina County Board of Revision has reviewed your property valuation for the year 1992. Based on sales of comparable real estate in your

The subject property is located in the Brunswick City, Brunswick School District taxing district and appears in the records of the Medina County Auditor ("Auditor") as permanent parcel numbers 03-18B-44-002 and 03-18B-44-003. The property has a land area of 5.7774 acres and is improved with eight, two story and english basement apartment buildings. There are a total of 96 apartment units in the subject property. Both the Auditor and the BOR concluded that the subject property had the following true and taxable values:

Permanent Parcel No. 03-18B-44-002

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 92,000	\$ 32,200
Building	<u>\$800,270</u>	<u>\$280,090</u>
Total	\$892,270	\$312,290

Permanent Parcel No. 03-18B-44-003

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 101,130	\$ 35,400
Building	<u>\$ 989,600</u>	<u>\$346,360</u>
Total	\$1,090,730	\$381,760

In its notice of appeal, appellant claims that the value of both parcels totals \$1,446,000 as of the tax lien date, and lists the total taxable values of both parcels as follows:

TAXABLE VALUE

neighborhood for years 1989, 1990, and 1991, the Board's decision is no change."

However, the statutory transcript certifies a determination by the BOR for the year 1994. We confirmed with the Medina County Auditor that the property valuation was for the year 1994 rather than 1992. The efficacy of sales for the years stated, is unexplained since the Auditor was unable to provide the BOR minutes. Therefore, this appeal is applicable to tax year 1994.

Land	\$ 67,600
Building	<u>\$438,500</u>
Total	<u>\$506,100</u>

This matter is now considered by this Board based upon the appellant's notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01, the evidence presented at the hearings conducted by this Board and the post-hearing briefs submitted by counsel. At this Board's hearings, appellant presented the testimony of its appraiser, Richard C. Racek, while the county appellees presented the testimony of its appraiser, Terrence L. Pool.

Before proceeding to the legal arguments pertaining to real property valuation, we first address Hadcock's contention that the Medina County Auditor unlawfully reassessed their real property for tax year 1994. Appellant argues the auditor failed to send or serve any change of assessment notice to them in regards to the subject property. Furthermore, they contend that there was no physical changes to the property, no sale, no casualty loss, no omitted land or building, nor any other change in the property which would enable the auditor to reassess value. In particular, they assert that the auditor possesses only limited authority to change the valuation of real property, and as such, the auditor exceeded its legal authority.

R.C. 5713.01 grants county auditor's broad authority to revalue property at any time. Specifically, R.C. 5713.01(B) provides in pertinent part:

"The auditor shall view and appraise ...each lot or parcel of real estate...at least once in each six year period...The auditor shall revalue and assess at any time all or part of the real estate in such count ...He may increase or

decrease the true or taxable value of any lot or parcel..."

In R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision (1988), 38 Ohio St.3d 198, 201, the Court reviewed the pertinent statutory authority as follows:

"R.C. 5713.01 provides that the auditor is the assessor of real estate and shall assess all real estate according to the appropriate statutes and rules. This statute also provides the following:

'***The auditor shall revalue and assess at any time all or any part of the real estate in such county***. He may increase or decrease the true value or taxable value of any lot or parcel of real estate in any township, municipal, corporation, or other taxing district by an amount which will cause all property on a tax list to be valued as required by law ***.'

(Emphasis added.)

"The auditor is thus free, 'at any time,' to seek a property's correct value. This authority includes the time when his initial value is challenged by a complaint before the board of revision. When a property's value is challenged, it is reasonable for the auditor to review it and assert correct value."

Followed, W. W. Williams Co. v. Medina Cty. Board of Revision (Oct. 20, 1995) B.T.A. No. 94-H-668, unreported. Manifestly, appellant cannot prevail on this contention.

At the outset, we acknowledge the affirmative burdens which exist in an appeal to this Board from a decision of a county board of revision finding value. In its decisions in Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St.3d 336, and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, the Ohio Supreme Court made it clear that in an appeal filed

pursuant to R.C. 5717.01, there exists no presumption that the values found by a board of revision are correct.

The party appealing a decision of a county board of revision has the burden of presenting evidence in support of the value which it has asserted. Freshwater v. Belmont Cty. Bd. of Revision (1997), 80 Ohio St.3d 26; B.F. Keith Columbus Co. v. Franklin Cty. Bd. of Revision (1947), 148 Ohio St. 253. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts the appellant's evidence. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St.3d 318, 319; Crane Corporation-Deming Division v. Columbiana Cty. Bd. of Revision (August 29, 1997), B.T.A. No. 95-M-1042. While this Board may ultimately find that the property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, de novo, determination which is predicated upon the preponderance of the evidence before the Board. See, Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St.3d 120, 122; National Church Residence v. Licking Cty. Bd. of Revision (1995), 73 Ohio St.3d 397.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

"The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***."

In State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

"The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two in the syllabus in In Re Estate of Sears {(1961)}, 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market." Id. at 412.

In the present case, there has been no recent sale of the property. Absent a recent sale, true value in money can be calculated by applying any of the three alternative methods provided for in Ohio Adm. Code 5705-3-03: 1) the market data approach which compares recent sales of comparable properties, 2) the income approach², which capitalizes the net income from the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

²The Board has previously held that an appraiser performing the income approach should, at a minimum, consider market income and expenses. The purpose for this reasoning is that if reliance is placed exclusively upon actual data, there may exist the possibility that the appraiser is valuing the business acumen of the owner rather than the real property. See, e.g., E. Liverpool Landfill, Inc. v. Columbiana Cty. Bd. of Revision (Mar. 24, 1995), B.T.A. No. 93-K-1302, unreported, reversed on other grounds (1997), 117 Ohio App.3d 606.

In support of the appellant's position that the Medina County Board of Revision has overvalued the property, the appellant has offered the testimony and appraisal report of Richard Racek, a MAI and state certified general real estate appraiser and President of Calabrese, Racek & Markos. Mr. Racek states that the highest and best use for the subject property is the continued use in its apartment capacity.

Mr. Racek reviewed the three traditional approaches to value the subject property, but elected not to utilize the cost approach because the subject property is "in the middle of its economic life." Accordingly, Mr. Racek noted, it would be extremely difficult to accurately measure the subject property's total amount of accrued depreciation. In addition, Mr. Racek stated the subject property had significant physical obsolescence and functional obsolescence thereby rendering a cost approach analysis extremely difficult. Therefore, Mr. Racek relied upon the market data and income approaches only to opine a value for the subject property.

In support of the County Appellee's position that the Board of Revision found a correct value for the subject real property, the County Appellees offered the testimony and appraisal report of Terrence L. Pool, at one time a licensed general appraiser with the State of Ohio and then project manager for John G. Cleminshaw, Inc., a mass appraisal firm. Mr. Pool's report was prepared to reflect the appraiser's opinion of value as of January 1, 1994. Mr. Pool, like Mr. Racek, used the market data and income approaches when he appraised the subject property. However, Mr. Pool additionally utilized the cost approach in calculating a value for the subject property, although he gave this approach somewhat limited weight.

Although Mr. Pool applied the cost approach, he did not detail the sources of information he relied upon to reach his calculations. Under cross-examination, Mr. Pool admitted that he did not list or explain the relevant sections of Marshall and Swift he utilized in his cost approach. Therefore, we have no way of verifying the category, quality of construction, local cost, and locational factors that Mr. Pool used from the resource. Mr. Pool also testified that he used "observed depreciation" rather than "straight-line physical depreciation." However, we find no support, in his testimony or appraisal report, for his estimate of a 30% depreciation rate. Furthermore, unlike Mr. Racek, Mr. Pool determined that the subject property did not suffer from any significant economic or functional obsolescence. This conclusion does not seem to take into account the subject property's age (24 years old), its lack of some modern amenities, and the new apartment building across the street. Therefore, we decline to attach significant weight to Mr. Pool's conclusions via the cost approach.

Both appraisers valued the subject property using the sales comparison approach to value. Mr. Racek analyzed four sales of apartment complexes within the general vicinity of the subject real property and determined that the best unit of comparison for value would be on a per apartment unit basis. The comparables analyzed were from Medina County (2 complexes) and Cuyahoga County (2 complexes). All of the four comparable sales seem to be viable apartment complexes operating at a stabilized occupancy at the time of their sale. The unadjusted sale prices ranged from \$20,455 per unit to \$24,490 per unit. Mr. Racek then made adjustments either up or down to the values of each of the four comparable sale properties based on the location, condition

and individual physical characteristics of each comparable as it is compared to the subject property.

When making these adjustments to the comparables, Mr. Racek did not make specific dollar adjustments for each particular or varying characteristic. Rather, he reviewed the actual income and expenses for each sale property and determined an "OAR" or "overall rate of capitalization" for each. He then made adjustments either up or down to the values for the comparables based on their net income. Mr. Racek defends this type of methodology as the most appropriate because generally, net income is what the investor is looking at when this type of property is sold in the market place. Based upon his review and analysis of the four sales comparables, Mr. Racek concluded that the value of the subject real property per the sales approach ranged from \$17,000 to \$17,500 per unit or a total value for the two parcels of \$1,660,000.

Whereas in appellees' sales comparison approach, Mr. Pool analyzed four sales of apartment complexes in the "surrounding area" of the subject real property; he also determined that the best unit of comparison for value would be on a per apartment unit basis. These apartment complexes were located in Medina County, Cuyahoga County and Summit County. However, under cross-examination, Mr. Pool admitted that he had personally verified the nature or terms of only one of the four sales and stated, "(T)he rest of them I think I checked the information on." (RII, 55, emphasis added.) He further explained that he had reviewed the County Auditor's records for the terms of the transfers and also relied upon information submitted to him by his peers; however, precisely how this was accomplished was not clearly detailed in his testimony.

Mr. Pool further stated that he could not recall whether he reviewed the actual income and expense statements or rent rolls relative to his four sales. Mr. Pool testified that he either did not inspect or did a cursory inspection of the interior of the improvements on the real property in sale no. 2 and sale no. 4. Mr. Pool admitted that he had no knowledge of the suite mix for sale no. 2 or sale no. 4. Furthermore, Mr. Pool did not verify the measurements of the buildings that he used to calculate the sales price for all four sales. Additionally, Mr. Pool testified he could not remember how the improvements sited on the property of sale no. 1, sale no. 2 and sale no. 3 were heated, or, whether the owner or the tenant paid for the heat.

Finally, Mr. Pool's unadjusted unit sale prices of his sales comparables ranged from \$22,500 to \$24,490. He then made adjustments up or down by reviewing such factors as: size of the subject property, its age, design, quality of construction, condition, utility, and other factors which influence value. However, it should be noted that Mr. Pool failed to include the data and analysis for his adjustments in his appraisal report and his explanations for such adjustments were somewhat vague and inexact. Based upon his review and analysis of the four sales he selected, Mr. Pool concluded that the value of the subject real property per his sales comparison approach was \$23,000 per unit or a total property value of \$2,287,000.

As noted, both Mr. Racek and Mr. Pool valued the subject property using the income approach to value. This approach is generally used to attempt to quantify a property's ability to generate future monetary benefits and to convert this income stream into an indication of the property's present value. There are essentially two methods of income capitalization, direct capitalization and yield capitalization.

A review of the testimony and evidence presented by each expert supporting their respective approaches and corresponding conclusions follows.

We begin with Mr. Racek's analysis. Mr. Racek utilized the direct capitalization process for the stated reason that the subject property, built in 1971-72 and consisting of 96 units, has historically operated at a vacancy and credit loss factor from within a range of 6% to 17% while operating at market levels. Mr. Racek asserts that the direct capitalization process would be the most reflective of a typical buyer's thought process in this instance, given the subject property's increasing market rents and stable operating history.

Accordingly, Mr. Racek begins with a review of the current and recent operating history of the property, and a comparison of the subject with other competing properties. His analysis looks at the one, two and three bedroom units, as well as commercial rental rates, and garage rentals and notes various amenities and expenses that are included with the rental of the properties. Mr. Racek calculated the total annual gross potential income for the entire property at \$496,560 less 7% for vacancy and credit loss plus an additional \$10,500 for laundry and miscellaneous income.

Consequently, Mr. Racek compiled the actual operating expenses, which preceded the factoring of real estate taxes and reserve replacements, and concluded that each unit ranged from \$2,321 to \$2,723. Mr. Racek also presented the average annual per unit operating expenses for seven other selected properties and determined a range of \$2,455 to \$3,237 in expenses per unit. He concluded that the appropriate annual operating expense before real estate taxes and a reserve for replacements was \$2,700 per unit or a total of \$259,200 per year. Next,

he estimated \$250 per unit for a total reserve expense of \$24,000 per year for the necessary reserve replacements for the subject property.

Next, Mr. Racek presented four recent multi-family transactions and the results of the overall capitalization rates. The capitalization rates with real estate taxes included in the operating expenses ranged from 9.13% to 10.04% for the four comparables he used in the sales approach. After considering the location, age and general condition of the subject property, Mr. Racek determined the appropriate composite capitalization rate for the subject property was 11.5%, based on a capitalization rate of 9.5% plus a tax additur of 2% for the city of Brunswick. The resulting value of the subject property calculated under his income approach was \$1,620,000, with \$24,000, or \$250 per unit removed for personal property. Mr. Racek, after giving equal weight to both the sales comparison and income approaches to value, concluded that the subject property's total fair market value as of January 1, 1994 was \$1,650,000. From this total value, Mr. Racek allocated \$200,000 to the value of the land and \$1,450,000 to the value of the improvements.

Mr. Pool likewise presented an income approach analysis to value the subject property, placing the greatest weight on this approach. Rather than using specific calculations, Mr. Pool estimated the potential gross income of economic rent for the subject property although he did not explain in his written report what data he used or how he arrived at this estimate. During his testimony, Mr. Pool stated that he used a survey of conventional apartments to arrive at the economic rent for his income approach. However, no survey of conventional apartments was included in his appraisal report.

Turning to Mr. Pool's determination of potential gross income, he estimated the gross potential income to be \$465,814 less 8% for

vacancy and credit loss. However, Mr. Pool stated that on the tax lien date the actual vacancy rate for the subject property was 6.25%. Using the 6.25% vacancy rate, Mr. Pool compared the subject property with "similar apartment projects" in the area. He concluded, after reviewing these properties, that a more realistic and normal allowance for the vacancy and credit loss rate would be 8%. However, he did not provide any information in his testimony or appraisal report supporting his 8% vacancy and credit loss allowance figure.

He then projected expenses for the subject property. Apparently, he utilized actual expenses from 1991, 1992, and 1993 in determining stabilized expense figures for 1994. We immediately note the lack of analysis in determining such stabilized values. Not only would this assist in understanding some puzzling 1994 stabilized expense figures, but it is especially important in light of Mr. Pool's unexplained omission of the entire category for reserve replacement. This omission and lack of analysis further reduces the reliability of his income approach.

The Board is required to consider all the evidence presented in determining the subject property's value. While there exists three accepted methods of valuing real property for the purposes of determining true value in money (absent an arm's-length sale), value itself is a question of fact. American Steel & Wire Co. v. Bd. of Revision of Cuyahoga Cty. (1942), 139 Ohio St. 388. Moreover, when differences of opinion are offered by expert witnesses, the Board is mindful that expert opinion evidence, under any circumstances, is but an opinion, and the reliability of that opinion depends upon the skill and ability demonstrated by the expert as well as the expert's ability to find truly comparable properties in the marketplace. In such cases, the

Board of Tax Appeals is vested with wide discretion in determining the weight to be given to the evidence before us and the credibility of the witnesses. Cardinal Federal S. & L. Assn. v. Bd. of Revision (1979), 59 Ohio St.2d 34.

In the instant case, both the appellant property owner and the county appellees presented appraisal evidence. As noted, the appellant presented the expert testimony and written appraisal of Mr. Richard Racek in support of its asserted values position of the subject property. Upon consideration, we find Mr. Racek's testimony and written appraisal to be a thorough and reliable analysis of the subject property's value. His written report also complied with the guidelines of the then current edition of the leading appraisal text, The Appraisal of Real Estate, (10th Ed., 1992) (Appraisal Institute, Chicago, Illinois).

For the reasons stated above, we find that appellant's opinion of value for the subject property is supported by a preponderance of the evidence. Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1994, was as follows:

Permanent Parcel No. 03-18B-44-002

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 96,000	\$ 33,600
Building	<u>\$652,500</u>	<u>\$228,375</u>
Total	<u>\$748,500</u>	<u>\$261,975</u>

Permanent Parcel No. 03-18B-44-003

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$104,000	\$ 36,400
Building	<u>\$797,500</u>	<u>\$279,125</u>
Total	<u>\$901,500</u>	<u>\$315,525</u>

It is ordered that the records of the Auditor of Medina County shall reflect the values as determined above. ohiosearchkeybta