

revision, the record of the hearing¹ before this board, and the brief submitted by counsel to the appellant.

The subject real property, a 45-unit apartment project operated under a HUD federally subsidized housing program, consists of six parcels (1.5 acres) in the City of Marietta/Marietta City Schools taxing district, specifically parcel numbers 24-41000.000, 24-41002.000, 24-40998.000, 24-40996.000, 24-17776.000, and 24-17784.000. The total value of the parcels, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 136,420	\$ 47,750
Building	1,260,580	441,200
Total	\$1,397,000	\$ 488,950

Appellant contends that the auditor and the board of revision have overvalued the property in question and claims the property's market value is that which its appraiser opined in his report, as submitted to the board of revision, specifically, \$923,000.

The subject property, a Section 8 subsidized project for low income residents, is located in a mixed neighborhood of residential and commercial uses and was built in 1981. The 45 units in the complex are contained in five buildings and consist of three 2-bedroom, one-bath handicapped-accessible units with 897 square feet, twelve 2-bedroom, one-bath garden units with 898 square feet, twenty 2-bedroom,

¹ Although it was the hearing examiner's belief at the hearing that the instant matter could be consolidated with BTA Nos. 2005-A-992 and 2005-A-993 for disposition purposes, as it had already been consolidated for hearing purposes, it was later determined that since each case involves a separate property with separate ownership, for clarity of the record, the board will issue three separate decisions and orders. However, the hearing record, briefs, and any other information common to all three cases will be deemed part of the record in each separate case.

one and one-half-bath townhouses with 878 square feet, and ten 3-bedroom, one and one-half-bath townhouses with 991 square feet. There is also a 728 square foot laundry/maintenance building on the premises, but there are no other amenities for the complex. The units are equipped with baseboard heating and through-the-wall air conditioning units, and overall, are in average condition with no deferred maintenance. S.T., Ex. E at 20.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of

comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Further, with regard to valuation of subsidized housing, the Supreme Court held that when employing the income approach, “economic rent is a proper consideration in a situation in which contract rent is not truly reflective of true value in money,” quoting *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34, 37, in *Canton Towers, Ltd. v. Bd. of Revision* (1983), 3 Ohio St.3d 4, 7. Later, in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, 23, the court further stated that “it is the fair market value of the property in its unrestricted form of title which is to be valued.” In said case, wherein the court considered the valuation process used for several apartment complexes that were operated with assistance from the Department of Housing and Urban Development, the court held that such an apartment property must be valued, “for real property tax purposes, with due regard for market rent and current returns on mortgages and equities.” *Id.* at 24.

In support of its position that the subject property was overvalued, appellant Colonial Village Ltd., An Ohio Ltd. Part. (“Colonial Village”) first relied upon the testimony and appraisal report of Charles G. Snyder, RM, MAI, a state-certified general real estate appraiser that it had presented to the board of revision. In his report, Mr. Snyder, in discussing the subject’s highest and best use, indicated that, as vacant, the subject’s highest and best use would be for a multi-family development.

As improved, Mr. Snyder concluded that the subject's highest and best use would be its continued use as a 45-unit apartment complex. S.T., Ex. E at 36-38.

In completing his appraisal of the subject property, Mr. Snyder did not employ the cost approach in deriving his value. He indicated that due to the chronological and effective age of the improvements, the cost approach was not utilized. S.T., Ex. E at 39-40. Thereafter, he proceeded to derive a land value, comparing the subject to three land sales that occurred between May 1999 and March 2005. After adjusting some of the sales for market conditions, site size, and location, Mr. Snyder concluded to a value of \$55,000 per acre, or \$83,200. S.T., Ex. E at 40-49.

Under the direct sales comparison approach, Mr. Snyder compared the subject to five apartment complexes that sold between January 2003 and April 2003. After making adjustments to some of the sales for differences in location, unit type, quality of construction, and amenities, Mr. Snyder concluded to a value of \$22,000 per unit, or \$990,000. S.T., Ex. E at 49-72.

Using the income approach, Mr. Snyder first developed an estimate of potential gross income. He utilized five rent comparables to estimate the subject's economic rent at \$435/\$445²-\$495 per month (according to unit type), per unit. Adding \$5,400 per year for laundry income resulted in total potential gross income of \$255,300 per year. From that figure, Mr. Snyder deducted an 8% vacancy and credit

² There is a discrepancy regarding the income estimated for the 2-bedroom, 1-bath garden units in the appraisal report. On page 77, in the summary discussion of economic rent, Mr. Snyder utilizes a \$435 per month rent estimate; on page 78, on the net operating income statement chart, he utilizes a \$445 per month rent estimate. While none of the rent estimates for any of the units are specifically tied to any of the rent comparable evidence included in the report, we will consider the \$445 rent estimate as the one that was intended, based upon its utilization in other discussions throughout the appraisal report.

loss figure of \$20,424, based upon a survey of local realtors and rental agents, and arrived at his effective gross income of \$234,876. An expense estimate was developed after looking at the subject's actual expenses. The total expenses amounted to \$119,250, or \$2,650 per unit. After deducting the expenses and a reserve for replacement figure of \$11,925 (\$265 per unit) from the effective gross income, a net operating income of \$103,701 resulted. S.T., Ex. E at 73-78.

Mr. Snyder developed his capitalization rate primarily using the direct capitalization/comparable sales method, the band-of-investment method, and a debt coverage ratio analysis. He concluded to a rate of 10% plus a tax additur of 1.3, for an overall rate of 11.3%. Accordingly, after capitalizing his net operating income, his overall value, via the income approach, was \$932,000 (rounded, inclusive of furniture, fixtures, and equipment). S.T., Ex E at 79-86.

Mr. Snyder reconciled the foregoing values by weighting the income approach value by 80% and the sales comparison approach value by 20% to arrive at an overall estimate of value of \$932,000, inclusive of furniture, fixtures, and equipment, with \$83,200 allocated to the land and \$848,800 to the buildings. After a deduction of \$200 per unit for furniture, fixtures, and equipment, his final estimate of value was \$923,000. S.T., Ex. E at 86.

Before this board, appellant also called Fred Westbrook as a witness, as if on cross-examination. Mr. Westbrook, an executive vice president with Barry R. Ankney, Inc., was the "overall project manager of the revaluation" for Washington County in 2004. H.R. at 22. Mr. Westbrook testified as to the methodologies

employed by his firm in preparing property valuation recommendations for the county reappraisal in 2004. H.R. at 21-49. He indicated that he, himself, acted as a review appraiser before the BOR, in relation to the subject property and others. H.R. at 76. When asked whether Mr. Westbrook's appraisal firm used the standard cost approach in valuing the subject property, he testified that the standard cost approach was not used and that:

“[f]or properties where there are market data available in terms of both sales as well as income, the overall analysis becomes a composite of those three approaches. For Colonial Village, we characterized it as a cost approach only for simplicity for our client due to its computer-aided appraisal system. Simply the market approach and the income approach would not fit in their computer structure, so the value was determined based on a number of analyses and then just reported and reflected as a cost approach and not simply done through that methodology singularly.” H.R. at 81.

Mr. Westbrook also testified that the appraisers for the county basically establish a value for a property, using any/all of the conventional approaches to value, and then work backwards, using the valuation method programmed into the county's computer system, to reflect their conclusions. H.R. at 89-90. He stated, “[b]ased on all approaches[,] we have to use a reporting mechanism at our disposal, and that was simply the way we had to do it.” H.R. at 90 He also indicated that under the terms of the firm's contract with the county, the auditor makes the final valuation determination on all of the properties under consideration. H.R. at 83. In fact, he indicated that, with regard to the subject property, it was the auditor's decision “to maintain the 1998 value.” H.R. at 90.

As we review Mr. Snyder's report, we take notice that a very similar report for the prior year's (2003) valuation of the subject property was presented to this board by the property owner in *Colonial Village Ltd., An Ohio Ltd. Part. v. Washington Cty. Bd. of Revision* (Apr. 21, 2006), BTA No. 2004-A-574, unreported, 114 Ohio St.3d 483, 2007-Ohio-4641. Just as we ultimately determined on remand in that prior tax year case, in *Colonial Village Ltd., An Ohio Ltd. Part. v. Washington Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2004-A-574, unreported, we also find several deficiencies in the appraisal report presented in the instant matter. First, as we review his income approach, we believe that Mr. Snyder failed to provide sufficient detail on some portions of his analysis. For example, with regard to the vacancy and collection loss for the subject, he attributes an 8% rate to the subject, relying upon higher than normal rates in the market "due to abnormally low interest rates, allowing more buyers into the marketplace." S.T., Ex. E at 77. Other than the subject's vacancy rates, on a subsidized basis, no other property's vacancy rates were set forth to support that figure. We did however note that one of Mr. Snyder's sales comparables had a vacancy rate of 8% as well, S.T., Ex. E at 64, and considering the county's vacancy rate of 20% appears to be wholly unsupported, we will utilize the 8% figure.

Mr. Snyder also used a 51% expense ratio and a \$2,650 per unit expense figure, which raises concern. He stated that the "[e]xpenses for the subject property are predicated upon a review of actual [i.e., HUD] expenses provided by the owners." S.T., Ex. E at 77. He failed to list his expenses, by category, or list any expense

comparables³ to which the subject's actual HUD expenses were compared to determine if the subject's actual expense rate conformed to the market. He simply alluded to his use of "[u]nits of a comparable nature on a regional basis" as his basis for comparison, but provided no data from such properties. S.T., Ex. E at 78. Considering the foregoing, we cannot rely upon the appraiser's bare assertions that the subject's actual HUD expenses were compared to those of comparable properties in the marketplace and were appropriately adjusted for differences between them, if necessary. Quite simply, there is no data in Mr. Snyder's report to support the expenses used, and with his significant reliance upon the income approach, we cannot rely upon his conclusions thereunder.

Further, although not heavily relied upon, under the sales comparison approach, we question Mr. Snyder's use of comparables #3 and #4. With regard to comparable #3, it has approximately 1/4 the number of units as compared to the subject and is located on a site that is approximately 1/7 the size of the subject's site, yet no adjustments were taken for such differences. Comparable #4 has over twice the number of units as that of the subject and is located on approximately seven times the acreage as the subject has, yet, again, no adjustments were taken to reflect such differences. Finally, only one of the five comparable sales provided an adjusted per unit value in the \$22,000 range (\$22,647), with the other two comparables (not including #3 and #4 for the reasons stated above) providing an adjusted per unit value

³ We note that there was some expense information included in Mr. Snyder's report as part of his summary of recent sales used for the extraction of a capitalization rate. Using those figures and calculating the associated expense ratios, Mr. Snyder's expense ratio could not be supported, as only two of the ten comparables exceeded a 40% expense ratio, and only one exceeded 50%.

of \$23,636 and \$24,432. Yet Mr. Snyder concluded to a value of \$22,000 per unit. Even if we actually consider the additional remaining comparables (#3 and #4), with adjusted values of \$24,750 and \$20,825, Mr. Snyder's ultimate per unit value of \$22,000 seems to skew on the low side of the entire group of comparables, with no support offered for such determination.

At this juncture, we must reiterate that the same/similar arguments were made to this board by appellant's appraiser in the 2003 tax valuation case, and we reaffirm our criticisms and corresponding rejections thereof, as set forth in both cases. The BTA is not obligated to accept the testimony of any appraiser. The BTA is vested with wide discretion in determining the weight to be given evidence and credibility of witnesses. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13. See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. However, we are also mindful of the Supreme Court's directive in *Colonial Village*, supra, "that the record in this case contains sufficient evidence to trigger the BTA's duty to undertake an independent valuation of the property." Id. at ¶24. Because the appraisal report under consideration herein is very similar to the one utilized in the prior *Colonial Village* case, we must review the record in the same manner as we did therein to arrive at a value for the subject property for tax year 2004.

The Supreme Court, in its decision in *Colonial Village*, stated "[i]n this case, the BTA found specific flaws in the appraiser's conclusion of value, and we defer

to those specific findings. In doing so, we conclude that the BTA was justified in declining to accept the appraiser's conclusion of value." *Colonial* at ¶19. The court then went on to indicate that the BTA should have fashioned its own value for the subject, based upon all information contained in the record, including portions of the appraisal report and the "owner's opinion of value" presented to the BOR. While there is no owner's opinion of value involved herein, we will proceed, as directed by the court, to consider all information in the record before us.

As noted herein, this board is concerned with several deficiencies in appellant's appraiser's report. Taking into consideration those categories within the report already deemed faulty by this board, yet using the appraiser's calculations for gross potential income, vacancy and collection loss, reserves for replacement, and capitalization rate, with which we found no problems, we have developed a pro forma statement for the subject property, as follows:

Gross Potential Income	\$255,300
Less Vacancy and Collection – 8%	\$ 20,420 (rounded)
Effective Gross Income	\$234,880
Less Expenses – 40% ⁴	\$ 93,950 (rounded)
Reserves for Replacement	\$ 11,925
Net Operating Income	\$129,000 (rounded)

The foregoing net operating income is capitalized at a rate of 10% to which a tax additur of 1.3 is added, resulting in a final value, via the income approach, of \$1,141,590 (rounded). After a deduction of \$9,000 for furniture, fixtures, and

⁴ This expense figure is based upon expense information from other properties that appear to be similar to the subject in size, configuration, and age, as contained in the appellant's appraiser's report under the sales comparison approach and the capitalization rate section.

equipment, the total value for the subject property, as of January 1, 2004, is \$1,132,590, allocated⁵ as follows:

PARCEL # 24-41000.000		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 53,800	\$ 18,830
Building	1,022,160	357,760
Total	\$1,075,960	\$ 376,590

PARCEL # 24-41002.000		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 4,530	\$ 1,590
Building	-0-	-0-
Total	\$ 4,530	\$ 1,590

PARCEL # 24-40998.000		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 22,650	\$ 7,930
Building	-0-	-0-
Total	\$ 22,650	\$ 7,930

PARCEL # 24-40996.000		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 11,330	\$ 3,970
Building	-0-	-0-
Total	\$ 11,330	\$ 3,970

PARCEL # 24-17776.000		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,800	\$ 2,380
Building	-0-	-0-
Total	\$ 6,800	\$ 2,380

⁵ The value for each parcel was determined using the same ratios (as between all parcels and between land and building) as the county auditor.

PARCEL # 24-17784.000
TRUE VALUE TAXABLE VALUE

Land	\$ 11,330	\$ 3,970
Building	-0-	-0-
Total	\$ 11,330	\$ 3,970

It is the decision and order of the Board of Tax Appeals that the Washington County Auditor shall list and assess the subject property in conformity with this decision.

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