

OHIO BOARD OF TAX APPEALS

Apple Hill Ltd. (Part.),)	CASE NO. 2006-K-1395
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Jackson County Board of Revision and)	
Jackson County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant		- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 1370 West 6th Street, Suite 200 Cleveland, Ohio 44113
For the County Appellees		- Rich, Crites & Dittmer, LLC James R. Gorry Special Assistant Prosecuting Attorney 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered February 10, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating

On September 26, 2006, appellant, Apple Hill Ltd. (Part.), filed the present appeal with this board challenging a decision of the Jackson County Board of Revision (“BOR”) in which that tribunal determined the value of the subject real property for ad valorem tax purposes for tax year 2005. The property which is the subject of this appeal, operating as Apple Hill Apartments, appears in the records of the Jackson County Auditor (“auditor”) as parcel numbers H14-007-00-016-00 and H14-007-00-017-00. The subject property, comprised of slightly less than four acres of land, is primarily improved with a 40

one-, two-, and three-bedroom apartment complex and community building which were constructed circa 1987.

As of January 1, 2005, the auditor originally assessed the property at total true and taxable values of \$1,373,080 and \$480,590, respectively, allocated as follows:

Parcel No. H14-007-00-016-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 87,500	Land	\$ 30,630
Building	<u>\$1,162,330</u>	Building	<u>\$406,820</u>
Total	\$1,249,830	Total	\$437,450

Parcel No. H14-007-00-017-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$118,650	Land	\$41,530
Building	<u>\$ 4,600</u>	Building	<u>\$ 1,610</u>
Total	\$123,250	Total	\$43,140

Appellant filed a complaint with the BOR requesting that the property’s total true and taxable values be reduced to \$800,000 and \$280,000, respectively, for the stated reason that the “[a]uditor’s valuation exceeds true value of subject real property. Income valuation. Other factors to be presented at BOR hearing.” S.T., complaint at line 9. Although the Jackson City Board of Education filed a “counter-complaint” pursuant to R.C. 5715.19(B), requesting that the auditor’s values be maintained, it did not participate further before either the BOR or this board. At the hearing conducted by the BOR, appellant presented a package of materials entitled “property owner’s submission of documents, business records, and opinion of value for: Apple Hill Ltd.”¹ which suggested through use of an income approach

¹ Although appellant now relies primarily upon its appraiser’s opinion of value, given the de novo review which must undertaken, we find it appropriate to comment upon its original submission to the BOR. Attached thereto is an affidavit, the signature of which is illegible, which purports to be that of the “property owner” attesting to the information/opinion included therein. This individual did not testify before the BOR. This document appears to be substantially similar, in form and general content, to one described in *Parkside Towers Apts. v. Cuyahoga Cty.*

that the subject property had a value of \$875,000.² In addition, appellant presented the testimony of William Shoemaker, vice president of Provident Company, who discussed the property and addressed the information contained within the aforementioned materials.³ Ultimately, the BOR reduced the subject’s total true and taxable values to \$1,270,970 and \$444,840, respectively:

Parcel No. H14-007-00-016-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 43,750	Land	\$ 15,310
Building	<u>\$1,162,330</u>	Building	<u>\$406,820</u>
Total	\$1,206,080	Total	\$422,130

Parcel No. H14-007-00-017-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$60,290	Land	\$21,100
Building	<u>\$ 4,600</u>	Building	<u>\$ 1,610</u>
Total	\$64,890	Total	\$22,710

Dissatisfied with the adjustment effected, appellant appealed to this board, presenting at hearing the written appraisal report and testimony of David E. McConahy, who

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Bd. of Revision (Dec. 7, 2007), BTA No. 2005-K-1000, unreported, at 3, fn. 4. For the reasons expressed in *Parkside Towers*, this submission would be accorded little, if any, weight by this board. See, e.g., *1524 Indianola Ave. LLC v. Franklin Cty. Bd. of Revision* (Oct. 12, 2007), BTA Nos. 2005-T-1605 et al., unreported; *Soc. Natl. Bank v. Franklin Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-1418, unreported; *Fisher Big Wheel, Inc. v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 1995), BTA No. 1993-T-1007, unreported.

² We acknowledge that throughout the course of these proceedings, appellant has suggested several different values for the subject property, i.e., \$800,000 in its complaint, \$875,000 during the BOR’s hearing and in its notice of appeal, and \$1,040,000 at this board’s hearing. Nevertheless, we do not find appellant limited to a value claim initially proposed given the court’s expression that a value set forth in a complaint filed with a county board of revision “places neither minimum nor maximum limitations on the court’s determination of value, and there are none save the judicial requirement that the determination be supported by the evidence.” *Jones & Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 63. See, also, *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, 595 (“There is no requirement that the value of the property, as determined by the board of revision, must match the opinion of value set forth in the complaint.”).

³ At counsel’s request, Shoemaker described his relationship with the owner as follows: “I’m here from the Provident Company and we have two involvements in this project, first Apple Hill Ltd[.] Partnership Inc[.], Provident Management is a general partner in that and I am the Vice-President of that company. And the second

opined to a total true value for the property of \$1,040,000 as of January 1, 2005. We now consider this matter upon appellant's notice of appeal, the transcript certified by the auditor pursuant to R.C. 5717.01, the record of this board's hearing, and the written argument provided on behalf of appellant and the county appellees.

In *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, the Supreme Court discussed the affirmative burden assumed by a party appealing a determination rendered by a county board of revision:

“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 328, ***. The appellant before the BTA must present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, ***.” *Id.* at 566. (Parallel citations omitted.)

See, also, *Bd. of Edn. of the Hamilton Local Schools v. Franklin Cty. Bd. of Revision* (June 10, 1997), Franklin App. Nos. 96APH09-1228, et seq., unreported (“When an issue concerning the true value of real property for taxation purposes is presented to the BTA, the value set by the BOR is not presumptively correct. *** However, in a hearing before the BTA, the taxpayer is obliged to prove his right to a reduction in value.”).

Because the property involved in this appeal has not been the subject of a recent, arm's-length sale, typically considered the “best” evidence of value, see, generally, R.C.

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way I am involved in that company is the [sic] we manage it ourselves under a filleted [sic] entity called Premier Management and I am vice president of the company.” S.T., BOR hearing transcript at 1.

5713.03, appellant sought to substantiate its claim through the presentation of an appraisal. See, e.g., *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412 (“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. *** 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.”).

In the preliminary portion of his appraisal, McConahy, a member of the Appraisal Institute, offered a general overview of the Jackson County area before proceeding to describe the subject property itself and his valuation efforts. He indicated that the subject, comprised of slightly less than four acres, is improved with eight one- and two-story buildings containing forty apartment units. One bedroom units, with an area of approximately 605 square feet, have a living room, kitchen/dining area, bathroom. and bedroom. The subject’s two- and three-bedroom units are similar, with the exception of additional bedrooms, having approximately 874 and 1,130 square feet, respectively. In addition to the apartment units, the property is also improved with a laundry room, paved parking areas, a playground, general landscaping, and a 750-square foot community building. Concluding the improvements had an effective age of fifteen with a remaining economic life of thirty years, McConahy found their overall condition to be below average.

He then proceeded to estimate the value of the property⁴ predicated upon the sales comparison and income approaches, indicating that “[t]he Cost Approach was not utilized due to depreciation and limited land sales in the area.” Ex. 1 at 26. See, generally, Ohio Adm. Code 5703-25-07(D) (describing the three approaches approved by the Tax Commissioner for use by county auditors in estimating true value). Considering the first of the approaches used, i.e., the sales comparison approach, the appraiser estimates the value of the property under consideration by comparing it to other properties recently sold, making adjustments where necessary in order to account for various elements of comparison, e.g., location, physical characteristics, timing of sale, etc. *The Appraisal of Real Estate* (13th Ed. 2008), at 141-142.⁵

McConahy indicated initially that “[s]ince few similar sales have occurred in Jackson County, it was necessary to expand the search.” Ex. 1 at 26. Continuing, however, he noted that “[a]lthough scores of sales were analyzed, we were able to find reliable sales in Ohio.” *Id.* Ultimately, he focused on the sales of five particular properties, four located in the southeastern quadrant of Ohio and one in Huron County, with such sales having taken place

⁴ Within his appraisal, McConahy initially noted that the “apartment complex *** participates in the Rural Development Program” and “[t]he property has not been appraised based upon specific requirements of the IRS Code and the State of Ohio regulations for RD, Section 515. property. We used market rents and not RD restricted rents.” Ex. 1 at 4. Later, he also indicated:

“Similar to a federally subsidized apartment project, the economic factors inherent in the subject property are impacted by the federal housing program. For purpose of real estate tax assessment, as set forth in *Oberlin Manor vs. Lorain County Board of Revision* Supreme Court Case (1989), the effect of a property’s involvement in a low-income housing program **cannot** be considered. This retrospective (January 1, 2005) market value estimate ignores the subject’s involvement in the Rural Development, Section 515 program.” *Id.* at 25. (Emphasis sic.)

⁵ As pointed out by the court in *Freshwater v. Belmont Cty. Bd. of Revision* (1991), 58 Ohio St.3d 140, 141, “[a]ppraisal manuals and treatises can help in the valuation of real property.”

between January 2000 and September 2005. To the raw sales figures, net adjustments ranging from -10% to 15% were effected, due to intervening market conditions, their location, condition/quality, and size/unit mix, resulting in a range of \$25,097 to \$29,688 per unit. According to McConahy, “[e]ven without adjustment, it appears that the subject’s per unit value should be similar to these five sales and range from \$20,588 to \$31,250. The most appropriate value conclusion is \$26,500 per unit or \$1,060,000.” *Id.* at 28. Although as additional support, he also calculated, using these same five sales, an “effective gross income multiplier” (“EGIM”) of 5.3 which, when multiplied by the effective gross income, suggested a value of \$1,088,000, he ultimately concluded that “[t]he market value by the Sales Comparison Approach of Apple Hill market rents is \$1,060,000 as of January 1, 2005, including furniture, fixtures, and equipment.” *Id.* at 29.

The income approach to value, developed in this instance using the direct capitalization method, “convert[s] an estimate of a single year’s income expectancy into an indication of value in one direct step, either by dividing the net income estimate by an appropriate capitalization rate or by multiplying the income estimate by an appropriate factor.” *The Appraisal of Real Estate*, at 499. Rather than using historic rental income for the property, McConahy projected market rents for the three styles of apartments located at the subject based upon five apartment comparables located in Pike and Jackson counties. When rental income totaling \$220,320⁶ was added to \$2,800 attributable to other income, i.e., vending/miscellaneous, \$223,120 gross potential income resulted. Vacancy and credit loss of

⁶ Monthly rental of \$390 was applied to the thirteen one-bedroom units, \$470 for the twenty-one two-bedroom units, and \$570 for the six three-bedroom units.

8%, or \$17,850, was then deducted, and from the effective gross income of \$205,270, expenses totaling \$90,169 were removed with the end amount, i.e., \$115,101, considered the net operating income (“NOI”). McConahy ultimately selected an overall capitalization rate figure of 10.7726%, a figure developed based upon consideration of comparable sales data, a PricewaterhouseCoopers publication, and a band-of-investment analysis, which when applied to NOI resulted in a rounded value of \$1,068,000.

In his final reconciliation of the sales comparison and income approaches, McConahy opined that the subject property’s value as of tax lien date, after deducting \$20,000 attributable to furniture, fixtures, and equipment (“FF&E”),⁷ was \$1,040,000. Appellant now requests that this board adjust the subject’s value accordingly.

As previously noted, the county appellees presented no additional evidence on appeal, electing to rely exclusively upon information contained within the statutory transcript, counsel’s cross-examination of appellant’s witness, and the arguments made by way of post-hearing brief. Clearly, an appellee may proceed in such a manner and, at times, can be successful. See, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385.⁸ However, such a strategy is not without risk,

⁷ With respect to FF&E, McConahy explained in his appraisal that “Replacement Cost data and depreciation was used for the estimate of personal property value. The Replacement Cost of the appliances in 2005 was estimated to be \$36,000 or approximately \$900 per unit. We applied a 45% depreciation since they were mostly 4.5 years old and had an economic life of 10 years. The estimated value of this small component of value was \$20,000.” Id. at 48.

⁸ In *Vandalia-Butler City School Dist. Bd. of Edn.*, the court held:

“In the absence of probative evidence supporting the reduction in value ordered by the board of revision, and in light of the problems identified by the BTA with the even lower value proposed by the Timberlake appraiser, the BTA’s conclusion that the county auditor’s original valuation should be reinstated was not unreasonable. ‘In the absence of probative evidence of a lower value,’ a county board of revision and the BTA ‘are justified in fixing the value at the

acknowledged by the Supreme Court in *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998),

81 Ohio St.3d 67:

“If the appellee before the BTA in a valuation case does not present any evidence to rebut appellant’s evidence, the appellee takes the chance that the BTA may, as in this case, find the valuation evidence presented by the appellant to be competent and probative, and adopt it as the true value. On the other hand, the appellee may present evidence and the BTA may or may not find that evidence to be credible and probative in rebutting the appellant’s evidence.” *Id.* at 70-71.

Similar rationale has been expressed by several of Ohio’s appellate courts. For example, the Ninth District Court of Appeals in *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951, held:

“While an auditor has no corresponding burden to defend his valuation and a taxpayer is not entitled to a reduction simply because the auditor presents no evidence to rebut his claim, the auditor’s duty to defend his valuation is triggered once the taxpayer does present competent, probative evidence to support a right to a reduction. *Murray & Co. Marina, [Inc. v. Erie Cty. Bd. of Revision* (1997),] 123 Ohio App.3d [166] at 172-174. By not presenting any evidence, the BOR and county auditor do risk that

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amount assessed by the county auditor.’ *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193, 195 ***. The BTA’s decision to reject the board of revision’s valuation and reinstate the auditor’s original finding is supported by the evidence, and the BTA did not abuse its discretion in reaching that conclusion.” *Id.* at ¶12.

Compare, e.g., *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, ¶27 (“Today we hold that the reasoning we applied in *Columbus [City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision]* (2001), [90 Ohio St.3d 564,] *Columbus [Bd. of Edn. v. Franklin Cty. Bd. of Revision]* (1996), [76 Ohio St.3d 13,] and *Amsdell [v. Cuyahoga Cty. Bd. of Revision]* (1994), 69 Ohio St.3d 572,] also applies to the auditor’s determination of value. Namely, when the evidence presented to the board of revision or the BTA contradicts the auditor’s determination in whole or in part, and when no evidence has been adduced to support the auditor’s valuation, the BTA may not simply revert to the auditor’s determination. Whenever it does so, the BTA is acting unlawfully by making a finding of value that is affirmatively contradicted by the only evidence in the record.”); *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, at ¶15 (finding “the BTA erred in reinstating the auditor’s determination of value when the taxpayer had presented sufficient evidence to the BOR to justify the reduction the BOR ordered.”).

the court will find the appellant's evidence competent and probative, and therefore, determinative of the appeal. *Restivo v. Ottawa Cty. Bd. of Revision* (Dec. 30, 1999), 6th Dist. No. 90-OT-052, at *9.”). *Id.* at ¶12.

Likewise, in *Am. Tele-Legal Information Servs., Ltd. v. Lucas Cty. Bd. of Revision*, Lucas App. No. L-06-1109, 2006-Ohio-5911, the Sixth District Court of Appeals stated:

“Case law on property tax valuation disputes sets forth the evidentiary burden. Appellant, as the taxpayer requesting a reduced tax valuation, bears the burden of submitting determinative proof in support of the lower tax figure. The taxpayer must demonstrate a disparity between the value established by the board of revision and the true value of the property. *Cincinnati v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St.3d 301, 303. By contrast, the auditor and board of revision have no such burden of proof. *Restivo v. Bd. of Revision of Ottawa Cty.* (Dec. 30, 1999), 6th Dist. No. OT-99-052, at ¶3.

“There are significant legal ramifications stemming from this unilateral burden of proof structure in tax valuation disputes. Although an appellee in a tax valuation dispute has no burden to defend its initial valuation, it bears the risk that the evidence presented by the appellant will be found dispositive when it presents limited or no rebuttal evidence. *Restivo* at ¶3.” *Id.* at ¶¶12-13.

In the present appeal, the county appellees are critical of McConahy's opinion on the basis that he failed to inspect the interior of the apartment units being appraised, as well as some of the properties to which the subject was compared; instead, he admitted to having viewed only the exterior of these properties. Reference is also made to typographical misstatements contained within his report, asserted differences/similarities between the subject and comparables, e.g., age, construction quality, location, attributable NOI, and the absence within the report of detailed market rental data.

This board is vested with considerable discretion in determining the weight to be accorded the evidence before us and as such we are not required to accept the testimony of an appraiser. See, e.g., *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. It is equally true that we need not agree with challenges made to such evidence. When weighing opinions expressed within *competing* appraisals, the familiarity demonstrated by an appraiser with the property being valued and the properties from which market data is extracted, as well as the inclusion and accuracy of such data within a written report, are factors often reviewed in considerable detail. See, e.g., *Parkside Towers Apts. v. Cuyahoga Cty. Bd. of Revision* (Dec. 7, 2007), BTA No. 2005-K-1000, unreported. In this instance, however, we do not face a situation where there exist differing expert opinions of value.⁹ See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 14, 2001), BTA Nos. 2000-M-252, et seq., unreported (rejecting what would be tantamount to a per se rule, the board distinguished several prior decisions rejecting summary appraisals from the appeal under consideration where only one appraisal had been submitted).

While we agree McConahy's appraisal may fairly be criticized,¹⁰ the objections raised by the county appellees do not, however, cause us to reject the appraisal in this instance.

⁹ We find it noteworthy to point out that the BOR could be subject to criticisms not too dissimilar from those which it is making in response to appellant's evidence, as we are not readily able to discern the precise basis for the valuation adjustments effected by the BOR other than they apparently were deemed justified by virtue of their "technical advisors['] opinion." S.T., BOR hearing record at 5.

¹⁰ We acknowledge having previously expressed some concern with respect to reliance being placed exclusively upon an EGIM analysis. See, e.g., *Centerville City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of*

McConahy demonstrated to our satisfaction adequate familiarity with the subject property and the market data used to develop his ultimate opinion of value. While the county appellees may disagree with the adjustments made, McConahy identified within his appraisal the nature of and reasons for such modifications, amplifying his rationale during his testimony before this board. Contrary to the county appellees' assertions, we find sufficient support within his appraisal, which includes both historic and market information, for the income and expense data attributed to the subject property for purposes of his income approach.

Upon review of the entire record, we conclude appellant has presented sufficient evidence in this case to support its position and has satisfied its burden to demonstrate that the subject property had a lesser value than that determined by the BOR. Cf. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. Accordingly, this board finds the true and taxable values¹¹ of the subject property, as of January 1, 2005, to be as follows:

<u>Parcel No. H14-007-00-016-00</u>			
	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 62,400	Land	\$ 21,840
Building	<u>\$884,000</u>	Building	<u>\$309,400</u>
Total	\$946,400	Total	\$331,240

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Revision (Sept. 1, 2006), BTA No. 2004-T-1274, unreported, at 10-11. However, this method was undertaken to supplement the remainder of the sales comparison approach.

¹¹ Within his appraisal, McConahy proposed land and building values different from those which we adopt herein. While he indicates in his final conclusion that he can discern the appropriate allocation "based upon recent land sales in similar communities," Ex. 1 at 48, this seems contradictory to earlier statements explaining why a cost approach was not developed. Compare Ex. 1 at 26. In the absence of information which provides a more appropriate methodology for allocating the total value expressed within his appraisal, i.e., \$1,040,000, we allocate such amount utilizing the percentages reflected by the auditor's original assessment.

Parcel No. H14-007-00-017-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$83,200	Land	\$29,120
Building	<u>\$10,400</u>	Building	<u>\$ 3,640</u>
Total	\$93,600	Total	\$32,760

It is therefore the order of this board that the Jackson County Auditor list and assess the subject property in conformity with our decision as announced herein.

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