

assessed by the Franklin County Auditor (“auditor”) for tax year 2005. The subject property, identified in the auditor’s records as parcel number 530-164287, has a land area of approximately 2.4 acres. In addition to an asphalt paved parking area and several garages/carports, the subject’s primary improvements are comprised of ten two-story buildings each containing four two-bedroom townhouse apartment units constructed circa 1988.

As of January 1, 2005, the auditor had originally assessed the property consistent with the following values:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 142,100	Land	\$ 49,740
Building	<u>\$1,157,900</u>	Building	<u>\$405,270</u>
Total	\$1,300,000	Total	\$455,010

On March 22, 2006, the appellee property owner, Elk Run Co., Inc., filed a complaint with the BOR requesting that the subject’s total true and taxable values be reduced to \$1,000,000 and \$350,000, respectively, based upon an “MAI appraisal by Brian W. Barnes & Co.” Thereafter, on May 25, 2006, a “counter-complaint” was filed on behalf of appellant pursuant to R.C. 5715.19(B), wherein it asserted that the auditor’s originally assessed values be retained.

At a hearing convened by the BOR, the property owner presented the testimony of Dana Moore, an employee of Oakwood Management Company, as well as a written appraisal report apparently authored by Brian W. Barnes, MAI, president of Brian W. Barnes & Co., Inc., and the testimony of Thomas Sprout, an appraiser with Barnes &

Co.¹ Moore testified to the general marketing efforts undertaken to secure residents given the property's location, e.g., large advertising banner and reduced and/or waived rents.

Elaborating, Sprout indicated that the difficulty gaining ready access to the subject's location, although proximally near a major state route, contributes to the difficulties in maintaining full occupancy at its existing rental rates or rates comparable to other projects in the vicinity. Sprout also testified that at the owner's request, a restricted appraisal had been prepared which relied exclusively upon the income approach to value. To that end, the subject's monthly rental rates were compared with four other apartment projects and found representative of the market.² Proceeding to rely upon the subject's

¹ Included within the statutory transcript are communications between the property owner's counsel and the BOR regarding several matters then pending before the BOR in which counsel was involved, confirming the hearing of such matters would proceed consecutively. At the BOR's hearing with respect to the subject property, counsel referred to prior testimony provided by Sprout in earlier hearings and secured from appellant's counsel a stipulation as to his qualifications. While Sprout testified that he worked for Brian W. Barnes & Co. and handwritten notations on the BOR "hearing worksheet" identify him as an appraiser, Sprout's qualifications are nowhere included within the record of this appeal. We must also point out that the appraisal to which Sprout testified includes only the stated "[q]ualifications of Brian W. Barnes, MAI." More significantly, the "certificate of appraisal," which provides that "[n]o one provided significant real property appraisal assistance to the person signing this certification," is signed only by Brian W. Barnes. By including this discussion, we expressly recognize the importance of an appraiser's certification. See, e.g., *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565. However, it must be emphasized that appellant did not object, either before the BOR or in its argument provided to this board, to Sprout's qualifications or his ability to testify about the data, analyses, or ultimate opinion expressed within the foregoing appraisal report. Indeed, by way of brief, appellant's counsel notes that "[t]he BOR conducted a hearing, attended by Appellant, the Board of Education for the Groveport Madison Local Schools ('BOE'), at which time Elk Run presented the appraisal report of Thomas Sprout. Sprout rendered an opinion of value of \$1,000,000.00 and the BOR ultimately adopted that value as the fair market value of the subject property for tax year 2005." *Id.* at 2. Instead, appellant's arguments are directed to the substantive aspects of the appraisal to which Sprout testified knowledgeably. Given the unique circumstances of this appeal, we will proceed to consider and evaluate the weight to be accorded the testimony and appraisal contained within the record.

² Consideration accorded market data is referenced throughout the appraisal report. For example, at pages 10-11, it provides that "[a] summary of multi-family units similar to the subject and located in the subject's market area was conducted to test the subject's monthly rents for reasonableness. *** The comparables included pertinent competition located within the eastern environs of suburban Columbus. This data supports the range in rent per square foot that the subject units are currently achieving. Therefore, the scheduled rents are considered to be to market levels and will be utilized in the stabilized profit and loss

historic rental, garage, and miscellaneous income performance, the latter attributable to application fees and late charges, and deducting actual vacancy rates and credit loss, all of which were deemed typical of the marketplace, effective gross income was projected at \$222,237. Operating expenses, reasonable within the competing market, totaling \$132,453 were deducted, which resulted in net operating income of \$89,784, or rounded, \$90,000. This figure was capitalized at rates of both 9% and 9.25%, the range suggested by national and local market data and a band-of-investment methodology. This suggested values of \$1,000,000 and \$975,000, rounded, with the higher value, i.e., \$1,000,000, selected as representative of the subject's value as of tax lien date, i.e., January 1, 2005. Although its counsel questioned Sprout regarding various data and aspects of the appraisal, appellant did not provide any evidence of value.

Upon consideration of the testimony and appraisal submitted to it, the BOR granted the reduction requested by the owner, effecting the following adjustments to value:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 142,100	Land	\$ 49,740
Building	<u>\$ 857,900</u>	Building	<u>\$300,270</u>
Total	<u>\$1,000,000</u>	Total	<u>\$350,010</u>

From the BOR's decision, appellant appealed to this board, advocating that the auditor's original values be reinstated. Although accorded an opportunity to amplify the evidentiary record, the parties waived hearing and elected to have the matter

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statement ***. *** The owner's rent roll [which] is equivalent to market rents were [sic] the basis for the development of a stabilized profit and loss statement for tax year 2005. *** This profit and loss statement is based on historical data as well as other apartment properties that have been appraised or verified by this

submitted upon the existing record and their legal argument. Accordingly, we now proceed to consider this matter upon appellant's notice of appeal, the statutory transcript certified by the BOR, and the written argument submitted on behalf of appellant and the appellee property owner.

When reviewing an appeal from a decision of a county board of revision, it is important to note that the appellant has the burden to prove its right to the requested increase in or decrease from the value challenged. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. The manner by which an appellant attempts to satisfy its assigned burden falls within its own discretion. For example, an appellant may rely, as in the present case, solely upon its counsel's cross-examination of an opposing party's witnesses and its own legal argument. 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, at ¶9. However, such election is not without risk as this board may find the evidence relied upon by a county board of revision sufficient to establish value. Cf. *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951.

Ordinarily, the "best evidence" of a property's value is an actual, arm's-length sale recent to the tax lien date in issue. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. See, also, R.C. 5713.03. "However, such information is not usually available, and thus an appraisal

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office." See, also, appraisal at 13 ("[e]stimated economic rent for the apartments has been calculated based on the actual rent being achieved by the property as supported by market comparables.").

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 valuation 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.” *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

In this instance, there exists no recent sale of the property and the BOR found reliable an appraisal provided to it by the property owner. As previously noted, appellant presented no evidence supporting its own value claim. Instead, it cites as error the BOR’s reliance upon an appraisal utilizing only the income approach which appellant asserts relies exclusively upon the subject’s historic performance to the exclusion of stabilized market-supported data.

With respect to the first of appellant’s arguments, i.e., an appraisal is necessarily unreliable when only one methodology is used, we must point out that the Tax Commissioner, by virtue of his authority to promulgate administrative rules, see, generally, R.C. 5703.05, has advised county auditors that when determining the true value of property they “may consider the use of any or all of the recognized three approaches to value[,]” i.e., the market data, income, and cost approaches. Ohio Adm. Code 5703-25-07(D). As we have recently held, “[i]deally, all three approaches would be developed in every instance, as they may serve to further enhance or validate the ultimate opinion derived. Cf. Ohio Adm. Code 5703-25-07(E). However, merely because an appraisal uses fewer than all three of these approaches, perhaps due to cost restrictions, time constraints, the absence of reliable data, etc., does not, per se, dictate

rejection of the opinion ultimately expressed. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Oct. 21, 2008), BTA No. 2006-M-1620, unreported.” *Fountain Head Apts. Ltd. v. Montgomery Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2006-K-2124, unreported, at 8.

Appellant also challenges the reliability of the appraisal submitted on behalf of the appellee property owner, claiming it was not supported by the market. However, the report itself, as well the testimony provided by Sprout during both direct and cross-examination, indicated that the subject’s actual income and expenses were consistent with the market and that any meaningful differences could be fairly attributed to the subject’s location.

As in any situation where weight is accorded opinion testimony, there exists opportunity for criticism. However, under the facts of this appeal, where the property owner supported its valuation claim with appraisal evidence, we find significant the court’s ruling in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, in which it found this board’s reinstatement of a county auditor’s initial valuation in error:

“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.” Id. at ¶27.

Thereafter, in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, the majority applied *Dayton-Montgomery*, supra, and again reversed this board’s decision to return to an auditor’s valuation, 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.” Id. at ¶15. From its decisions in *Dayton-Montgomery* and *Bedford Bd. of Edn.*, it is clear the court disfavors the reinstatement of an auditor’s value when a board of revision alters that amount and there exists “sufficient evidence” to support an adjustment.

We are unable to conclude in this instance that appellant, which presented no evidence of value, has met its affirmative burden of proof on appeal. Further, giving due consideration to the court’s pronouncements in *Dayton-Montgomery* and *Bedford Bd. of Edn.*, we are reluctant to reinstate the auditor’s value where the BOR, upon recommendation of the auditor’s representative, found sufficient evidence exists warranting the claimed reduction, a determination which appears reasonable and reliable in the absence of contradictory evidence. We will not engage in conjecture and conclude, contrary to the representations made, that the subject’s actual data is inconsistent with the market. See *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26 (“Mere speculation is not evidence.”)

Accordingly, we find, as did the BOR, that the appraisal evidence provided by the appellee property owner supports the following true and taxable values for the subject property as of January 1, 2005:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 142,100	Land	\$ 49,740
Building	<u>\$ 857,900</u>	Building	<u>\$300,270</u>
Total	\$1,000,000	Total	\$350,010

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

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