

OHIO BOARD OF TAX APPEALS

Alliance BP LP,)	CASE NO. 2006-M-2279
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Franklin County Board of Revision, the Franklin County Auditor, and the Board of Education of the Columbus City School District,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Property Owner	Stephen Swaim, Esq, 118 East Main Street Columbus, Ohio 43215
For the County - Appellees	Ron O'Brien Franklin County Prosecuting Attorney William Stehle Assistant Prosecuting Attorney 373 South High St., 20 th Floor Columbus, Ohio 43215
For the Bd. of Edn. -	Rich, Crites & Dittmer, LLC Mark Gillis 30 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered February 3, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on December 12, 2006. Appellant

challenges decisions, mailed November 15, 2006 and November 30, 2006,¹ of the Franklin County Board of Revision (“BOR”), appellee.

The property which is the subject of this appeal is located in the Columbus City School taxing district of Franklin County, and is identified on the auditor’s records as parcel numbers 010-001628, 010-018865, 010-18994, 010-098821, 010-098822, 010-139346, 010-139347, 010-13948 and 010-139349.

The value of the property determined by the Franklin County Auditor as of January 1, 2005 was as follows:

Parcel No. 010-001628

	True Value	Taxable Value
Land	\$ 318,000	\$ 111,300
Building	\$ 4,302,000	\$ 1,505,700
Total	\$ 4,620,000	\$ 1,617,000

Parcel No. 010-018865

	True Value	Taxable Value
Land	\$ 375,500	\$ 131,130
Building	\$ 2,094,500	\$ 733,080
Total	\$ 2,470,000	\$ 864,210

Parcel No. 010-018994

	True Value	Taxable Value
Land	\$ 209,500	\$ 73,300
Building	\$ 1,845,500	\$ 645,930
Total	\$ 2,055,000	\$ 719,230

¹ Separate decision letters for each parcel were mailed to the parties by the BOR on November 15, 2008; one corrected letter was mailed November 30, 2008, within the period of time permitted for such reconsideration. *State ex rel. Borsuk v. Cleveland* (1972), 28 Ohio St.2d 224. See, also, *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.* (2000), 87 Ohio St.3d 363. The decision letters as well as the corrected letter are attached to appellant’s notice of appeal.

Parcel No. 010-098821

	True Value	Taxable Value
Land	\$ 456,000	\$ 159,600
Building	\$ 2,934,000	\$ 1,026,900
Total	\$ 3,390,000	\$ 1,186,500

Parcel No. 010-098822

	True Value	Taxable Value
Land	\$ 1,016,600	\$ 355,810
Building	\$ 5,890,900	\$ 2,061,815
Total	\$ 6,907,500	\$ 2,417,625

Parcel No. 010-139346

	True Value	Taxable Value
Land	\$ 14,500	\$ 5,080
Building	\$ -0-	\$ -0-
Total	\$ 14,500	\$ 5,080

Parcel No. 010-0139347

	True Value	Taxable Value
Land	\$ 14,000	\$ 5,080 ²
Building	\$ -0-	\$ -0-
Total	\$ 14,000	\$ 5,080

Parcel No. 010-0139348

	True Value	Taxable Value
Land	\$ 13,500	\$ 4,730
Building	\$ -0-	\$ -0-
Total	\$ 13,500	\$ 4,730

Parcel No. 010-0139349

	True Value	Taxable Value
Land	\$ 15,500	\$ 5,430
Building	\$ -0-	\$ -0-
Total	\$ 15,500	\$ 5,430

² The auditor's certification reflects a taxable value of \$5,080, the same as that of parcel 010-139346. However, 35 percent of the true value of \$14,000 calculates to \$4,900.

Upon consideration of a complaint filed by Alliance BP LP (“Alliance”), and counter-complaint filed by the Board of Education of the Columbus City Schools (“BOE”), the BOR determined that the correct values for tax year 2005 were as follows:

Parcel No. 010-001628

	True Value	Taxable Value
Land	\$ 318,000	\$ 111,300
Building	\$ 3,849,500	\$ 1,347,330
Total	\$ 4,167,500	\$ 1,458,630

Parcel No. 010-018865

	True Value	Taxable Value
Land	\$ 375,500	\$ 131,130
Building	\$ 1,878,900	\$ 657,620
Total	\$ 2,254,400	\$ 788,750 ³

Parcel No. 010-018994

	True Value	Taxable Value
Land	\$ 209,500	\$ 73,300
Building	\$ 1,649,800	\$ 577,430
Total	\$ 1,859,300	\$ 650,730 ⁴

Parcel No. 010-098821

	True Value	Taxable Value
Land	\$ 456,000	\$ 159,600
Building	\$ 2,627,500	\$ 919,630
Total	\$ 3,083,500	\$ 1,079,230

³ The BOR’s decision letter indicates a value of \$789,050. However, the auditor’s certification provides the figures identified above.

⁴ The BOR’s decision letter indicates a value of \$650,760. However, the auditor’s certification provides the figures identified above.

Parcel No. 010-098822

	True Value	Taxable Value
Land	\$ 1,016,600	\$ 355,810
Building	\$ 5,270,200	\$ 1,844,570
Total	\$ 6,286,800	\$ 2,200,380

Parcel No. 010-139346

	True Value	Taxable Value
Land	\$ 14,500	\$ 5,080
Building	\$ -0-	\$ -0-
Total	\$ 14,500	\$ 5,080

Parcel No. 010-0139347

	True Value	Taxable Value
Land	\$ 14,000	\$ 5,080 ⁵
Building	\$ -0-	\$ -0-
Total	\$ 14,000	\$ 5,080

Parcel No. 010-0139348

	True Value	Taxable Value
Land	\$ 13,500	\$ 4,730
Building	\$ -0-	\$ -0-
Total	\$ 13,500	\$ 4,730

Parcel No. 010-0139349

	True Value	Taxable Value
Land	\$ 15,500	\$ 5,430
Building	\$ -0-	\$ -0-
Total	\$ 15,500	\$ 5,430

Alliance claims that the correct values for the subject property as of the tax lien date January 1, 2005 were as follows:

⁵ See Footnote 2.

All Parcels	True Value	Taxable Value
Land	\$ 2,433,100	\$ 851,590
Building	\$ 12,066,900	\$ 4,223,410
Total	\$ 14,500,000	\$ 5,075,000

The matter was submitted to the Board of Tax Appeals, pursuant to R.C. 5717.01, upon the notice of appeal, the statutory transcript certified by the Franklin County Auditor as secretary of the BOR, and the record of the hearing held in the matter. Counsel for Alliance and for the BOE also presented written argument supporting their respective positions.

The subject property is a large apartment complex located on the east side of Columbus. The complex consists of 50.940 acres divided among nine parcels. 759 apartment units are contained in 41 buildings and are divided among one- and two-bedroom units of varying configurations. A clubhouse, laundry facility, and swimming pool, as well as asphalt parking areas and carports, are located within the subject.

At hearing before this board, Mr. David Hatcher, MAI, provided expert testimony as to the value of the subject. Mr. Hatcher also testified before the BOR. The appraiser started with a short history of the subject. Constructed in 1972, the apartment complex was once considered a premier complex on the east side of Columbus. Over the years, the complex's desirability has waned as the area in which it is located has decayed. The commercial sector once surrounding the complex has moved to newer spots on the outskirts of the city. As the retail/office sector moved

out, the storefronts/offices remaining are either vacant, or filled with less desirable businesses. H.R. at 12-13.

Mr. Hatcher was very familiar with the neighborhood, and described a number of competing apartment complexes located within the subject's vicinity. Mr. Hatcher testified that there were approximately 1,700 units, divided among four large complexes, of which the subject was one. H.R. at 16. Mr. Hatcher testified that the vacancy rates of all the complexes during the relevant period (2005) were in the 12 to 17 percent range. *Id.* Mr. Hatcher also testified that the apartment complexes' vacancies have suffered as crime in the area has increased. H.R. at 17. Mr. Hatcher's testimony described a neighborhood in decline.

Mr. Hatcher attributed the high vacancy rates not only to the increase in crime, the aging of the complexes (the others were also constructed in the same time frame as the subject) and deferred maintenance issues (from which the subject suffered), but also to the attractive interest rates and ease of obtaining mortgages at the time surrounding tax lien date. H.R. at 17.

The appraiser did not prepare a cost approach for the subject property, and, given its age, the board agrees that the value derived from this approach would require such significant deductions that its value would be minimal at best. The appraiser did conclude to value using the market approach. Mr. Hatcher found eight apartment sales he believed to be comparable to the subject. Six were in the city of Columbus, and two in the city of Reynoldsburg. All were constructed at

approximately the same time frame as the subject. The subject property is a very large complex. The appraiser's comparables, while large, all contained fewer units than the subject. The closest in number of units was Mr. Hatcher's comparable no. 3, a 651-unit complex. Others contained 182 - 432 units.

Through his market analysis, Mr. Hatcher also developed an "effective gross income multiplier" ("EGIM") analysis. H.R. at 20. It was Mr. Hatcher's testimony that such an analysis reflects the market's allocation of value to specific amenities that are otherwise difficult for an appraiser to measure. H.R. at 22.

The appraiser's comparables, on a sales-price-per-unit basis, ranged from \$18,750 to \$37,899, and, on a sales-price-per-square-foot basis, ranged from \$22.26 to \$38.95. The overall capitalization rates ranged from 5.4 percent to 10.68 percent and the EGIM ranged from 3.5 to 5.1. App. Ex. 1 at 29. Applying an EGIM of 3.75 to the subject's estimated effective gross annual income, Mr. Hatcher derived a value of \$14,000,000, or \$18,445 per unit.

Mr. Hatcher also concluded to value under the income capitalization method. Mr. Hatcher provided rents and vacancy rates for six apartment complexes. All six are very near the subject and three of the six have vacancy rates similar to those of the subject. The subject has a number of unit types ranging from studios to two-bedroom, two-bath townhouses. Appellant's Ex. 1 at 34. The rental rates range from \$400 per month to \$630 per month. Electricity and gas are separately metered, but costs for water and sewer are paid by the complex with partial reimbursement

from the tenants. The appraiser noted that some of the comparables did not pay any portion of the water and sewer charges of their tenants.

A review of the market indicated that the rental rates earned by the subject were at the higher end of the market rates. For example, market rentals for a one-bedroom, one-bath garden apartment were \$369 to \$445 per month. The subject rental rates for one-bedroom, one-bath apartments ranged from \$410 to \$530 per month. Mr. Hatcher indicated that the slightly higher rates were a result of the higher expenses absorbed by the landlord because of the water and sewer costs. When taking these costs into consideration, it was the appraiser's opinion that the actual rental rates obtained by the subject were in fact at market. Therefore, Mr. Hatcher utilized potential actual income as the starting point for his market approach.

The appraiser added other income of \$289,000, also derived from actual income received, for a total gross annual income potential of \$4,778,860. From this figure the appraiser deducted a vacancy and credit loss of 15.5 percent and an "additional concession" percentage of 5.5. The complex's actual vacancy rates for the past three years had been as follows: 2003 - 10 percent, 2004 - 15-16 percent, 2005 - 18-19 percent. According to the market survey performed, the three complexes nearest the subject, Eastgreen on the Commons,⁶ Century City, and Williamsburg

⁶ The first page of the supporting information regarding Eastgreen on the Commons is missing from Appellant's Ex. 1. However, the same appraisal report was presented to the BOR and the missing page, page A-18, is present in the statutory transcript. We have also found a typographical error on page 33 of Mr. Hatcher's report. That page indicates that Eastgreen on the Commons suffers from a 1 percent vacancy, as opposed to the 11 percent vacancy that is indicated in the supplemental information.

Square, had vacancy rates ranging from 11 percent to 17 percent. Appellant's Ex. 1 at 33.

Deducting these amounts reduced the annual income potential to an effective gross income of \$3,775,299. From the effective gross income, the appraiser deducted expenses of \$2,225,431 (58.95 percent of effective gross income, \$2,932 per unit), derived from the actual expenses of the subject. The appraiser also deducted a replacement reserve of \$238,471, or \$314 per unit, to account for short-lived items directly included in the apartment units. After deducting these amounts, the appraiser concluded to a net annual operating income of \$1,311,398.

The appraiser's market sales provided a market capitalization rate range of 8.03 percent to 11.42 percent. The appraiser concluded to an overall capitalization rate of 9 percent. He added a tax additur of 2.27 percent and concluded to value under the income approach of \$14,500,000. Placing the greatest weight on the income approach, the appraiser concluded to a value for the subject property as of tax lien date of \$14,500,000.

The BOE presented no evidence. Counsel did, however, question Mr. Hatcher regarding a sale of the subject property in August 2002 for a sale price of \$22,297,400. Mr. Hatcher testified that he was unaware of the sale. H.R. at 56.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value 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 City Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once competent and probative evidence of true value has been presented by an appellant, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

It is not enough, however, to come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. There is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value that it seeks. *Cincinnati School Bd. of Edn.*, supra. Accordingly, this board must proceed to examine the available record and to determine the subject property's 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 will determine the weight and credibility to be accorded the evidence

presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. In order to make an assessment of property at its true value, the county auditor must first determine its true value. Specifically, R.C. 5713.03(B) provides, in part:

“The auditor shall assess all the real estate situated in the county at its taxable value [and] *** shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate ***.”

In interpreting the meaning of “true value,” the Supreme Court has determined that true value for real estate tax purposes is the cash price for which the property would sell on the open market in an arm’s-length transaction. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57. Where parties rely upon appraisers’ opinions of value, this board may accept all, part, or none of those appraisers’ opinions. *Am. Steel & Wire Co. v. Bd. of Revision* (1942), 139 Ohio St. 388; *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 62 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609.

It is also well established that when property has been the subject of a recent arm’s-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes. *Berea City School Dist. Bd.*

of Edn. v. Cuyahoga Cty. Bd. of Revision, 106 Ohio St.3d 269, 271-272, 2005-Ohio-4979; *Zazworsky*, supra; *Hilliard City School Bd. of Edn.* supra; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Accordingly, where there exists an actual sale of real property which is both recent and arm's length, R.C. 5713.03 requires the county auditor, and this board, to consider such a sale as the best evidence of the property's true value. *Berea*, supra; *Conalco*, supra; *Park Investment Co.*, supra. In the present matter, there is evidence within in the record which suggests that the subject property sold on August 28, 2002. A copy of the limited warranty deed is provided as a part of the appraisal presented by Alliance. Appellant's Ex. 1, Addendum. That limited warranty deed indicated the W9/PHC Real Estate Limited Partnership transferred the subject to Alliance for a price of \$22,297,400. While the appraiser testified that he was unaware of the sale, the board finds the copy of the limited warranty deed sufficient evidence that indeed a transfer took place on August 28, 2002.

Thus, the first question this board must consider is whether a sale 28 months prior to tax lien date is sufficiently recent for purposes of determining true value. In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36 (overruled on other grounds), the court held:

“The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case. R.C. 5713.03 provides that if there has been ‘an arm's-length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to

be the true value for taxation purposes.’ ***. One of the factors that must be considered in determining what is ‘a reasonable length of time’ is a consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or changing very slowly.” Id. at 44.

In compliance with the court’s directive, this board must look to more than just the time period between the date of valuation and the date of sale. This board must also look to market changes between those two dates.

Alliance’s appraiser was very knowledgeable concerning the market surrounding the subject property. His testimony leads this board to conclude that the value of the subject property as of the sale date was far different from the value of the subject property as of tax lien date. For example, the vacancy rate for the subject in 2003 was 10 percent. For 2005 it was between 18 and 19 percent. Appellant’s Ex. 1 at 35. Moreover, at the BOR hearing, a representative of the management company indicated that about the beginning of 2006, the vacancy rate was 45 percent. S.T., Digital Recording. We would also note that the BOE does not seek a value increase to the sale price, but argues for the auditor’s assessment, which was \$19,590,100, \$2,700,000 less than the sale price. Clearly, changes in circumstances between the sale date and the valuation date indicated that the sale price garnered in late 2002 was no longer reflective of value.

While we do not agree that the subject property is properly valued at the sale price garnered in late 2002, neither do we agree with Alliance’s appraiser that the

value should be reduced beyond that which was granted at the BOR. While Mr. Hatcher does not rely upon his sales comparison approach, this board has, in the past, rejected his EGIM analysis because we have been concerned that the analysis does not accurately capture value. *Interstate Limited Partnership, an Ohio Limited Partnership v. Fairfield Cty. Bd. of Revision* (Jan. 4, 2008), BTA No. 2005-B-1119, unreported; *Somerford Square Purchase Company, LLC v. Fairfield Cty. Bd. of Revision* (Apr. 15, 2008), BTA No. 2006-R-775, unreported.

We also question Mr. Hatcher's income capitalization approach. Mr. Hatcher testified that he placed the most emphasis on actual income and expenses of the subject, yet a review of those actual income and expenses does not support Mr. Hatcher's numbers. In 2003 and 2004, according to the actual figures included in the addendum of the appraiser's report, other income receipts equaled \$470,104 and \$409,552, respectively, while Mr. Hatcher's pro forma appraisal indicates other income of only \$289,000.

This discrepancy is important, because an increase in income of \$150,828 (the average of the 2003 and 2004 other income and the amount used by the appraiser) can have a significant effect on value when numbers are capitalized. In this case, capitalizing that amount by the appraiser's capitalization rate increases values by \$1,338,314 (rounded) ($\$150,828/11.27$ percent).

The board also questions the 5.5 percent deducted for concessions to rent apartments. That figure is not supported by information regarding comparable

apartment units. Certainly such a significant deduction would have been taken into consideration in the market sales and reflected in the capitalization rates. Moreover, the additional percentage deduction removes the subject from the range of comparables when considering vacancy rates. Given the issues with the appraiser's income capitalization opinion, the board declines to place weight on that method.

We do agree with the BOR, however, that the auditor's value is not correct, as reflected in the comparable sales. We agree that the market sales comparables are truly comparable to the subject, and reflect a sales price for the subject lower than the auditor's assessment. We acknowledge that the BOR calculated value by averaging the sales price of the market comparables and multiplying the result by the gross building area of the subject. This board does not generally approve of averaging of market comparables to find value. *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. However in the present matter, the board finds that the market sales are comparable to the subject in both market condition and rental rates. Therefore, we find that the evidence supports a reduction in value. We are also cognizant of the Supreme Court's admonishment in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, where it held "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." Id. at ¶27.

Therefore, the board finds that the market value of the subject property is \$17,709,000. Therefore, this board finds by a preponderance of competent and probative evidence that the value of the subject property as of January 1, 2005 is as follows:

Parcel No. 010-001628

	True Value	Taxable Value
Land	\$ 318,000	\$ 111,300
Building	\$ 3,849,500	\$ 1,347,330
Total	\$ 4,167,500	\$ 1,458,630

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Building	\$ -0-	\$ -0-
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Parcel No. 010-0139347

	True Value	Taxable Value
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Building	\$ -0-	\$ -0-
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Parcel No. 010-0139348

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Parcel No. 010-0139349

	True Value	Taxable Value
Land	\$ 15,500	\$ 5,430
Building	\$ -0-	\$ -0-
Total	\$ 15,500	\$ 5,430

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

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