

Donald R. Kenney, Trustee,)	CASE NO. 96-K-259
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Franklin County Board)	
of Revision, Franklin)	
County Auditor and the)	
Columbus Board of)	
Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Todd W. Sleggs Todd W. Sleggs & Associates 1015 Euclid Avenue, Third Floor Cleveland, Ohio 44115
For the County Appellees	-	Ronald O'Brien Franklin County Prosecuting Attorney By: Matthew Chafin Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215
For the Appellee Columbus Board of Education	-	Karol Cassell Fox Teaford, Rich and Wheeler 20 East Broad Street Columbus, Ohio 43215

Entered March 21, 1997

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 on March 19, 1996, by appellant, Donald R. Kenney, Trustee. Appellant appeals a decision of the Franklin County Board of Revision ("BOR"), mailed on February 21, 1996, in which it determined that the subject property

had a total taxable value of \$953,750 as of the tax lien date, January 1, 1994.

The subject property is located in the City of Columbus-Columbus City School District taxing district and appears in the records of the Franklin County Auditor ("Auditor") as permanent parcel number 196702. The property has a land area of approximately two acres and is improved with a one hundred forty-two room Cross Country Inn. Both the Auditor and the BOR concluded that the subject property had the following true and taxable values:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 568,000	Land	\$ 198,800
Building	<u>\$ 2,157,000</u>	Building	<u>\$ 754,950</u>
Total	<u>\$ 2,725,000</u>	Total	<u>\$ 953,750</u>

In his notice of appeal, ¹ appellant claims that the following more accurately reflects the true and taxable values of the subject property on tax lien date:

¹In addition to challenging the value findings made by the BOR, appellant also suggested in his notice of appeal that the common level of assessment utilized by the BOR to calculate the subject property's taxable value was inaccurate. However, at hearing before this Board, appellant's counsel withdrew this issue. R. 35. Accordingly, no further discussion of this issue will be included within the remainder of our decision. Cf. Columbus Bd. of Edn. v. J.C. Penney Properties, Inc. (1984), 11 Ohio St. 3d 203. See, also, J.C. Penney Properties, Inc. v. Franklin Cty. Bd. of Revision (Aug. 27, 1992), Franklin App. Nos. 91AP-872, et seq., unreported.

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 568,000	Land	\$ 198,800
Building	<u>\$ 1,251,230</u>	Building	<u>\$ 437,930</u>
Total	<u>\$ 1,819,230</u>	Total	<u>\$ 636,730</u>

This matter is now considered by this Board based upon appellant's notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01, the evidence presented at the hearing conducted by this Board and the post-hearing briefs submitted by counsel. ² At this Board's hearing, appellant presented the testimony of his appraiser, Ronald P. Davis, while the appellee Columbus Board of Education ("BOE") presented the testimony of its appraiser, Gary J. Seckel. Both of these appraisers hold the designation of Member Appraisal Institute ("MAI").

In considering the record before us, 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 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 county board of revision are correct. Nevertheless, an appellant

²We note that a single brief has been filed in response to that filed on behalf of appellant. Although it is captioned "Joint Brief of Appellees," only counsel for the Columbus Board of Education ("BOE") has signed it and the certificate of service accompanying it. Given the position advocated by counsel for the county appellees at hearing, see footnote 3 infra, we will consider this brief to reflect only the interests of the BOE.

has the burden of presenting evidence in support of the value which it has asserted. 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 that of the appellant.

Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318, 319.³

In assessing property at its taxable value, its "true value," or fair market value, must first be determined. As indicated in R.C. 5713.03:

"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 succinctly set forth the manner by which the value of real estate is to be ascertained:

³At the hearing before this Board, counsel for the county appellees indicated that no additional evidence would be presented on their behalf. When questioned by the presiding attorney examiner as to whether there existed any specific evidence within the existing record supporting the values found by the Auditor or the BOR, counsel indicated that there was not. R. 9. Given counsel's admission and the court's admonitions in the above-referenced cases, we consider the values previously ascribed the subject property to be entitled to minimal consideration. Cf. Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision (1996), 76 Ohio St. 3d 13 (holding that the decision of the Board of Tax Appeals should be more than a mere rubber stamping of the board of revision's determination).

"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 of 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, the subject property has not been recently sold. Accordingly, we must consider the other evidence before us in determining its value. As previously indicated, in this instance, such evidence consists of the respective opinions of value offered by the parties' appraisers.

We first review the opinion of value expressed by appellant's appraiser. Davis rejected the cost approach in estimating the subject property's value due to the unreliability in estimating accrued depreciation for its improvements. Instead, he relied primarily upon the income approach, with limited support being provided by the market data, or sales comparison approach.

In performing the income approach, Davis first derived an average occupancy rate for the subject. He considered and rejected the use of national motel surveys on the basis that they "are for large segments of the lodging industry and include statistics which can be inappropriate for any one specific

situation." Ex. A at 39. Ultimately, he selected a 59% occupancy rate, focusing upon three factors: (1) the subject's actual average occupancy for a four year period, which was 52.4%; (2) the subject's "rate structure in comparison to other inns in the market"; and (3) existing competition.

Considering the subject's history, an average daily room rate of \$31 was chosen. When this amount was multiplied by the subject's number of rooms, multiplied by its average occupancy rate and added to other miscellaneous income, an effective gross income of \$972,971 resulted. After expenses totaling \$660,647 were deducted, the net operating income of \$312,324 was capitalized at 15.74%, a rate which Davis selected after reviewing ten sales of "comparable" properties. Through use of his income approach, Davis estimated the subject's value, rounded, at \$2,000,000.

Next, in his market data approach, Davis considered thirteen sales of properties occurring between June 1989 and April 1992 in order to determine a range of value within which the subject property would fall. The most recent of these sales were either Knights Inns or Arborgates, both of which are limited service motels generally similar to the subject. Seven of the properties were located in the general Columbus area, three in the Cincinnati market and one each in Circleville and Heath, Ohio and Florence, Kentucky. On a price per rentable room basis, Davis projected value at \$13,380, or \$46.45 per rentable square foot. Applied to the subject property, a rounded value of \$1,900,000 resulted.

Finally, Davis reconciled his income approach and market data approach. Because, in his opinion, investors do not typically rely upon the market data approach in making purchase-sale decisions of properties of this type, Davis gave little weight to this approach. Instead, since the subject is considered an investment property, Davis placed primary emphasis upon the income approach and opined that the subject property had a value as of tax lien date of \$2,000,000. He then acknowledged that this value amount would include a minor amount attributable to personal property. Relying upon appellant's personal property tax returns, he indicated a deduction of \$180,772 would be appropriate.

We next review the appraisal of the subject property performed by the BOE's appraiser. Like Davis, Seckel found the cost approach to be an unreliable method to estimate the value of this property. He also rejected the market data approach, indicating there existed no properties truly comparable to the subject which were not in a distressed condition. He therefore restricted his analysis to the income approach.

Although indicating that he had made a review of three years of actual data from the subject property, it appears that primary emphasis was placed upon a single year's worth of information. For example, he selected 1993 as reflecting a stabilized occupancy condition for the property. Multiplying a 48.3% occupancy rate by the subject's number of rooms and by the subject's actual figures, again derived from 1993, Seckel's effective gross income, less sales discounts, was \$983,100. From this amount, he deducted expenses and reserves for replacements

totalling \$620,200, which resulted in a net operating income of \$362,900. Arriving at a capitalization rate of 10.9% through use of the band-of-investment technique, which he verified by the debt coverage ratio method, and adding 1.7% to reflect real estate taxes, a rounded value of \$2,880,000 was estimated. After deducting \$180,000 to reflect the value of personal property on site, it was Seckel's opinion that the subject property had a fair market value of \$2,700,000.

The present appeal, not unlike many involving divergent opinions of value, necessarily turns upon the competence and reliability demonstrated by the individual expressing the opinion. See Cardinal Federal S. & L. Assn. v. Bd. of Revision (1975), 44 Ohio St. 2d 13; Witt Co. v. Hamilton Cty. Bd. of Revision (1991), 61 Ohio St. 3d 155. Both Davis and Seckel hold the MAI designation, have substantial experience in appraising commercial properties and have testified before this Board, competently, on many occasions. Nevertheless, each party has managed to point to deficiencies in the opposing appraiser's analysis, while extolling the virtues of their own appraiser.

It has been demonstrated that there are aspects of both appraisals in which certain assumptions are not completely explained or supported with independent data contained within the written report. For example, ⁴ the BOE has challenged the expense

⁴At hearing, counsel for the BOE examined appellant's appraiser regarding his relationship with Doug Parobek and Ambassador Research. However, no argument has been made by the BOE in its post-hearing brief regarding this relationship or in what manner, if any, it impacts upon Davis' credibility. As the BOE has not pursued this issue and as this Board has previously considered and rejected similar arguments, we find no basis upon which to conclude

figures used by Davis as being well above the actual expenses experienced by the subject property. In addition, the BOE questions the validity of the "extremely high" capitalization rate selected by Davis since it was derived from distress sales of lower quality properties. In comparison, appellant argues that Seckel's appraisal is summary in nature and is merely a recitation of actual data from a single year without sufficient regard to the market.

Following our consideration of each appraiser's analysis, we conclude that the appraisal performed by Davis expresses the more reliable opinion of value. Although the BOE suggests that the expense data reflected in Davis' appraisal exceeds that experienced at the subject property, historical data should not be relied upon to the exclusion of the market. Cf. Wynwood Apartments, Inc. v. Bd. of Revision (1979), 59 Ohio St. 2d 34, syllabus; Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St. 3d 552, 555. In this instance, Davis testified that the subject's historical income and expenses were generally consistent with the market. He then supported the adjustments which he made to actual expenses by pointing out that as the subject's actual occupancy rate was increased to reflect market occupancy, a corresponding increase in expenses was warranted. Furthermore, the BOE's appraiser conceded that payroll expenses had been on the rise at both the subject property and properties like it. Despite the BOE's assertions to the contrary,

that Davis is incapable of rendering, as he has represented, an independent appraisal of the subject property. See, e.g., Inner City Catholic Parishes, Inc. v. Franklin Cty. Bd. of Revision (Aug. 30, 1996), B.T.A. Case Nos. 95-R-457, et seq., unreported; Central Benefits Mutual Insurance Co. v. Franklin Cty. Bd. of Revision (Dec. 20, 1996), B.T.A. Case No. 96-K-1, unreported.

we find the adjustments made by Davis to be reasonable given the evidence before us.

We agree with the BOE that the quality of sales upon which Davis relied in arriving at his capitalization rate is less than ideal. In fact, these sales, several of which were transferred by banks following foreclosure, further underscore each appraiser's opinion that there are no properties, having recently sold, which are truly "comparable" to the subject and that have not been in somewhat of a distressed condition. However, merely because a property was sold by a bank does not, in and of itself, render the sale unreliable for purposes of determining that property's value or using it in determining an appropriate capitalization rate for another property. Cf. Equity Strongsville II v. Cuyahoga Cty. Bd. of Revision (Feb. 2, 1996), B.T.A. Case Nos. 94-M-163, et seq., unreported.

In any event, we consider Davis' capitalization rate better supported than that of the BOE's appraiser. Seckel's reliance upon general discussions, the timing of which are unclear, is exemplified by the following discourse regarding the mortgage/equity portion of his capitalization rate: ⁵

"Q. Down at the bottom of the page [16], where you are talking about the equity portion of your capitalization rate, that the 12 percent recognizes the additional risk over

⁵Seckel suggested that two "independent" methods of calculating an appropriate capitalization rate had been performed. However, on cross-examination he admitted that the two methods were not truly independent of one another since each utilizes much of the same underlying data and therefore require many of the same assumptions to be made.

some other real estate investments, is it your opinion that the equity portion of the capitalization rate for a limited service motel such as the subject would be higher for other types of real estate?

"A. Some other types, yes. Lower than some other types.

"Q. Okay. And I asked you that same question when we were at the Board of Revision on this property, and you answered that a motel capitalization rate would be higher than for some other types of real estate. And I asked you about the differential, what it would be, and you testified at that time it would be about 1.75 percent.

"And my question is: How do you -- or, do you have any market information that quantifies that differential in the capitalization rate?

"A. What I'm indicating to you is that my equity rates what I thought it did. The direct testimony is taken from what an investor does for real estate motel properties, the rate that -- of the return they would like on their equity.

"Q. Uh-huh.

"A. Again, it's established in part by mortgage loan work that I've done, so I know what an investor wants on his investment.

"Q. Okay. But you haven't included any of that data in the report here in terms of specific deals you worked on?

"A. When you say included in the report, things of that nature are difficult to -- In other words, when I talk to an investor of a real estate property, or anywhere, and he says, 'You know, I would desire a 12 percent return on this motel when I build it', I don't know how you quantify that.

"Can you say this person told me 12 percent? I could because I quote people, but I think in this case it's my job to talk to many people and get the overall opinion of what the desirable return is. That's my opinion.

"Q. Now, in terms of banks and the mortgage placement companies that you talked to, do you

remember specifically which banks and mortgage placement companies you talked to about the property?

"A. Not on this specific property. When I'm doing appraisal in a particular time period, I probably have four or five people that I call that work on mortgage loan work.

"I could quote Jerry Garman of Wheeling National Bank. I could quote Dan Maloney of Commerce Nation Bank, Scott DuFlaun at National City. That is some of the people. I call them and I say, 'Scott, what kind of mortgage rate could you make on a motel as we speak?', and they will tell me.

"Is it all exactly the same, no; but I talk to these people. And I use Spectrum Mortgage, which is a different breed of cats than a banking institution, and I take all the information and correlate it.

"Q. But if the bank were to look at this specific property they are going to look at the occupancy history and financial information and determine what the specific lending rate is for the property?

"A. I'm sure that's true.

"Q. Now, in terms of the time frame in which you spoke with these other people, was it at the time that you prepared the report for purposes of the Board of Revision when you surveyed these lenders?

"A. No. That's going bac k -- Fortunately, I have been in the business long enough that I do appraisals each year. And each year I have rates that are applicable as to that period in time. In other words, I did appraisals for mortgage loans in 1994, so I have rates as of that time." R. 57-60.

In quoting this testimony, we do not mean to suggest that an appraiser's analysis will be considered flawed if he or she relies upon discussions with individuals who do not testify before this Board. In fact, we have acknowledged on many occasions that

information of this kind is typically gathered and considered by an appraiser in the performance of an appraisal. See, e.g., Cyclops Corp. v. Richland Cty. Bd. of Revision (May 30, 1985), B.T.A. Case Nos. 82-A-566, et seq., unreported. However, where it becomes a choice between two appraisers' opinions, one of which includes supporting information from which we can independently evaluate subjective adjustments made and another which does not, we will generally accord greater weight to the former. See, e.g., Cincinnati Ridge Property/J&W Management Co. v. Hamilton Cty. Bd. of Revision (Feb. 14, 1997), B.T.A. Case No. 95-K-1274, unreported.

Because we find appellant has met his initial burden of proof, in that it offered competent and probative evidence of value, and because we find appellees have failed, when the burden shifted to them, to rebut appellant's evidence, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property were as follows on the tax lien date of January 1, 1994:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 568,000	Land	\$ 198,800
Building	<u>\$ 1,251,230</u>	Building	<u>\$ 437,930</u>
Total	<u>\$ 1,819,230</u>	Total	<u>\$ 636,730</u>

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. It is further ordered that the values as determined herein shall carry forward in accordance with law. Cf. Oberlin Manor Ltd. v. Lorain Cty. Bd. of Revision (1994), 69 Ohio St. 3d 1. ohiosearchkeybta