

[Cite as *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 2010-Ohio-5845.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94585**

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**INDEPENDENCE SCHOOL DIST. BD. OF EDN.**

PLAINTIFF-APPELLANT

vs.

**CUYAHOGA COUNTY BD. OF REVISION, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
AFFIRMED**

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Administrative Appeal from the  
Board of Tax Appeals  
Case No. 2006-K-1345

**BEFORE:** Jones, J., Gallagher, A.J., and Vukovich, J.\*

**RELEASED AND JOURNALIZED:** December 2, 2010

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LARRY A. JONES, J.:

{¶ 1} Appellant Independence School District Board of Education (“school board”), appeals the decision by the Board of Tax appeals (“BTA”), that rejected the school board’s proposed value for Rockside Corners, Ltd. (“Rockside”), a shopping center located in the Independence school district. For the reasons set forth below, we affirm the decision of the BTA.

### **Facts**

{¶ 2} The property at issue is a shopping center located at 6901 Rockside Road in Independence, Ohio, at the corner of Rockside Road and Brecksville Road. The shopping center was constructed in 1989 and is 56,000 square feet, with approximately 19 tenants, mainly consisting of food vendors. The strip also includes a Wendy’s restaurant that is 3,864 square feet that was built in 1996. Basically, the mall provides lunch options for the surrounding businesses.

{¶ 3} On March 31, 2006, Rockside filed a tax complaint with the Cuyahoga County Board of Revision (“BOR”) for the 2005 tax year, seeking to reduce the taxable value of its property. The Cuyahoga County Auditor appraised the property’s fair market value at \$6,986,700, which corresponds to a taxable value of \$2,445,340.<sup>1</sup> Rockside sought to reduce the fair market value to \$6,078,400. The school board filed a counter complaint with the

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<sup>1</sup>Taxes in the state of Ohio are assessed at 35% of the Auditor’s appraised value.

BOR to maintain the Auditor's value for the 2005 tax year. The BOR refused to decrease the value of the property and maintained the Auditor's value for the 2005 tax year.

{¶ 4} The school board appealed the BOR's decision to the BTA, requesting an increase in the fair market value of the property to \$7,000,000, with a taxable value of \$2,450,000. However, at the hearing, the board sought a significantly higher value of \$9,700,000 based on the appraisal report prepared by Paul M. Provencher.

{¶ 5} At the BTA hearing, the school board presented the testimony of Provencher. In determining the property's taxable value, Provencher calculated the value for the property under three different methods: (1) the income-capitalization approach, which focuses on a property's capacity to generate income for the owner, (2) the sales-comparison approach, which focuses on the prices of comparable properties that have changed hands recently, and (3) the cost approach, which focuses on the cost of replacing the improvements on the property. Provencher gave the most weight to the income-capitalization approach and concluded the true value of the property was \$9,700,000.

{¶ 6} In response to Provencher's testimony, Rockside presented the testimony of two witnesses, Debbie L. Moss, the associate general counsel for the shopping center, and Alec J. Pacella, who acquired a 4.2% partial

ownership interest in the property in November 2006. The BTA discounted this testimony because it was based upon 2006 figures that were not supported by documentation.

{¶ 7} After considering the testimony and evidence submitted, the BTA concluded that it could not find sufficient probative evidence to determine a value different from that found by the BOR and affirmed the BOR's decision. The school board appeals and assigns the following four errors for our review:

**“I. The Board of Tax Appeals abused its discretion in rejecting the appraisal and testimony of the School Board's expert witness.”**

**“II. The Board of Tax Appeals abused its discretion and erred in concluding that Mr. Provencher did not develop a sales comparison approach by comparing the subject property to comparable recently transferred properties and by outright dismissing the sales comparison approach through the consideration of an effective gross income multiple analysis.”**

**“III. The Board of Tax Appeals abused its discretion and erred in concluding on page 11 that Mr. Provencher did not provide market support for the determination of income and expenses even though Mr. Provencher provided market data on pages 26-28, and 31 of the appraisal.”**

**“IV. The Board of Tax Appeals abused its discretion and erred in concluding that the School Board failed to provide competent, credible, and probative evidence of value to the BTA.”**

### Standard of Review

{¶ 8} Initially, we note our limited standard of review of decisions by the BTA. R.C. 5717.04, which sets forth this court's standard of review for appeals from the BTA, provides:

**“If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.”**

{¶ 9} Thus, the appellate court does not sit either as a super BTA or as a trier of fact de novo. *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, 400, 422 N.E.2d 846. We must affirm a decision of the BTA unless that decision was unreasonable or unlawful. *Galvin v. Masonic Toledo Trust* (1973), 34 Ohio St.2d 157, 296 N.E.2d 542; *Cincinnati Nature Ctr. v. Bd. of Tax Appeals* (1976), 48 Ohio St.2d 122, 357 N.E.2d 381. “As long as there is evidence which reasonably supports the conclusion reached by the board, the decision must stand.” *Highlights for Children, Inc. v. Collins* (1977), 50 Ohio St.2d 186, 187-188, 364 N.E.2d 13. See, also, *PPG Industries, Inc. v. Kosydar* (1981), 65 Ohio St.2d 80, 417

N.E.2d 1385; *American Steamship Co. v. Limbach* (1991), 61 Ohio St.3d 22, 572 N.E.2d 629.

### **Analysis**

{¶ 10} Because the school board does not argue its assigned errors separately, we will address them together. The school board contends the BTA's decision was unreasonable and unlawful because it rejected Provencher's appraisal value of the property based on erroneous conclusions.

{¶ 11} In reviewing the arguments, we are mindful that the BTA is not required to adopt the valuation fixed by any expert or witness. *Cardinal Fed. Sav. & Loan Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13, 336 N.E.2d 433, paragraph two of syllabus; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, 48, 49 N.E.2d 949; *Benedict v. Bd. of Revision* (1959), 170 Ohio St. 62, 63, 162 N.E.2d 479; *Shaker Square Co. v. Bd. of Revision* (1960), 170 Ohio St. 369, 371, 165 N.E.2d 431. The BTA is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses and courts will not disturb such determination unless a patent abuse of discretion is shown. *Cardinal*, at 20. Moreover, the fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities. *Id.*, at paragraph four of the syllabus.

{¶ 12} The school board argues the trial court erred by rejecting the

value Provencher established by using the income-capitalization approach.

In rejecting the value, the BTA held:

**“As for his income approach, Provencher offered little substantive support for his data other than the subject’s own performance data which we are unable to confirm is representative of the market. Given the distinct age, comparative size, construction, etc. of the two structures improving the property, with nothing more, we also question his apparent conclusion that these improvements would both command the same price per square foot in rental income. Likewise, expense data appears to have been summarily projected and not supported by market data made available for this board’s review.”**

BTA Opinion, Dec. 29, 2009, at 11.

{¶ 13} The school board argues that contrary to the BTA’s decision, Provencher did offer substantive data regarding the market and did not summarily project the expense data as the information was provided in the section of the report containing the summary of the comparable properties that were sold. Where a party relies upon an appraiser’s opinion of value, the BTA may accept all, part, or none of the appraiser’s opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, 573 N.E.2d 661.

While the school board contends sufficient information was presented, the BTA did not believe the figures presented were adequately detailed. The comparison property figures were in summary form. That is, how the expenses or net operating income were determined was not known. Additionally, the BTA questioned Provencher's conclusion that the 1989 strip mall property would garner the same price per square foot as the newer Wendy's building that was constructed in 1996. Given the BTA's concern with the figures relied upon Provencher, it was not obligated to accept the income approach value established by Provencher.

{¶ 14} The school board also argues that the income value of \$9,700,000 is consistent with the Auditor's 2006 value of \$9,774, 200. However, the record does not show the information or data on which the Auditor based the 2006 value. "[T]he evidence adduced for one tax year may not be considered with respect to another year if it is not made a part of the record in the case pertaining to that other year." *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196, ¶14. The Supreme Court in *Colonial* went on to explain:

**“Indeed, we have recently had occasion to consider and reject the argument that the BTA’s determination of value as to one tax year is subject to legal constraints of consistency to its determination of value as to other tax**

**years. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, 909 N.E.2d 597, ¶19, 23-25. Of particular importance is our holding that ‘[a]s a matter of both case law and elementary principles, each tax year should be determined based on the evidence presented to the assessor that pertains to that year.’ *Id.*, ¶20.”**

Id. at ¶15.

{¶ 15} The school board also contends the BTA erred by finding that Provencher failed to fully develop his approach in establishing the sales comparison. Provencher claims he provided the data that formed the basis of his sales comparison approach in his written report. In rejecting the value reached by the sales comparison approach, the BTA specifically stated:

**“As for his claimed second method of estimating value, i.e., a sales comparison approach, Provencher deviated from the norm and did not truly develop the approach, i.e., comparing the subject to properties having sold near the lien date and making appropriate adjustments to the sale amounts to account for differences among the properties, and then estimate a likely sale price. While making reference to actual sales data, Provencher, in effect**

**disregarded it in favor of a modified income analysis whereby he derived an effective gross income multiplier, an approach which this board has often criticized.”**

BTA Opinion, Dec. 29, 2009, at 10.

{¶ 16} Thus, contra to the school board’s argument, the court was aware that Provencher provided data regarding the comparison properties. However, Provencher failed to use the data to determine the value of the property. Instead, he engaged in a modified income analysis using a gross income multiplier.

{¶ 17} The school board contends the BTA erred by refusing to acknowledge the value established by the gross income multiplier, contending the BTA provided no authority for rejecting its use. The BTA, relying on one of its earlier decisions, explained the use of a gross income multiplier is not a good way to determine the value of the property:

**“Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and to one another in terms of physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense**

**ratios and, therefore, may not be comparable for valuation purposes.’ The Appraisal of Real Estate, at 546. The multipliers should not be used to determine value under the market data approach because, ‘comparable prices are not adjusted on the basis of difference in net operating income per unit because rents and sale prices tend to move in relative tandem.’ Id. at 421.” BTA Decision, Dec. 29, 2009, at 11, citing *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported, at 9-10.**

{¶ 18} In reaching its conclusion, the BTA relied on its former decision in *Edgewood Manor* and the publication, “The Appraisal of Real Estate.” Thus, the BTA did state the authorities it was relying upon in rejecting the use of gross income multipliers. Even if the BTA did not cite its authorities, it was within its discretion whether to accept the gross income multiplier in determining the value as the BTA is not required to adopt the valuation fixed by any expert or witness. *Cardinal*, paragraph two of syllabus.

{¶ 19} We conclude, the BTA’s unwillingness to base its decision upon the appraisals offered by the school board was not unreasonable, nor did the BTA abuse its discretion by affirming the decision of the BOR. Accordingly, the school board’s four assigned errors are overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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LARRY A. JONES, JUDGE

SEAN C. GALLAGHER, A.J., and  
JOSEPH J. VUKOVICH, J., \* CONCUR

(\*Sitting by assignment, Judge Joseph J. Vukovich, of the 7<sup>TH</sup> District Court of Appeals.)