

OHIO BOARD OF TAX APPEALS

Brooklyn City School District)
Board of Education,)
)
Appellant,) CASE NOS. 00-G-435 & 00-G-436
)
vs.) (REAL PROPERTY TAX)
)
Cuyahoga County Board of Revision,)
Cuyahoga County Auditor, and Lester)
& Ethel Gicei and Robert J. Richards,) DECISION AND ORDER
)
Appellees.)

APPEARANCES:

For the Appellant - David H. Seed
Britton, McGown, Smith, Peters
& Kalail Co., L.P.A.
Summit One, Suite 540
4700 Rockside Road
Cleveland, Ohio 44131

For the County - William D. Mason
Appellees Cuyahoga County Prosecuting Attorney
By: Timothy J. Kollin
Assistant Prosecuting Attorney
Courts Tower, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For Lester & - Leslie L. Gicei
Ethel Gicei and Attorney at Law
Robert J. Richards 3726 Ridge Road
Cleveland, Ohio 44144

Entered December 14, 2001

Mr. Johnson, Ms. Jackson and Ms. Margulies concur.

This cause and matter is before the Board of Tax Appeals as a result of two notices of appeal filed herein by the above-named appellant from a decision of the Cuyahoga County Board of Revision (BOR). In said decision the BOR determined the taxable value of the subject real property for tax year 1998.

The subject property is located in the Brooklyn Taxing District, Cuyahoga County, Ohio, and appears on the Auditor's records as Parcel No. 431-14-012. The size of the subject property is 40,580 square feet and is improved with a part one-story and part two-story light industrial building.

The Cuyahoga County Auditor determined the true and taxable values of the subject property for tax year 1998 to be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 50,710	\$ 17,750
Building	234,290	82,000
Total	\$ 285,000	\$ 99,750

The Board of Revision determined the true and taxable values of the subject property for tax year 1998 to be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 50,710	\$ 17,750
Building	179,290	82,000
Total	\$ 230,000	\$ 99,750

The appellant contends in its notices of appeal that the correct true and taxable values for the subject property should be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 50,710	\$ 17,750
Building	234,290	82,000
Total	\$ 285,000	\$ 99,750

This matter is now considered by the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified to this Board by the BOR, and the briefs of counsel for the Board of Education (“BOE”) and Lester & Ethel Gicei and Robert J. Richards (“taxpayers”). The parties waived the hearing in this matter.

At the outset, we acknowledge the affirmative burden which exists 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 Ohio 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 board of revision are correct. Nevertheless, an appellant 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.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

“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 addressed the manner by which the value of real estate is to be ascertained:

“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, Leslie Gicei, attorney for the taxpayers, submitted an appraisal report signed by Clifford D. Feierabend, MAI, of Calabrese, Racek & Markos, Inc. to the BOR without further foundation. We observed that Mr. Feierabend did not appear at the hearing before the BOR to verify or respond to questions regarding the report. In *East Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, et al.* (June 21, 1996), B.T.A. No. 94-J-458, unreported, the appraiser failed to appear and testify before this Board. We stated, “Without Mr. Canitia’s appearance before us to verify and clarify the information and data upon which his opinion is based, we attach little weight to such report.” In *Carlyle Management Co. and L&P Valley Forge Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (Apr. 25, 1997), B.T.A. No. 96-T-49, unreported, the appraiser failed to appear before either the BOR or this Board to testify regarding the report. We found that the appraisal report should be given no evidentiary weight. We stated, “We are unable to review the methods used in Mr. Ritley’s appraisal or the accuracy of the data and adjustments presented without Mr. Ritley actually being before the Board.”

We are presented with a similar situation in the present case. The author

of the appraisal report did not appear before the BOR or this Board for questioning. The accuracy of the report cannot be determined. An even more compelling reason to reject the report is that it values the property as of October 1, 1998. The tax lien date in issue is January 1, 1998. In *Carlyle Management, supra*, the appraisal did not value the property as of tax lien date. We determined that the value must be based upon the market as it existed on tax lien date. We cited the general rule adopted by the Ohio Supreme Court in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, wherein the Court found that “the B.T.A. must base its decision on an opinion of true value that expresses a value for the property as of tax lien date of the year in question.” Based upon the foregoing, we find that the appraisal report has little or no evidentiary weight.

We note that counsel for the taxpayers argues in her brief that the absence of the appraiser before the BOR and this Board, and the failure to appraise the property as of tax lien date, does not require a conclusion that the report should be given little or no weight. Counsel also argues that the BOE has a duty to provide evidence of its asserted value before the BOR’s determination can be changed. For the above-stated reasons we disagree. The BOE does not assert a value different from that of the auditor or the BOR, it argues that the appraisal presented to the BOR should not be considered and therefore the auditor’s value should be retained.

Giving consideration to the record in this matter, we find the appraisal report failed to provide probative, credible evidence of value of the property as of January 1, 1998, the tax lien date. As stated previously, there is no presumption that the value determined by the board of revision is correct. In the instant matter, we find that the BOR erroneously relied on the appraisal report in granting a decrease in the value of the property. Further, we find nothing in the record to suggest that the value determination of the County Auditor is in error.

Therefore, we find the value determination by the County Auditor is the most accurate basis upon which to determine the fair market value of the property for the tax year in question. Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1998, was as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 50,710	\$ 17,750
Building	234,290	82,000
Total	\$ 285,000	\$ 99,750

It is ordered that the records of the Auditor of Cuyahoga County shall reflect the values as determined above.

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