

OHIO BOARD OF TAX APPEALS

Firestone Real Estate Leasing Co.,)	
)	
Appellant,)	CASE NO. 2002-A-2001
)	
vs.)	(REAL PROPERTY TAX)
)	
Erie County Board of Revision, Erie)	DECISION AND ORDER
County Auditor, and Perkins Local Schools,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Arter & Hadden LLP
Jacob I. Rosenbaum
925 Euclid Avenue
1100 Huntington Building
Cleveland, Ohio 44115-1475

For the County Appellees - Rich, Crites & Wesp
James R. Gorry
300 East Broad Street, Suite 300
Columbus, Ohio 43215

For the Appellee Board of Education - Baumgartner & O'Toole
Abraham Lieberman
5455 Detroit Road
Sheffield Village, Ohio 44054

Entered July 11, 2003

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

This cause and matter came on to be considered by the Board of Tax Appeals upon the notice of appeal, filed herein by the above-named appellant, from a decision of the Erie County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2000.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the hearing before this board, and the briefs submitted by counsel to the appellant and county appellees.¹

The subject real property, a one-story commercial garage building, contains a small retail area, a garage area, including ten bays, and a storage area. Built in 1985, it is located on approximately 1.22 acres in the Perkins Township taxing district. The subject's gross building area measures approximately 7,238 square feet, according to county records. The value of the parcel, number 32-04782.000, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 266,570	\$ 93,300
Building	324,730	113,660
Total	\$ 591,300	\$ 206,960

Appellant contends that the board of revision has overvalued the property in question and claims the property's market value is that which it presented to the board of revision in its property owner's memorandum and associated materials.

¹The instant appeal is a continuation of matters earlier filed with this board but dismissed upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Firestone Real Estate Leasing Company v. Erie Cty. Bd. of Revision* (Oct. 30, 2002), BTA No. 2001-N-1300, unreported. In light of the fact that no party has objected, although given an opportunity to do so by order of this board dated March 14, 2003, and in the interests of administrative economy, this board will accept the previous record and legal argument provided by the parties as probative of the issues in the current appeal.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction," *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in OAC 5705-3-03: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income from the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

In support of its position, the appellant presented a memorandum and other materials, i.e., an "owner's opinion of value," to demonstrate that the subject's true value should be reduced to \$400,000. As we review the information presented, at

the outset, we must first note that we do not know the author of the property owner's memorandum, i.e., whose opinion of value is reflected therein. (Ex.1) Without having the author(s) of such report before us, or, at the least, the board of revision, to give testimony about the memorandum and further explanation about its contents, as well as to be available for cross examination, we cannot place any reliance upon the conclusions set forth therein. Since the opinion expressed therein is based upon the use of appraisal methodology, and, with no evidence of the author's qualifications/credentials or, that the author is, in fact, an appraiser, we question any conclusions offered.

We have previously considered the use of an "owner's opinion of value" at the board of revision level in *Olentangy Bd. of Edn. v. Delaware Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1997-M-848, unreported, where we held:

"As complainant, the property owner presented a written 'Opinion of Value' ('Opinion') at the hearing before the BOR. Such Opinions are regularly presented to boards of revision throughout the state. This Board has been critical of such Opinions when they are presented solely by persons representing property owners without any identification of the author thereof or underlying substantiation. *Grand Development Co. v. Cuyahoga Cty. Bd. of Revision* (June 5, 1998), B.T.A. No. 97-J-312, unreported; *Society Nat'l. Bank v. Montgomery Cty. Bd. of Revision* (Aug. 25, 1995), B.T.A. No. 94-P-875, unreported; *Society Nat'l. Bank v. Carroll Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 97-J-450, unreported; *Parkview Manor Company v. Cuyahoga Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-A-228, unreported." Id. at 4-5.

Even if we were able to attribute more weight to the owner's memorandum, we find that its limited analysis, even with the added information

concerning rental rates offered at this board's hearing,² would not constitute competent, probative evidence of value. The pro forma operating statement developed in the memorandum gave no support for the rent, vacancy, expense, reserve for replacement, and capitalization rates utilized. Specific information about rent and expense comparables, let alone any adjustments made to them, was not included.

Based upon the foregoing concerns, we find that the owner's memorandum does not constitute sufficient, probative evidence of the subject's value. It is this board's statutory duty to find taxable value herein. R.C. 5717.03. As such, one of our primary concerns relates to the market value of the subject property. Accordingly, with no evidence of market value before us that we find to be probative and credible, we will utilize the county board of revision's valuation of the subject. As the Supreme Court stated in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St. 3d 47, "(W)here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation * * * ." Thus, we adopt the valuation for the subject property, as established by the auditor and retained by the board of revision. Specifically, the value of the subject property, as of January 1, 2000, shall be as follows:

² The hearing examiner reserved ruling as to whether Exhibit 2, concerning market rental rates, would be received into evidence. The board will not receive Exhibit 2 into evidence as it constitutes hearsay; the individual who attempted to authenticate the document did not prepare it and did not have personal knowledge of the information contained within such document.

	TRUE VALUE	TAXABLE VALUE
Land	\$ 266,570	\$ 93,300
Building	324,730	113,660
Total	\$ 591,300	\$ 206,960

It is the Decision and Order of the Board of Tax Appeals that the Erie County Auditor shall list and assess the subject property in conformity with this decision.

ohiosearchkeybta