

## OHIO BOARD OF TAX APPEALS

Tony Joe and Rachel A. Horn,	)	
	)	
Appellants,	)	CASE NO. 2003-G-1652
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Montgomery County Board of Revision,	)	
and Montgomery County Auditor,	)	DECISION AND ORDER
	)	
Appellees.	)	

APPEARANCES:

For the Appellants		- Tony Joe Horn, pro se 86 North Johnsville Road New Lebanon, Ohio 45345
For the County Appellees		- Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Douglas M. Trout Assistant Prosecuting Attorney 301 West Third Street 5 <sup>th</sup> Floor; P.O. Box 972 Dayton, Ohio 45422

Entered October 1, 2004

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

This cause and matter is considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellants. Appellants appeal from a decision of the Montgomery County Board of Revision (“BOR”), wherein said board determined the value of the subject property for tax year 2002.

The subject property is located in the City of New Lebanon taxing district, Montgomery County, Ohio, and appears on the auditor’s records as Parcel No. L52-2-13-34. The subject property is improved with the appellants’ residence.

The Montgomery County Auditor and the BOR determined the true and taxable values of the subject property for tax year 2002 to be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 26,070	\$ 9,120
Building	\$ 126,190	\$ 44,170
Total	\$ 152,260	\$ 53,290

The appellants contend in their notice 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	\$ 19,310	\$ 6,760
Building	\$ 100,850	\$ 35,300
Total	\$ 120,160	\$ 42,060

This matter is now considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the testimony and evidence submitted at the hearing before this board. The county appellees notified this board that they 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.

At the hearing before this board, Mr. Tony Horn testified regarding the value of his property. He submitted an appraisal report prepared by Randy E. Bowser of Wentzell Realty. Mr. Bowser was not present to testify about his report. In *East Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, et al.* (June 21, 1996), BTA No. 1994-J-458, unreported, the appraiser failed to appear and testify before this board. We stated, “[w]ithout 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), BTA No. 1996-T-49, unreported, the appraiser failed to appear before this board to testify regarding the report. We found that the appraisal report should be given no evidentiary weight. We stated, “[w]e 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 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 June 28, 2004. The tax lien date in issue is January 1, 2002. 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, 555, wherein the

court found that “the BTA 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.” See, also, *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. In addition, the report states that the value determined is for tax year 2003. Based upon the foregoing, we find that the appraisal report has little or no evidentiary weight.

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, 2002, the tax lien date. When a taxpayer has failed to provide competent, probative evidence of a property’s value, this board may affirm the value determined by the BOR. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47.

Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 2002, was as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 26,070	\$ 9,120
Building	<u>\$ 126,190</u>	<u>\$ 44,170</u>
Total	\$ 152,260	\$ 53,290

It is ordered that the records of the Auditor of Montgomery County shall reflect the values as determined above. Further, said values shall be carried forward according to law.

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