

OHIO BOARD OF TAX APPEALS

FOGG-AKRON Associates &)	CASE NO. 2006-A-1793
Raymond B. Fogg, Sr. ¹ ,)	
)	(REAL PROPERTY TAX)
Appellants,)	
)	DECISION AND ORDER
vs.)	
)	Appeal Filed Feb. 11, 2009
Summit County Board of Revision,)	Ohio Supreme Court No. 09-316
Summit County Fiscal Officer, and)	
Akron City School District Board)	
of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Wayne Petkovic Attorney at Law 840 Brittany Drive Delaware, Ohio 43015
For the County Appellees	-	Sherri Bevan Walsh Summit County Prosecuting Attorney Marvin D. Evans Assistant Prosecuting Attorney 220 South Balch Street, Suite 118 Akron, Ohio 44302-1606
For the Appellee Bd. of Edn.	-	Brindza, McIntyre & Seed, LLP David H. Seed 1111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114

Entered January 13, 2009

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

¹ We note that Raymond B. Fogg, Sr. was not a complainant before the BOR nor is he the owner of the subject property. Therefore, we find that he does not have standing to bring the instant appeal, and, as such, will no longer receive any further reference as an appellant hereinafter. See *The City of Dayton, Ohio v. Montgomery Cty. Bd. of Revision* (Jan. 18, 2008), BTA No. 2006-Z-1811, unreported.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Summit County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the county board of revision. All parties hereto waived their right to appear before this board at a merit hearing, and although all parties were given an opportunity to do so, none submitted a brief for this board's review.

The property in question is located in the Akron city school district taxing district and appears on the auditor's records as parcel number 67-57229. Located on the subject parcel, which totals approximately 6 acres, are two commercial buildings/warehouses.

The value for the subject parcel for tax year 2005, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land \$	174,350	\$ 61,020
Bldg	2,760,480	966,170
Total \$	2,934,830	\$ 1,027,190

The appellant property owner contends that the board of revision has overvalued the subject parcel by relying upon the fiscal officer's valuation of the subject and not the valuation testimony and evidence presented by the property owner at the hearing before the board of revision. Accordingly, on the notice of appeal, the appellant argues that the subject's true value should be \$2,150,000.

Since the parties did not appear before this board to provide any additional evidence or testimony or submit briefs in support of their positions, we must review and rely upon the record created at the board of revision, consistent with the Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision]* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its formal determination is more than a mere rubber stamping of the board of revision's determination. ***.” *Id.* at 13-14.

See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15, 1996-Ohio-432 (“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”).

Fogg-Akron Assoc. & Fogg-Akron Associates Ltd. Partnership (“Fogg-Akron”) filed an original complaint against the valuation of the subject property with the Summit County Board of Revision. Fogg-Akron sought to decrease the subject's value to \$2,500,000, claiming the subject's valuation “exceeds true market value.” S.T., Ex. 1. A counter-complaint was filed by the Board of Education for the Akron City School District, which sought maintenance of the auditor's valuation of

\$2,934,830, based upon “[e]conomic valuation as determined by the cost, sales comparison, and income approaches to value.” S.T., Ex.3.

At the hearing before the board of revision, Fogg-Akron presented the testimony of William McVeigh, who identified himself as a property tax manager with Midwest Property Tax. Mr. McVeigh presented and discussed a packet of information regarding the subject property, which he described as a property summary and update on operations/occupancies and which included a rent roll and review of vacancy rates at the property. S.T., Ex. 6. Fogg-Akron’s counsel also commented at the BOR hearing that the property owner saw no basis for the 17% increase in valuation for the tax year in question. He went on to discuss that previously, a decrease complaint for the subject property for tax year 2003 had been filed, which resulted in a valuation determination by the BOR in the amount of approximately \$2,500,000 for tax year 2003 (and carried forward to 2004). Apparently, it is the property owner’s belief that the previously determined value for the subject should have been carried forward and applied to tax year 2005 because the proceedings relating to such valuation were not concluded until 2005.²

The board of education was represented by counsel, but did not present any evidence or testimony to the board of revision. Upon consideration of the testimony and evidence received, the board of revision, citing lack of sufficient evidence, made no change to the subject’s valuation.

² There is no definitive evidence in the record demonstrating when the previous complaint’s proceedings were concluded. It would appear from the property record card included in the statutory transcript that a refund was issued for the subject property for tax year 2003 on September 23, 2004. Arguably, then, the proceedings regarding tax year 2003 were concluded as of that date. S.T., Ex. 2 at 3. See R.C. 5715.19(D).

In our review of this matter, we initially note 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.

As we consider the evidence and testimony presented to the board of revision, we find that we cannot rely upon or utilize the information presented by Mr. McVeigh to the board of revision because it is insufficient to support the property owner's conclusion of value there of \$2,500,000, nor does it support the claimed value here of \$2,150,000. A more detailed analysis, beyond providing vacancy rates and a rent roll, is needed to substantiate the value sought. No appraisal report from a qualified appraiser was provided; only a discussion of the history of the property and its vacancy rates occurred. Quite simply, there is nothing in the record to support the appellant's position.

Accordingly, based upon the foregoing, this board finds that appellant has failed to demonstrate that the value which is sought has a basis in the market, as of the tax lien date in question. See *Cleveland Bd. of Edn.*, *supra*, at 337; *Springfield Local Bd. of Edn.*, *supra*, at 495; *Mentor Exempted Village Bd. of Edn.*, *supra*, at 319.

Therefore, we find, as of January 1, 2005, the value of the subject parcel shall be that which the fiscal officer previously determined and the board of revision retained, as follows:

	TRUE VALUE	TAXABLE VALUE
Land \$	174,350	\$ 61,020
Bldg	2,760,480	966,170
Total \$	2,934,830	\$ 1,027,190

It is the decision and order of the Board of Tax Appeals that the Summit County Fiscal Officer shall list and assess the subject property in conformity with this decision.

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