

**OHIO BOARD OF TAX APPEALS**

Detroit Avenue I Corporation, (an	)	CASE NO. 2006-A-264
Ohio corporation),	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Cuyahoga County Board of Revision,	)	Remanded Upon Appeal Feb. 20, 2009
Cuyahoga County Auditor, and	)	
Cleveland Municipal School District	)	Appeal Filed July 23, 2008
Board of Education,	)	Ohio Supreme Court # 08-1436
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 1370 West 6 <sup>th</sup> Street, Suite 200 Cleveland, Ohio 44113
For the County Appellees	- William Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8 <sup>th</sup> Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee Bd. of Edn.	- Brindza, McIntyre & Seed LLP David A. Rose 1111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114

Entered June 24, 2008

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap concurring separately.

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 Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

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, and the briefs submitted by counsel to the appellant and the appellee board of education. No hearing was held before this board, as all parties hereto waived their right to appear.

The subject real property, a 19-unit apartment project located in the Cleveland taxing district, consists of one parcel, number 002-01-007, measuring approximately 7,905 square feet. The value of the parcel, as determined by the auditor and by the board of revision, is as follows:

	AUDITOR	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 30,100	\$ 7,000
Building	463,100	162,100
Total	\$493,200	\$ 169,100

	BOARD OF REVISION	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 30,100	\$ 7,000
Building	264,900	92,700
Total	\$295,000	\$ 99,700

Appellant contends that the auditor and the board of revision have overvalued the property in question and claims the property's market value is either \$190,000, which it contends in its notice of appeal and initial brief, or \$69,167, which it contends in its reply brief.

At the outset, we note that since the parties did not appear before this board to provide any additional evidence or testimony, 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.”).

The subject apartment building is located in an older neighborhood where crime, prostitution, and drug activity are prevalent. S.T. at Audio Tape. It was built in 1920 and contains 13,308 square feet with three stories and a full basement. Within the building, there are seven efficiency units which contain a living/sleeping area, open kitchen, and a bath and were rented for \$290 per month, as of January 1, 2004. There are also six one-bedroom units which contain a living room, kitchen, bath and bedroom and were rented for \$375 per month, as of the tax lien date. Finally,

there are six two-bedroom units which contain a living room, kitchen, bath, and two bedrooms which were rented for \$425 per month, as of tax lien date.

At the BOR, appellant's witnesses testified regarding the nature of the ownership of the subject. Specifically, the subject was purchased in 1991 as part of a low income tax credit project with rent restrictions. It is operated pursuant to a restrictive covenant that requires the property owner to "meet and continue to meet the affordability requirements contained in 24 CFR 92.252 regarding affordability of the units and evaluation of that affordability for a period of fifteen (15) years beginning on the date the final drawdown of the funds granted by the City to the Grantee and loaned to the Owner was disbursed." S.T., Restrictive Covenant at 1.

Detroit Shoreway Community Development Organization, ("DSCDO"), is the parent corporation of appellant Detroit Avenue I Corporation, (an Ohio corporation), ("Detroit Ave. I"). DSCDO "is a neighborhood based non-profit community development group serving the Detroit Shoreway Neighborhood," and it is "committed to improve the neighborhood and provide affordable housing for families." Appellant's Brief at 3; S.T. at Audio Tape. DSCDO/Detroit Ave. I renovated the subject building "using a variety of city, state and federal grants and funding. These (sic) funding or subsidies run only to the renovation of these properties. There are no rental subsidies, but rental rates are restricted pursuant to the funding. \*\*\* The rental rates at the subject property are restricted for 15 years as specified in the Restrictive Covenant enter[ed] into in April of 2003. \*\*\* The apartments are rented to the working poor and the restricted rental rates are established

based upon the income and the size of the family.” Appellant’s Brief at 3; S.T. at Audio Tape.

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 Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Further, with regard to valuation of rent/income-restricted housing, e.g., subsidized housing, that has not been the subject of a recent sale, as is the case herein, the Supreme Court has held that when employing the income approach, “economic rent is a proper consideration in a situation in which contract rent is not truly reflective of true value in money,” quoting *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34, 37, in *Canton Towers, Ltd. v. Bd. of Revision* (1983), 3 Ohio St.3d 4, 7. See, also, *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Later, in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, 23, the court further stated that “it is the fair market value of the property in its unrestricted form of title which is to be valued.” In said case, wherein the court considered the valuation process used for several apartment complexes that were operated with assistance from the Department of Housing and Urban Development, the court held that such an apartment property must be valued, “for real property tax purposes, with due regard for market rent and current returns on mortgages and equities.” *Id.* at 24.

In support of its position that the subject property was overvalued, appellant first relies upon the appraisal report of J. Everett Prewitt, SRA, a state-certified general real estate appraiser, that it had presented to the board of revision. We note that Mr. Prewitt did not appear before the BOR to testify about his report, which estimated the market value of the subject real property to be \$209,000 for tax year 2001, three years prior to the tax lien date under consideration herein, i.e., 2004.

There are several reasons why this board will not rely upon the conclusions set forth in Mr. Prewitt's report. First, Mr. Prewitt opined to a value three years prior to the year we are considering in this matter. Based upon the "as of" date that was utilized, the accuracy of the findings within the report becomes questionable since the date upon which all conclusions are based is approximately three years before the actual date in question. The instant valuation determination must be premised on evidence relevant to the tax lien date in question. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552.

Further, the appraiser did not appear before the BOR or this board to authenticate the appraisal that was submitted, testify regarding his professional credentials and the methodologies utilized in deriving his valuation conclusions, or be cross-examined/questioned by the opposing party or members of the BOR or this board's examiner. As we noted in *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, a view expressed by this board on numerous other occasions:

"Generally, documentary evidence which is received at hearing needs to be identified and authenticated by a witness who testifies under oath and is subject to examination by both the opposing party and an attorney examiner of this board. Furthermore, that witness' qualifications and credibility may be assessed during such examination. However, in this case, such safeguards are noticeably absent since the individuals who prepared the appraisals did not appear at hearing. Given our inability to assess the appraisers' qualifications and credibility and the failure to have the documents authenticated, we find

that each report constitutes hearsay upon which this board may not rely in reaching a decision.” Id. at 3-4.

See, also, *Specca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported; *Bd. of Edn. of the Northridge Local Schools v. Montgomery Cty. Bd. of Revision* (Jan. 28, 2005), BTA No. 2004-B-35, unreported, settled on appeal, Sup. Ct. No. 2005-0390, *08/16/2005 Case Announcements*, 2005-Ohio-4216; *Fisher v. Morrow Cty. Bd. of Revision* (Feb. 15, 2008), BTA No. 2006-V-717, unreported; *Giallombardo v. Montgomery Cty. Bd. of Revision* (May 7, 2004), BTA No. 2003-V-875, unreported; *Shanker v. Franklin Cty. Bd. of Revision* (July 19, 2002), BTA No. 2002-J-82, unreported. These cases reflect the fundamental proposition that “[a]n expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.” *Freshwater*, supra at 30.

Finally, we note that Mr. Prewitt’s appraisal begins from an inaccurate perspective of the subject property, since at the time he completed his opinion of value, the property contained only seventeen rental units and two retail units containing a total of 1,650 square feet, which were later converted to rental units. S.T., Appraisal Report at 16-17. We could not rely upon an appraisal that does not reflect the configuration of the subject building as of January 1, 2004.

We acknowledge that some or all of the foregoing defects may have been cured by Mr. Prewitt had he testified to his report and updated the conclusions therein to reflect the tax lien date we now consider. Claims by appellant’s counsel, in its brief, that the appraisal “is competent and probative evidence of the value of the subject property” because it “has not improved financially since January 1, 2001,” it “suffers

from a negative cash flow,” and “the neighborhood deteriorated from January 1, 2002 to January 1, 2004,” and as a result “the subject property would be worth less as of January 1, 2004 tha[n] it was worth on January 1, 2001” (Appellant’s Brief at 11-12) are pure speculation on counsel’s part, have no basis in an actual appraisal for the subject tax year, and do not equate to the appraiser’s conclusions based upon an update of his report.

The only other evidence presented to the BOR on behalf of the appellant was the testimony of two witnesses from DSCDO who provided a physical description of the subject property and the surrounding neighborhood as well as information regarding the overall business structure of the appellant, including the audited financial statements for calendar years 2003 and 2004 and a brief income approach valuation of the subject using such income and expense information.

We find that appellant’s witnesses testified credibly regarding the physical characteristics of the subject property and its location within its neighborhood, as well as provided what appears to be reliable income and expense information for the subject for two relevant tax years. However, the witnesses’ interpretation of that financial information is of little probative value, as there is nothing in the record that establishes their expertise in valuing real property utilizing recognized appraisal methodology, i.e., that either is a licensed real estate appraiser or has significant experience in the appraisal of real property. Thus, we find that an insufficient foundation for their value estimate was established with regard to their knowledge and experience in real estate valuation. The opinions expressed by the

witnesses were in the nature of an expert's opinion; however, this board does not find that they were so qualified. By not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the derivation of true value for a particular piece of real property, this board does not consider their estimate of value to be that of experts, and, as such, does not find it to be credible and probative evidence of value. See *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Cardinal Federal Savings & Loan Association v. Board of Revision* (1975), 44 Ohio St.2d 13; *Day Lay Egg Farm v. Union Cty. Bd. of Revision* (1989), 62 Ohio App.3d 555; *Cleveland Hubbard Property v. Cuyahoga Cty. Bd. of Revision* (June 23, 2000), BTA No. 1997-A-1395, unreported. Had these witnesses appeared before this board and offered testimony, they could have been questioned not only about their qualifications and the nature of the subject property, but also about the basis for their conclusions of value. However, by not appearing, we can only speculate about their credentials and the probative value of their conclusions.

Further, even if we were to consider the income approach valuation propounded by the appellant's witnesses, we find that there is no stated source for the "market" information utilized in the income approach. Without evidence to confirm that the numbers utilized were market driven, we cannot rely upon the witnesses' derivation of value.

Accordingly, based upon the foregoing, this board finds that appellant has failed to demonstrate that the value which it seeks 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. We must also highlight that it is unclear what value the appellant is advocating as the desired outcome from this board. In its notice of appeal and its initial brief, appellant argues that the subject property should be valued at \$190,000. We further note that no evidence offered by the appellant into the record ever concluded to a value of \$190,000. In its reply brief, appellant sought a \$69,167 value for the property, as argued by the witnesses before the BOR and ultimately determined by this board to be unsupported. Accordingly, we find that appellant did not meet its burden of proof regarding the subject's valuation, and having found no evidentiary support for any of the valuations sought by the appellant, we must now consider the BOR's reduction of the auditor's valuation.

Our analysis of a BOR's valuation determination routinely has begun with the Supreme Court's holding in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1988), 81 Ohio St.3d 47, 49, that "[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, without the board of revision's presenting any evidence." However, the foregoing holding in *Simmons*, supra, appeared to have been tempered in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 567, where the court held "[w]hen the BTA reviews the evidence in a case in which the statutory transcript is the only evidence, the BTA must review the transcript and 'make its own independent judgment based on its weighing of the

evidence contained in the transcript.’ *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 \*\*\*. When the BTA reviewed the transcript in this case, it found that ‘there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.’ By affirming the BOR’s valuation, the BTA affirmed a valuation that was not supported by any evidence.” Under the latter pronouncement, we would find little evidentiary support for the BOR’s value herein.

Later, in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-5237, the Supreme Court concluded that “the BTA erred in reinstating the auditor’s determination of value when the taxpayer had presented sufficient evidence to the BOR to justify the reduction the BOR ordered.” The court relied on its holding in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, where it held “when the evidence presented to the board of revision or the BTA contradicts the auditor’s determination in whole or in part, and when no evidence has been adduced to support the auditor’s valuation, the BTA may not simply revert to the auditor’s determination.” *Id.* at ¶27. Even though this board did not find a stated explanation for the BOR’s adjustment, the court criticized the board for reinstating the auditor’s determination as the default value. *Bedford Bd. of Edn.*, *supra*.

Thus, the question for us becomes what constitutes “sufficient” evidence to justify a reduction in valuation. In the instant record, there is no evidence to support the valuation adopted by the BOR, as all of the evidence upon which it apparently

relied was the information we have criticized herein. The board does not discuss the basis for its decision, other than it was “[b]ased on what was presented as evidence.” S.T. at Ex. F. As we stated earlier, a three-year-old appraisal, without authentication, and actual income and expense data from the subject property for which no appraisal analysis applying the subject’s information to the general marketplace standards was completed by a licensed real estate appraiser, do not constitute competent, probative evidence of the subject’s value for tax year 2004. The Supreme Court has recognized the very situation this board finds itself in when there is no competent, probative evidence of value in the record. It held:

“In the absence of probative evidence supporting the reduction in value ordered by the board of revision, and in light of the problems identified by the BTA with the even lower value proposed by the \*\*\* appraiser, the BTA’s conclusion that the county auditor’s original valuation should be reinstated was not unreasonable. ‘In the absence of probative evidence of a lower value,’ a county board of revision and the BTA ‘are justified in fixing the value at the amount assessed by the county auditor.’ *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193, 195 \*\*\*. The BTA’s decision to reject the board of revision’s valuation and reinstate the auditor’s original finding is supported by the evidence, and the BTA did not abuse its discretion in reaching that conclusion.” *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, at ¶12.

Therefore, the value of the subject parcel as of January 1, 2004, shall be that which the auditor previously determined, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 30,100	\$ 7,000
Building	463,100	162,100

Total            \$493,200            \$ 169,100

The Auditor of Cuyahoga County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

Mr. Dunlap concurring separately.

I join generally in the foregoing analysis and specifically in the conforming valuation determination.

However, I note my continuing disagreement with the utilization of the term “fundamental proposition” to describe this board’s persistent exclusion from consideration of any unauthenticated or an otherwise partially flawed appraisal. It remains my view that evidentiary weight may often be accorded even a faulty valuation analysis if unchallenged or otherwise deemed helpful in determining a reasonable and reliable value for a subject property.

Additionally, I differ with the sweeping generalization that opinions of a property’s value are only probative when submitted by a witness qualified as an “expert.” By virtue of experience, market knowledge, and/or a demonstrated unique connection with the subject property, testimony from an individual not qualified as a bona fide expert real property evaluator may be sufficiently competent to assist in determining a subject’s value.

However, as noted above, I agree that the valuation testimony offered to the board of revision by appellant's representatives is patently unhelpful. While the witnesses demonstrated knowledge relative to the subject property's characteristics and neighborhood, the valuation explanation offered lacked substance, not due to a lack of expertise, but rather because the values presented were formulated utilizing incomplete or unsupported data and, correspondingly, questionable methodology. That is, the income and expense information used to arrive at an opinion of value is inadequate, and without an additional BTA hearing to expand the presentation, no probative worth can be accorded the conclusions advanced.

The Supreme Court's reluctance to approve a reinstatement of an auditor's assigned values is set forth at some length in the decision. However, in this case, an examination of the record establishes there is simply no competent, reliable evidence to support either the appellant's requested values or the valuations determined, without explanation, by the BOR.

I concur in the values found.

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