

OHIO BOARD OF TAX APPEALS

James E. and David D. Sluka,)	CASE NO. 2006-K-2260
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Hamilton County Board of Revision and)	
the Hamilton County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants - James E. Sluka, pro se
10555 Montgomery Road #1
Cincinnati, Ohio 45242

For the County - Joseph T. Deters
Appellees Hamilton County Prosecuting Attorney
Thomas J. Scheve
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-1251

Entered January 20, 2009

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

On December 4, 2006, appellants, James E. and David D. Sluka, filed the present appeal with this board challenging a decision of the Hamilton County Board of Revision (“BOR”), mailed on November 2, 2006,¹ in which it determined the value of certain real property for purposes of ad valorem taxation for tax year 2005. The subject

¹ Although appellants’ notice of appeal was filed with this board and the BOR more than thirty days after the mailing of the BOR’s decision, see R.C. 5717.01, because the last date for perfecting an appeal fell on a Saturday, appellants’ appeal filed on the following Monday is deemed timely. See R.C. 1.14 (“When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act or before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined in this section.”). Cf. *Van Meter v. Segal-Schadel Co.* (1966), 5 Ohio St.2d 185, paragraph two of the syllabus (“Where a statute requires an application to be filed in a public office within a certain number of calendar days, the time within which such filing can be made should be computed by excluding the first and including the last

property appears in the records of the Hamilton County Auditor (“auditor”) as parcel number 603-0024-0098 and is devoted to residential use. Although the parties were accorded an opportunity to present additional evidence at a hearing convened before this board, the parties waived such opportunity. Accordingly, we proceed to consider this matter upon appellants’ notice of appeal, the transcript certified by the auditor pursuant to R.C. 5717.01, and the written arguments made by appellants.

The property was originally assessed by the auditor consistent with the following values:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 62,000	Land	\$ 21,700
Building	<u>\$290,800</u>	Building	<u>\$101,780</u>
Total	\$352,800	Total	\$123,480

Through a complaint filed with the BOR,² appellants asserted that the subject’s total true value should be reduced to \$280,000 for the reason that “[t]he court ordered an appraisal in connection with my divorce. The appraisal on 5/30/2004 was for \$280,000.” Neither appellants nor anyone on their behalf appeared at the September 15, 2006 hearing conducted by the BOR. However, the statutory transcript contains an appraisal report, filed with the BOR on September 12, 2006, which expresses an opinion of value consistent with the representations made by appellants in their complaint. This document offers a brief description of the subject property, i.e., a one-half acre lot improved with a two-story residence constructed circa 1999, includes a cost and a sales

Footnote contd. _____
 day and, when the last day falls on Saturday, then the filing may be done on the following Monday. (Sections 1.11, 1.14, 5.30 and 4141.28(G), Revised Code, construed and applied.)”

² Prior to the announcement of the present decision, inquiry was made of the parties regarding the timeliness of the filing of appellants’ complaint with the BOR. *Sluka v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 7, 2008), BTA No. 2006-K-2260, unreported. Thereafter, a determination was made

comparison approach, and concludes to an opinion of value, as of May 30, 2004, of \$280,000.

Identifying himself as the auditor's representative at the BOR hearing, although not his designee as a member of the BOR, see R.C. 5715.02, William Grauvogel appeared and testified to a residential appraisal report he had prepared for the subject property as of the pertinent tax lien date, i.e., January 1, 2005. His report consisted exclusively of a sales comparison analysis which compared the subject property to three properties located less than a mile from the subject which had transferred on July 10, 2003, May 11, 2005, and July 14, 2005. Effecting adjustments in order to account for differences such as date of sale as compared to tax lien date, site size, view, age and size of improvements, he concluded to a value of \$300,000. Upon consideration of Grauvogel's report and testimony, the latter including his observations of the written appraisal presumably submitted by appellants, the BOR reduced the value of the subject property to \$300,000.

Believing the property to still be overvalued, appellants filed the present appeal with this board claiming a total true value of \$270,000.³ As previously indicated, appellants did not present any additional evidence on appeal, but the import of their position is apparent from a cover notice to their appeal:

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that such filing was timely, *Sluka v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 26, 2008), BTA No. 2006-K-2260, unreported, and, as a result, we are able to address the merits of appellants' appeal.

³ Although the values asserted in their complaint and notice of appeal differ, i.e., \$280,000 and \$270,000, respectively, a party is not restricted to an amount set forth in its original complaint filed with a county board of revision as it "places neither minimum nor maximum limitations on the court's determination of value, and there are none save the judicial requirement that the determination be supported by the evidence." *Jones & Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 63. See, also, *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, 595 ("There is no requirement that the value of the property, as determined by the board of revision, must match the opinion of value set forth in the complaint.").

“I [sic] appeal based on the appraisal, my home being mixed with 2 family homes, high towers on the street, and homes bigger than mine on ‘normal[’] streets that are not selling for \$300,000 in 2006. The appraisal in May 2004 doesn’t necessarily mean I could have sold it for that. I think a \$10,000 reduction is fair based on all factors.”

In a more recent submission, filed with this board on December 10, 2008, appellants added to the preceding:

“My [sic] appeal is based on the appraisal I have submitted for \$280,000. Other factors include: 1) my home is mixed with 2 family homes, ranches, high towers on the street, homes with more square feet than mine selling for less on ‘NORMAL’ streets. The appraisal in May 2004 doesn’t mean I could have sold it for that price. A \$10,000 reduction from the appraisal price (\$280,000) or \$270,000 is fair [b]ased on all the above factors.”

In considering appellants’ appeal, we must acknowledge at the outset the standard by which our review must be conducted. The Supreme Court has held that “[w]hile a determination of the true value of real property by a board of revision is entitled to consideration by the BTA, such determination is not presumptively valid.” *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 572, 574. See, also, *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495; *Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 337, 338. Nevertheless, on appeal to this board an appellant challenging a decision of a county board of revision must support its valuation claim:

“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 328, ***. The appellant before the BTA must present

competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, ***.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. (Parallel citations omitted.)

See, also, *Bd. of Edn. of the Hamilton Local Schools v. Franklin Cty. Bd. of Revision* (June 10, 1997), Franklin App. Nos. 96APH09-1228, et seq., unreported (“When an issue concerning the true value of real property for taxation purposes is presented to the BTA, the value set by the BOR is not presumptively correct. *** However, in a hearing before the BTA, the taxpayer is obliged to prove his right to a reduction in value.”).

Elaborating in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, the court reiterated its past holding:

“R.C. 5717.03(B) provides that for appeals to the BTA from a county board of revision, ‘the board of tax appeals shall determine the taxable value of the property whose valuation *** by the county board of revision is complained of.’ Thus, the purpose of the hearing before the BTA is to determine the value of the property on the tax-lien date. When real-property valuation cases are appealed from a board of revision to the BTA, the burden is on the appellant to prove his or her right to an increase or decrease in the value determined by the board of revision. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, ***.

“In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is

adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, ***.” Id. at ¶¶5-6. (Parallel citations omitted.)

We recognize that an owner of property is permitted to express an opinion regarding the value of his or her property even though not formally qualified as an expert. See, e.g., *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. However, it is equally clear that “[w]hile an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property.” *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 32. Indeed, this board is accorded considerable discretion in weighing the evidence presented. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405; *Zukowski v. Franklin Cty. Bd. of Revision* (1994), 70 Ohio St.3d 503, 504; *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraph two of the syllabus.

As previously indicated, appellants did not themselves testify before the BOR or this board nor did any witnesses testify on their behalf. Instead, they have elected to rely upon an appraisal expressing an opinion for a date seven months prior to tax lien date, claimed deficiencies asserted to adversely affect the subject’s value, and an asserted lack of sales which would support the BOR’s value determination.

With respect to the appraisal to which appellants have directed this board’s attention, we note initially that the individual(s) who prepared it did not appear at the BOR’s hearing and, as a result, was not available to authenticate the document or be

examined about the development of the opinion expressed therein. As we commented in *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, a view which has been 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; *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 v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 30.

Furthermore, the opinion expressed within the appraisal is not for the tax lien date in issue, an element of the valuation process which the Supreme Court has rigidly enforced. For example, in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, the court criticized this board’s reliance upon appraisal evidence which did not opine value for the pertinent tax lien date:

“We reverse the BTA’s decision and remand this matter to the BTA because the BTA based its decision on evidence that did not value the property as of the tax lien date.

“R.C. 5715.19(A)(1)(d) authorizes a property owner to file complaints with a board of revision against determinations made by the county auditor concerning the true value of the owner’s property. According to R.C. 5715.19(D), ‘the determination of any such complaint shall relate back to the date when the lien for taxes *** for the current year attached ***.’ The lien for taxes for each year attaches on the first day of January. R.C. 323.11.

“To emphasize the importance of this date, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment of real property for taxation, including adopting rules to that end, states:

“The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year ***.’

“The BTA valued the property according to Canitia’s opinion of value. However, Canitia did not value the property as of any certain date. According to his testimony, he valued the property as of the entire year. To him, the tax lien date was a reflective date, not the valuation date. Thus, the evidence on which the BTA relied for its ultimate decision is unlawful. *SFZ Transp., Inc. v. Limbach* (1993), 66 Ohio St. 3d 602, ***.

“We emphasize that the BTA ‘*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer’s property on the tax lien date.’ *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St. 2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.” *Id.* at 554-555. (Parallel citations omitted.)

Thereafter, in *Freshwater*, *supra*, the court approved of our reliance upon

Olmsted Falls in rejecting appraisal evidence under similar circumstances:

“The BTA rejected Becker’s procedure and refused to assign any weight to his opinion of true value. The BTA stated that “[t]he mere fact that the tax lien date is approximately midway between the two appraisal dates does not mean that the 1994 value must also be midway between the two appraisals.

“In rejecting Becker’s opinion of true value, the BTA cited a passage from *The Appraisal of Real Estate* (10 Ed.1992) 75, which states that because market forces are constantly changing, ‘an estimate of value is considered valid only for the exact date specified.’

“R.C. 5715.19(D) requires that the determination of a complaint filed for a particular tax year ‘shall relate back to the date when the lien for taxes *** for the current year attached.’ R.C. 323.11 provides that the lien for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that ‘[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year ***.’ Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, ***.

“The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. Becker’s approach to valuation was not based upon the facts as they existed as of January 1, 1994, the tax lien date. Becker’s appraisals were based upon facts as they existed on December 30, 1991 and April 5, 1996, the dates of his appraisals. Evidence of the valuation as of these two dates is not evidence of the valuation as of January 1, 1994. The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact. The BTA may accept all, part, or none of the testimony presented to it by an expert. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155 ***. In this case, the

BTA chose not to accept Becker's valuation, and we agree." Id. at 29-30. (Parallel citations omitted.)

The foregoing precedent has, within the past few months, again been reaffirmed by the court in *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, and we can discern no basis for attempting to distinguish it from the facts presented in this appeal or other cases in which it has been applied by this board. See, e.g., *Morris v. Montgomery Cty. Bd. of Revision* (Dec. 2, 2008), BTA No. 2007-A-815, unreported; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 16, 2007), BTA No. 2004-H-1212, unreported; *East Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (July 21, 2006), BTA Nos. 2004-V-1342, et al., unreported; *Karres v. Erie Cty. Bd. of Revision* (May 5, 2006), BTA No. 2004-B-854, unreported; *Elyria City School Dist. Bd. of Edn. v. Lorain Cty. Bd. of Revision* (Aug. 6, 2004), BTA No. 2003-J-1372, unreported; *Simmons v. Franklin Cty. Bd. of Revision* (Apr. 26, 2002), BTA No. 2000-K-987, unreported; *Pierce-Ruhland v. Ashtabula Cty. Bd. of Revision* (Sept. 4, 1998), BTA No. 1997-K-787, unreported.

Appellants have suggested that the value of the subject property is adversely affected by its surrounding community, i.e., a diverse neighborhood mixed with various types of structures. In *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, the Supreme Court addressed the burden attendant in advancing similar claims, emphasizing that a party must demonstrate more than the mere *existence* of such factors, but the *impact* they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397. The court's decision in

Throckmorton mirrored this board's own reasoning in *Haydu v. Portage Cty. Bd. of*

Revision (June 18, 1993), BTA No. 1992-H-576, unreported:

“A recitation of defects in a taxpayer's property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the diminution [sic] in value caused by the defects, or some evidence of the value of the property as so diminished. Appellant has established to our satisfaction that there are detrimental aspects to the subject property (which, however, are shared by his neighbors to a large degree, and to certain of the comparables) but he has utilized none of the approaches to value that would allow us to determine a value for the property as affected by the defects.” *Id.* at 7.

This board has not been presented with competent and probative evidence supporting appellants' claim that the factors cited negatively affected the subject's value. Although appellants suggest an absence of market data to sustain the BOR's value determination, they did not provide evidence which would allow this board to reach such a conclusion. Rather, contained within the existing record is an appraisal, to which the aforementioned deficiencies do not apply, which supports the opinion expressed therein and the reduction granted the subject property by the BOR.

Having concluded appellants did not meet their affirmative burden, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of January 1, 2005, are as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 62,000	Land	\$ 21,700
Building	<u>\$238,000</u>	Building	<u>\$ 83,300</u>
Total	\$300,000	Total	\$105,000

It is therefore the order of this board that the Hamilton County Auditor list and assess the subject property in conformity with our decision as announced herein.