

OHIO BOARD OF TAX APPEALS

Springfield City School District Board) CASE NO. 2006-K-838
of Education,)
) (REAL PROPERTY TAX)
Appellant,)
) DECISION AND ORDER
vs.)
)
Clark County Board of Revision, Clark) Appeal Filed May 28, 2008
County Auditor, and Nancy Wilson,) Clark County Court of Appeals
)
Appellees.)

APPEARANCES:

- For the Appellant - Means, Bichimer, Burkholder & Baker Co., LPA
Robert M. Morrow
2600 Kenney Road
Columbus, Ohio 43221-3502

- For the County Appellees - Stephen A. Schumaker
Clark County Prosecuting Attorney
50 East Columbia Street
P.O. Box 1608
Springfield, Ohio 45501

- For the Appellee Property Owner - Valerie Juergens Wilt
Attorney at Law
333 N. Limestone Street, Suite 104
Springfield, Ohio 45503

Entered April 29, 2008

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

Appellant, Springfield City School District Board of Education, appeals a decision of the Clark County Board of Revision (“BOR”), reducing the value of the subject property for purposes of ad valorem taxation for tax year 2005. The property in issue is located in the Springfield City Schools taxing district and is identified in the

records of the Clark County Auditor (“auditor”) as parcel number 340-07-35-325-28.¹ Following the filing of this appeal, the parties jointly waived hearing, with counsel for appellant and the appellee property owner, Nancy Wilson, submitting briefs in support of their respective positions. Accordingly, we now proceed to consider this matter upon appellant’s notice of appeal, the statutory transcript certified by the BOR, and the parties’ written argument.

On the property record card included within the statutory transcript, the subject property is described as a five-story building which was originally constructed in 1917, having a “total floor area” of approximately 25,660 square feet. S.T., Ex. C. While the first floor is finished for use as a restaurant and bar, the remaining floors, including the basement, are unfinished, apparently used exclusively for storage. For tax year 2005, the auditor valued the subject property as follows²:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 55,830	Land	\$ 19,540
Building	<u>\$323,070</u>	Building	<u>\$113,070</u>
Total	\$378,900	Total	\$132,610

Believing the subject property to have been overvalued by the auditor, Wilson filed a complaint with the BOR seeking a decrease in the subject’s value to a total true value of \$190,000.³ Pursuant to R.C. 5715.19(B), appellant filed a “counter-

¹ On DTE Form 3, entitled “Transcript on Appeal from County Board of Revision,” reference is made to parcel number 340-07-35-325-25. However, the complaints filed by the parties with the BOR and that tribunal’s ultimate decision refer to 340-07-35-325-28.

² Included on the property record card are notations suggesting that the total true value attributed to the subject property for “assessment year 05” was \$360,860. However, this contradicts references included on the parties’ complaints, the BOR’s decision, and DTE Form 3.

³ On her complaint, Wilson alleged the requested reduction was justified because “[n]either the condition of the property nor the market warrant a change in valuation over the previous real estate tax statement which

complaint” in which it requested that the auditor’s values be retained. The BOR convened a hearing where both Nancy Wilson and her husband, Arthur E. Wilson, appeared and testified.

Before the BOR, Mr. Wilson referred to his ownership of several commercial properties in the downtown Springfield area, as well as his personal investments and efforts to contribute to the revitalization of that particular area. With respect to the subject property, he indicated that the first and second floors had been subject to a five-year lease which, upon its conclusion, have continued to be leased on a month-to-month basis for almost two years by the tenant which has used it as a BW3 restaurant. Mr. Wilson expressed concern regarding the tenant’s constant operation of heating/air conditioning, suggesting areas within the building may be subject to warping. The remainder of the building is apparently incapable of occupancy and is currently used for dry storage. Mr. Wilson also testified that little has been done in the way of improvements to the subject property other than the replacement of a cornice on the exterior of the building. Although apparently not offered into evidence, Mr. Wilson also referred to an appraisal of the subject property which apparently opined a fair market value of “about \$90,000.”⁴ S.T., Ex. E., at 14. Mrs. Wilson also testified briefly,

*Footnote contd.*_____

was approximately \$1750/half. [sic]” S.T., Ex. A. In an attachment to her complaint, she continued, noting that “[m]y direct cost to repair the cornice of the subject property was approximately \$20,000. Such repairs are precisely why these older structures require special consideration when establishing value. I am regularly required to cure deferred maintenance on this old structure. In so doing, the value is made less when one uses the income approach to determine value. The replacement cost approach and comparable sales approach are less accurate in this particular situation.” Id.

⁴ By way of brief, counsel for the property owner suggests that the reference to “\$90,000” in the BOR hearing record is a typographical error and that such amount should actually be “\$190,000.” See

asserting, consistent with her husband's comments, that the increasing tax burdens attendant with the properties in the area serve to diminish, rather than stimulate growth, making it less likely for investors to remodel and develop such properties.

Following its consideration of the information before it, the BOR reduced the value of the subject property as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 55,830	Land	\$19,540
Building	<u>\$146,740</u>	Building	<u>\$51,360</u>
Total	\$202,570	Total	\$70,900

It is from this decision that appellant has now appealed to this board, requesting that the auditor's values be reinstated. Appellant insists the BOR's decision is simply not supported by the evidence:

“In the present case, there is no evidence in the record, other than the Complaint filed by the property owner which even expresses an opinion of value. What is in the record are general comments made by the property owner regarding a tenant who occupies a portion of the premises and an owner that utilizes the remaining portion for himself or his friends. There is literally no other evidence within the statutory transcript which supports the Board of Revision's decision to decrease the true value of the property by more than \$176,000. As previously indicated, the property owner commented that he had possession of an appraisal, however the appraisal was never introduced into evidence, is not part of the statutory transcript, and it is not even clear whether the appraisal dealt with the applicable tax lien date or what the ultimate opinion of the appraiser may have been.” Appellant's brief at 6.

Footnote contd. _____
appellee's brief at 4. However, as noted within the body of our decision, since the appraisal is not included within the record we can only speculate as to its content.

In response, counsel for Wilson argues that the auditor's initial valuation was inaccurate and that the BOR, within its authority, appropriately adjusted the subject's values for tax purposes. In support of this position, counsel attached to her brief a common pleas court decision, i.e., *Wilson v. Soddors* (C.P. Aug. 16, 2002), No. 01-CV-0636, unreported, in which the court apparently concluded that the subject property's value for tax year 2000 was \$180,000. Relying upon this decision and adding, on a dollar-for-dollar basis, the cost of miscellaneous improvements to the property, counsel posits that the BOR's value of \$202,000 is "based upon rational factors set forth in the record, and should be accorded the appropriate weight." Appellee's brief at 5.

In considering this appeal, we first note the standards by which our review is to be conducted. As has been pointed out by the Supreme Court, "[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. "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." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Soin v. Greene Cty. Bd. of Revision*, 110 Ohio St.3d 408, 2006-Ohio-4708.

Where parties waive the presentation of additional evidence on appeal, as in the present case, this board must independently review the record developed before the county board of revision and render a determination regarding value which is consistent with the existing information, not merely “rubber stamping” the earlier finding. As noted by the court in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13:

“The parties herein apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. The situation faced by the BTA in this case is analogous to that faced by the common pleas court in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St. 3d 11 ***. The court in *Black* had before it an appeal from a board of revision under R.C. 5717.05, the alternative appeal provision to R.C. 5717.01. The only evidence before the common pleas court was the statutory transcript from the board of revision. We stated in *Black* that the common pleas court was not required to hold an evidentiary hearing or a trial *de novo*, but that the common pleas court ‘has a duty on appeal to independently weigh and evaluate all 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 final determination is more than a mere rubber stamping of the board of revision’s determination.’ *Id.* at 13-14 ***. Our conclusion in *Black* was that R.C. 5717.05 ‘contemplates a *decision de novo*.’ (Emphasis *sic.*) *Id.* at 14 ***.

“The duty of both the BTA and the common pleas court upon an appeal is to ‘determine the taxable value of the property.’ See R.C. 5717.03 and 5717.05. 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.” *Id.* at 15. (Parallel citations omitted.)

A complainant before a county board of revision, like an appellant before this board, has an affirmative obligation to support its claimed value and “it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim.” *Columbus City School Dist. Bd. of Edn.*, 90 Ohio St.3d, at 566. Although Wilson’s counsel attached to her brief a copy of a trial court decision relating to the valuation of the subject property for tax purposes, such decision is neither properly considered by this board nor does it constitute competent and probative evidence upon which we may rely. Clearly, this decision is offered for its purported evidentiary value. However, because it was not included within the statutory transcript nor submitted during a hearing before this board, it must be stricken. See, e.g., *Columbus Bd. of Edn.*, 76 Ohio St.3d, at 16-17 (“After the BTA hearing, Nestle submitted a copy of a resolution and quitclaim deed by the Franklin County Commissioners. Because these documents were not part of the original record from the BOR and were submitted after the BTA hearing, they must be disregarded by the BTA.”).

Nevertheless, even if we were to consider the attachment to Wilson’s brief, a determination regarding the value of a property for an earlier tax year is not probative evidence for a later year. See, e.g., *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 29 (“When the BTA makes a determination of true value for a given year, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years.”). See, also, *TBC Westlake, Inc. v.*

Hamilton Cty. Bd. of Revision (1998), 81 Ohio St.3d 58, 66.⁵ Not only does the referenced decision relate to a tax year five years prior to the one currently in issue, Wilson simply adds certain dollar-for-dollar costs incurred in the replacement of an exterior cornice and other “cosmetic improvements” in an effort to justify the BOR’s value. However, such an approach constitutes an overly simplistic method by which to establish value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 228 (“Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA.”); *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299; *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339.

As previously noted, during his testimony Mr. Wilson referred to an appraisal having been prepared for the subject property by an individual who was not present at the BOR’s hearing. In the absence of this individual, counsel for appellant objected to both the BOR’s receipt of such appraisal and permitting appellant to read from the written report. Although Mr. Wilson disclosed that the appraisal concluded to a fair market value of “about \$90,000,” see fn. 4, *supra*, because the individual who prepared the report did not testify before either the BOR or this board and because a copy

⁵ We note the same conclusion is dictated when reviewing an opinion of value expressed by an expert witness. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555 (“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.’ *** 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.”). See, also, *Arbogast v. Milliken*, Columbiana App. No. 04 CO 29, 2005-Ohio-7081.

of the appraisal is not included within the transcript,⁶ we can only speculate as to the qualifications of the individual preparing the report, its effective date, the purpose for which it was prepared, the interests appraised, the information relied upon, and the conclusions drawn.

In conducting the review mandated by statute, we simply can discern no basis for the values concluded to by the BOR. Under such circumstances, we are mindful of the court's decision in *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385:

“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 Timberlake 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.” Id. at ¶12.

⁶ To the extent it may be alleged that the above-referenced appraisal was an exhibit introduced into evidence during the course of the BOR's hearing which should have been certified to this board as part of the transcript pursuant to R.C. 5717.01, a suggestion which appears contradicted by the BOR's hearing record, when parties elect to waive hearing it is incumbent upon them to confirm the record is complete; otherwise, they must be prepared to suffer the consequences which result from any claimed deficiencies.

In the absence of competent and probative evidence of value having been presented by the property owner and our inability to ascertain on what evidence the BOR relied in adjusting the subject's values, we are compelled to reinstate the auditor's original values. Accordingly, 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	\$ 55,830	Land	\$ 19,540
Building	<u>\$323,070</u>	Building	<u>\$113,070</u>
Total	\$378,900	Total	\$132,610

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

Mr. Dunlap, dissenting.

I respectfully disagree with the foregoing conclusions and corresponding valuation decision and, accordingly, dissent.

It is axiomatic and noted in the majority decision, a party appealing a decision issued by a county board of revision to this board is required to affirmatively support the value asserted in its notice of appeal.

Herein, a hearing before this board was waived; no additional evidence was presented on appellant's behalf.

I would find that appellant BOE has failed to meet its assigned burden of proof requirements.

Moreover, I disagree with the majority's reinstatement of the auditor's originally assigned values.

It seems clear the Supreme Court does not favor defaulting to the auditor's initial valuations when the county board of revision conducts a full hearing, accepts evidence and testimony supporting a change in the value of the subject property and unanimously adjusts the value to conform to the evidence and testimony presented.

I would confirm the values found by the Clark County Board of Revision, which, upon consideration of the record, do not appear unsupported or unreasonable. It continues to be my view that by virtue of their firsthand relationship and familiarity with a subject property, any board of revision, provided with credible and plausible information, can issue a reliable and reasonable determination of value.⁷

ohiosearchkeybta

⁷ Particularly significant in this case as in most cases, when a board of revision changes any assigned valuation, the county auditor as a board member, consents to the adjusted value.