

OHIO BOARD OF TAX APPEALS

Board of Education of the Kettering)
City Schools,)
)
Appellant,)
)
vs.)
)
Montgomery County Board of Revision,)
Montgomery County Auditor, and)
Fred Kronauge Tr.,)
)
Appellees.)

CASE NO. 2006-N-1626
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Bd. of Edn. -	Rich, Crites & Dittmer, LLC James R. Gorry 300 East Broad Street Suite 300 Columbus, Ohio 43215
For the County Appellees -	Montgomery County Prosecuting Attorney Nolan Thomas Assistant Prosecuting Attorney Dayton-Montgomery County Courts Building, 5 th Floor P.O. Box 972 301 West Third Street Dayton, Ohio 45422
For the Property Owner -	Fred Kronauge, pro se 467 Bath Club Boulevard North North Redington Beach, Florida 33708

Entered February 6, 2009

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

This matter is before the Board of Tax Appeals as a result of a notice of appeal filed October 20, 2006 by the Board of Education of the Kettering City Schools. Appellant challenges a decision of the Montgomery County Board of

Revision (“BOR”). In its decision, the BOR determined the value of parcel number J4404010012 for tax year 2005.

The property owner and counsel for appellant appeared at a hearing before this board. The county appellees, signaling their intent to rest upon the statutory transcript (“S.T.”), waived their appearance at said hearing by letter to this board dated August 4, 2008. Accordingly, we proceed to consider this appeal based upon appellant’s notice of appeal, the statutory transcript, and the testimony and evidence adduced at the hearing before this board (“H.R.”).

The subject property consists of approximately 0.530 acres of land, and is improved with two buildings used for commercial purposes. Both buildings are used as rental properties by the owner. The first building was constructed in 1996, and is an industrial structure consisting of metal walls and a pitched metal roof. The approximate size of the building is 7,900 square feet. This building contains office space, a storage room, restroom facilities, and warehouse space used in connection with a tool rental and welding business operated by the tenant. The building has no air conditioning or central heat, and is heated only by space heaters. The second building, constructed in 1970, is approximately 1,082 square feet in size, and is used for storage purposes in association with the tenant’s business. This building has no air conditioning, heat, water, or functioning plumbing. Other improvements to the subject property include paved parking, outside storage areas, and fencing. The true and taxable values, as determined by the Montgomery County Auditor (“auditor”) and the BOR, are as follows:

AUDITOR

Parcel No. J4404010012	TRUE VALUE	TAXABLE VALUE
LAND	\$ 41,560	\$ 14,550
BUILDINGS	<u>\$268,760</u>	<u>\$ 94,070</u>
TOTAL	\$310,320	\$108,620

BOARD OF REVISION

Parcel No. J4404010012	TRUE VALUE	TAXABLE VALUE
LAND	\$ 41,560	\$14,550
BUILDINGS	<u>\$208,260</u>	<u>\$72,890</u>
TOTAL	\$249,820	\$87,440

This matter came to the BOR pursuant to a decrease complaint filed by the property owner. A counter-complaint was subsequently filed by appellant. A total true value of \$180,000 was asserted by the property owner at the BOR hearing. Before the BOR, the property owner generally testified to the condition of the buildings, and also presented photographs of the subject property.¹ Specifically, the owner noted the lack of amenities for each building, and the apparent poor condition of the smaller structure. The property owner also testified that he receives \$2500 per month in rental income, and that he is responsible for insurance and taxes for the subject. The owner further stated that the subject is situated in a good location, and that a Holiday Inn and Motel 8 are located in close proximity.

In its appeal before this board, appellant contends that the subject property's total true value should revert to the auditor's original value of \$310,320.

Through its opening statement and cross-examination of the property owner at this

¹ Certain portions of the property owner's testimony before the BOR are difficult to discern, as the quality of the recording contained in the statutory transcript is generally poor. The photographs referenced are not contained in the statutory transcript.

board's hearing, appellant argues that insufficient evidence was presented to the BOR to justify the reduction given.²

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 1997-Ohio-212. “*** How a party seeking a change in valuation attempts to meet its burden of proof *** is a matter for that party's judgment.” *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, ¶9, quoting *Snavelly v. Erie Cty. Bd. of Revision* (1997), 78 Ohio St.3d 500, 503. An appellant can meet its burden of proof

² Although a briefing schedule was established at this board's hearing, no briefs were submitted by the parties.

before this board by relying on its cross-examination of witnesses and arguments made in its post-hearing brief. *Id.* Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

This board will also review the existing record established before the BOR 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, 1996-Ohio-432.

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule *according to value* ***.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “true value”:

“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 ***.” (Emphasis added.)

With regard to the sales presented to us, R.C. 5713.03 provides that if “a tract, lot, or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.” In construing R.C. 5713.03, the Ohio Supreme Court has specified, “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶13. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588.

“[A]n arm’s-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, at the syllabus. The absence of a single one of these factors is sufficient to demonstrate that a transaction was not conducted at arm’s

length. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, at ¶13, citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145. See, also, *RLG Properties, LLC v. Franklin Cty. Bd. of Revision*, 2006-Ohio-5096.

In the absence of a recent arm's-length sale, an appraisal or other relevant evidence is necessary to determine the true value of real property. *First Union Real Estate Equity & Mtg. Investments v. Morrow Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. Under such circumstances, 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, where the value of property is estimated through a comparison of the subject to recent sales of comparable properties in the market area, 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.

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 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.

We begin by reviewing the proceedings before the BOR. Included in the statutory transcript is a document titled “Montgomery County BOR Appraisal Notes.” S.T., Ex. E. This document contains an appraiser’s opinion of value that is identical to the value assigned to the subject property by the BOR. The document notes apparent adjustments to the smaller building related to “heat, plumbing, physical.” S.T., Ex. E. It also notes apparent adjustments to the larger building based on “heat, use type.” Id. Further, the document contains the notation “see cards for physical changes,” in addition to other comments. Id. In the comments section of its hearing worksheet, the BOR notes the lack of heat in both buildings, and the lack of water in the smaller building. The BOR also notes the gross rent for the subject property.

Upon review of these documents, we find them to be sufficiently probative to explain the value determination by the BOR. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948. Specifically, the aforementioned appraisal document directly supports the value assigned by the BOR. S.T., Ex. E.

We next examine the evidence presented by the property owner at the hearing before this board. The property owner relied upon a “market data report,” apparently prepared by an appraiser, and his own knowledge of properties in the area. H.R. at 17, Ex. 1. He also introduced an aerial photograph of the subject property, which indicates its close proximity to a major interstate. The “market data report” contains what the owner believes to be five comparable properties. H.R., Ex. 1. The apparent author of this report, Stephen J. Weis, did not testify before this board. The report contains several limiting conditions in its cover page, stating that “[t]his report

is not an appraisal report. No indication of value of the subject property is provided or intended.” H.R., Ex. 1. Similar to his testimony before the BOR, the property owner also testified as to the functional inadequacies of both buildings located on the subject. H.R. at 8, 12.

In considering the evidence presented by the property owner before this board, we note that the subject property has not been sold in a recent, arm’s-length transaction. Therefore, we first address the sales evidence submitted by the owner. As noted above, the “market data report” contains five apparently comparable properties. The report provides photographs, sales data, and other information related to the properties, including their location, size, year built, condition, quality, and construction composition. The report also states that each sale was an arm’s-length transaction. No adjustments are listed. Also included were printouts from the auditor’s website related to these properties.

A review of the sales information for each property included in the report indicates that all but one sale apparently took place more than two years from the subject’s January 1, 2005 tax lien date. It appears that these sales may be too remote to consider when compared to the subject’s tax lien date; however, appellant did not dispute this aspect of the sales. See *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (May 13, 2005), BTA No. 2003-G-1041, unreported (burden of party opposing reliance upon the sale has the burden of proving it to be unreliable). Ohio courts have declined to provide a “bright line” test as to what constitutes a sale that is “too remote” for purposes of whether that sale is a reliable

indicator of value. See *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d, 36, overruled on other grounds.

Nevertheless, we do not consider these sales to be helpful in determining a value based on other factors. While it appears that the property owner was generally familiar with these properties, he did not have personal knowledge of the circumstances surrounding each sale, including whether the sales were arm's length in nature. H.R. at 21-23. No conveyance fee statements or deeds were submitted by the owner, nor did the preparer of the report testify as to the apparent arm's-length nature of the sales listed in the report. Additionally, according to the owner's testimony, it's questionable whether the area where his comparable properties are located is similar to the subject's area as of the relevant tax lien date. H.R. at 25-26. Based on the above, we do not find the properties submitted by appellant to be comparable to the subject, and, accordingly, place no weight upon this evidence when determining a value for the subject property.

With regard to the owner's testimony about the subject property's potential defects related to utilities and amenities, we note that the owner has not presented this board with any evidence regarding the actual diminution in value caused by these defects. See *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, and *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227. Therefore, we do not find the owner's testimony regarding potential defects to be helpful in determining a value for the subject property.

In summary, this board ordinarily would not find the evidence and testimony presented by the property owner to be competent and probative in

determining a value. However, we reiterate that appellant bears the burden of proof in this matter, and as we found the evidence contained in the statutory transcript to be supportive of the BOR's determination of value, we find the value assigned by the BOR to be the total true value of the subject as of January 1, 2005. *Dayton-Montgomery, supra.*

Accordingly, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows as of January 1, 2005:

Parcel No. J4404010012	TRUE VALUE	TAXABLE VALUE
LAND	\$ 41,560	\$14,550
BUILDINGS	<u>\$208,260</u>	<u>\$72,890</u>
TOTAL	\$249,820	\$87,440

We order the Auditor of Montgomery County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

ohiosearchkeybta