

OHIO BOARD OF TAX APPEALS

Bryan Skelton,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Erie County Board of Revision and)
 Erie County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Bryan Skelton, pro se
5320 Patten Tract Road
Sandusky, Ohio 44870

For the County Appellees - James R. Gorry
Attorney at Law
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered May 19, 2009

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

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 Erie County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2006.

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 record of the hearing before this board, at which both the appellant and county appellees' counsel appeared.

The subject real property, a residential parcel upon which the appellant's 2,269-square foot home is situated, is located in the Perkins Township-Perkins School District taxing district, Erie County, Ohio, and appears on the auditor's records as parcel number 32-03212.002. 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	\$ 48,510	\$ 16,980
Bldg	237,000	82,950
Total	\$ 285,510	\$ 99,930

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 48,510	\$ 16,980
Bldg	192,310	67,310
Total	\$ 240,820	\$ 84,290

In his notice of appeal to this board, appellant contends that the auditor and board of revision have overvalued the subject property and seeks a valuation for the subject of \$212,000, based upon an appraisal of the subject.

Mr. Skelton appeared before this board and testified, essentially reiterating the position he espoused before the BOR. Specifically, he questioned the accuracy and/or validity of the county's valuation of the subject, dating back to tax year 2000. He offered, as evidence in support of that position, two appraisals, Exs. B and C, that he had previously submitted to the BOR in prior proceedings for tax years

2000 and 2003, in support of his position that a decrease in valuation was warranted on such properties. The appraisals had been completed for financing purposes. While decreases were granted by the BOR for both tax years in question, neither tax year's valuation was reduced to the amount set forth in the appraisal provided by Mr. Skelton for such year.

With regard to the subject tax year, 2006, Mr. Skelton also offered an appraisal, Ex. A, which was completed for purposes of supporting his request for a reduction in valuation and which valued the property at \$212,000, as of January 1, 2006. The author of the appraisal did not appear before the BOR or this board. The BOR ultimately reduced the subject's valuation for tax year 2006, but, again, not to the value reflected in the appraisal.

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.

With regard to the appraisal evidence offered by Mr. Skelton regarding the subject's valuation as of January 1, 2006, i.e., Ex. A, we note that the appraiser did

not appear before the BOR¹ 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. For example, we note that there is no certification by the appraiser who authored the report as to his certification or licensure as an appraiser. Ex. A. 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;

¹ Although the BOR did not include copies of Exs. A-C in the statutory transcript that it certified to this board, appellant testified that he supplied copies to the BOR at his hearing on July 11, 2007. Further, the transcript from such hearing indicates that such documents were discussed. S.T., Ex. 5 at 3, 12.

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 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.

Further, with regard to the appraisals² submitted by appellant valuing the property as of June 23, 2003 (Ex. B) and December 14, 2001 (Ex. C), basically two years and six months and four years, respectively, before the tax lien date under consideration, we find the probative value of the conclusions set forth therein to be limited. Based upon the “as of” dates that were utilized, the accuracy of the findings within the reports becomes questionable since the dates upon which all conclusions are based are two and one-half years and four years earlier than the actual date in question. The instant valuation determination must be premised on evidence relevant to the tax lien date in question. See *Freshwater, supra*; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552.

Thus, having no probative evidentiary support in the record for the valuation sought by the appellant, we must also consider the BOR’s valuation. Our analysis of the BOR’s 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

² Appellant also indicated that the appraisals were done for financing purposes. This board has generally rejected such reports, finding that “they are not necessarily a complete and thorough evaluation of the property.” *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 7.

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.

Then, 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 limited evidence to support the valuation adopted by the BOR, as it was essentially the same information that was presented to this board. We have previously rejected such evidence as not being competent and probative of value. However, the BOR saw fit to reduce the subject’s valuation, while not to the value opined by the property owner, but to a value lower than that which the auditor had determined. S.T. at Ex. 5. Arguably, the auditor must have conceded to the reduced valuation for the subject, since there is no indication in the record that the auditor attempted to defend and/or maintain the auditor’s original valuation.

Therefore, the value of the subject parcel as of January 1, 2006, shall be that which the board of revision previously determined, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 48,510	\$ 16,980
Bldg	192,310	67,310
Total	\$ 240,820	\$ 84,290

The Auditor of Erie 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.

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