

OHIO BOARD OF TAX APPEALS

Steven L. Hardin,)
)
 Appellant,) CASE NO. 2007-A-1082
)
)
 vs.) (REAL PROPERTY TAX)
)
)
) DECISION AND ORDER
 Montgomery County Board of Revision)
 and Montgomery County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant -Steven L. Hardin, pro se
124 Union Ridge Drive
Union, Ohio 45322

For the County
Appellees -Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Laura G. Mariani
Assistant Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422

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 appeal¹ filed herein by the above-named appellant from a

¹ The statutory transcript indicates that the BOR's decision was mailed to appellant on September 10, 2007. Therefore, appellant's filing of his notice of appeal with this board on October 10, 2007 was considered timely for purposes of vesting jurisdiction with this board. See R.C. 5717.01. We note that the statutory transcript also indicates that a copy of the notice of appeal was not received by the BOR until October 29, 2007, well after the 30-day time frame set forth in R.C. 5717.01. However, a review of the contents of the statutory transcript clearly indicates a copy of the notice of appeal was received by the BOR on September 28, 2007, per the file stamp placed thereon. Accordingly, this board finds that jurisdiction was properly established with this board.

decision of the Montgomery County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real 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 two hearings² convened before this board at which only the counsel to the county appellees appeared. At such hearings, the county appellees did not offer any evidence or testimony and chose to rely upon the record of the statutory transcript. H.R.

The subject residential rental property is located in the Dayton corporation taxing district and is identified on the auditor's records as parcel number R72-126-05-0002.³ The value of the parcel, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 8,040	\$ 2,810
Building	38,670	13,530
Total	\$ 46,710	\$ 16,340

In his notice of appeal, the appellant, Mr. Hardin, alleges that the correct total true value for the subject parcel is \$30,000, based upon an appraisal of the subject.

² This matter was originally scheduled for hearing on August 1, 2008 at 9:00 a.m., at which only counsel to the county appellees appeared. Thereafter, appellant contacted this board's attorney examiner to inquire as to when the hearing would be rescheduled, claiming that he had called before the hearing on August 1 and left a message indicating his need for a continuance, which the hearing examiner never received. He was directed to put his request for continuance in writing, and, after several reminders, including one in writing, Mr. Hardin sent a letter to the board requesting a new hearing date in late November or early December. The board granted his request, and although another hearing was convened on December 16, 2008, again, only counsel to the county appellees appeared.

³ Although two other parcels were referenced in appellant's decrease complaint to the BOR, both parcels were withdrawn from consideration by the appellant at or before the time of the BOR hearing.

We must begin by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Since the appellant did not appear at the hearing before this board, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. Mr. Hardin filed an original decrease complaint with the Montgomery County Board of Revision seeking a reduction in value for the subject property to \$30,000. S.T. at Ex. A. No counter-complaint was filed. At the BOR hearing, appellant appeared and in support of the \$30,000 value he sought, he presented a "Uniform Residential Appraisal Report" completed by a state-certified appraiser, Brian Gibbs,

who opined to a value for the subject of \$30,000. S.T. at Ex. A. Mr. Gibbs did not appear. Upon completion of the hearing, the board of revision decided to maintain the auditor's valuation of the subject. S.T., Ex. E. No basis is stated for the board's determination.

As we review the evidence presented to the BOR, we must first note that the appraisal of the subject provided by Mr. Hardin to the BOR indicates that it was completed for use by Union Savings Bank, the client, for a "refinance transaction."⁴ S.T. at Ex. A. At the outset we must state that appraisals done for financing purposes have generally been rejected by this board because "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.

Further, as we review the contents of the report, we note that the appraiser concluded to a value for the subject as of May 23, 2006, approximately five months beyond the tax lien date under consideration. 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 some five months later than the actual date in question. The instant valuation determination must be premised on evidence relevant to the tax lien date in question. See *AP Hotels of Illinois, Inc. v. Franklin Cty.*

⁴ It is unclear, based upon the record before us, whether the subject property was purchased and/or refinanced in May 2006. The property owner, on the original complaint and his notice of appeal, indicates that the subject property was purchased in May 2006. S.T. at Ex. A. The property record card also indicates a sale of the property in May 2006. S.T. at Ex. C. However, the appraisal, arguably created in conjunction with such "sale," indicates that it was requested for a refinance of the subject property. Since the appellant has not requested a decrease in valuation based upon such sale, but instead, upon the submitted appraisal, and since there is no evidence of a sale in the record, other than the aforementioned references, we will not consider the alleged sale in making our determination herein.

Bd. of Revision, 118 Ohio St.3d 343, 2008-Ohio-2565; *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.

Finally, 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 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.

With regard to any reference by appellant regarding the valuations of neighboring properties, we have previously found such reliance upon taxable values assigned to other properties unpersuasive. In *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, we held:

“The Appellant has attempted to show a lower value than that assessed by the BOR. However, appellant’s presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly helpful. “Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. *Paul L. and M. Courtney Caron v. Hamilton Cty. Bd. of Revision* (August 27, 1993), BTA No. 1992-B-879, unreported.” *Id.* at 6.

See, also, *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31 (“Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.”).

Accordingly, based upon the foregoing, this board finds that appellant has failed to demonstrate that the value which he 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. Therefore, we find, as of January 1, 2006, the value of the subject parcel shall be that which the auditor previously determined and the board of revision retained, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 8,040	\$ 2,810
Building	38,670	13,530
Total	\$ 46,710	\$ 16,340

The Auditor of Montgomery 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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