

OHIO BOARD OF TAX APPEALS

Daniel G. Roth,)
)
Appellant,)
)
vs.)
)
Erie County Board of Revision and)
Erie County Auditor,)
)
Appellees.)

CASE NO. 2007-A-1104
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Daniel G. Roth, pro se
5662 Huron Street
Vermilion, Ohio 44089

For the County Appellees - James 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 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 a brief filed by the appellant. Both the appellant and the county

appellees waived their right to appear at a hearing before the board, and, although given an opportunity to file briefs in lieu of making such appearance, only the appellant filed a brief.

The subject property, a residence/bed and breakfast, is located in the Vermilion City taxing district and is identified on the auditor's records as parcel number 18-00618.000. 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	\$ 66,490	\$ 23,270
Building	234,250	81,990
Total	\$300,740	\$ 105,260

In his notice of appeal, appellant does not allege that the valuation for the subject, as determined by the BOR, was necessarily incorrect. Specifically, appellant stated the following in an attachment to his notice of appeal:

“Please consider my unique situation. I am not, so much, contesting the value of my property, as I am contesting the classification as ‘commercial.’ My home was recently changed in classification from residential to commercial because we operate a bed & breakfast out of our home.

“In accordance with Ohio Revised Code our B&B did not exceed (4) guestrooms and is not considered commercial. This (4) room limit also extends to the state fire codes and the vendors [sic] license/sales tax requirements. Erie County has decided to use (4 rms. and over) instead of (over 4 rms.) which I feel is in direct conflict with the Ohio Revised Code classification. This recent change has caused a significant increase in our property taxes and should be kept concurrent [sic] with Ohio law.

“We operate as a B&B under a conditional use variance which is not transferable. Therefore no value is added as it would not pass to new buyer.”

He went on to elaborate in his brief, in pertinent part, as follows:

“Prior to making the decision to use our home as a Bed and Breakfast, we attended a workshop put on by the State of Ohio. I also checked State Fire and Building Codes, Board of Taxation, as well as all Local County and city regulations.

“In *all* cases a Bed and Breakfast with four rooms or less was not considered commercial and was exempt from the stricter regulation and higher tax rate associated with hotels, etc...Erie County also used this same four room or less distinction.

“Recently, however, Erie County, without notice, changed policy and now considers a Bed and Breakfast home with four or more rooms as commercial. This in effect, changes the rules in the middle of the game and is in direct conflict with Ohio Revised Code.

“***

“I feel we, as [sic] the least, should be grand fathered [sic] into the residential classification that fits our zoning. This would also fit with the county’s original criteria which we worked and educated ourselves to meet.

“***

“Our property is primarily a home where we are raising our family and seasonal Bed and Breakfast use is secondary.” (Emphasis sic.)

Since the hearing before this board was waived, 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. We note that in February 2007, the appellant property owner filed a complaint against the

valuation of real property with the Erie County Board of Revision seeking a change in the property's classification to residential, which was listed as the principal use of the property on the complaint. No counter-complaint was filed. The board of revision held a hearing at which the property owners, Mr. and Mrs. Roth, appeared. Mr. Roth testified that as a result of the county revaluation of real property, his property "was also re-classified as commercial." S.T., Ex. 5 at 3. He went on to describe that "we live on the first floor of the house and we have taken some apartments that were on the upstairs and converted that to bed and breakfast use during the summer. We received a Conditional Variance from the City of Vermilion in order to do that. *** We are located in an RS special residence zoning district." S.T., Ex. 5 at 3-4, 5. Mr. Roth also testified that "[i]n the winter, or *** the off season we usually try to rent those as long-term apartments because we want to keep that grandfathering in, in case we did have- so we're not stuck with a large single family home, so we could at least go back to apartments if we need to." S.T., Ex. 5 at 5-6. Mrs. Roth further explained that the winter customers are not consistent and, at best, stay for one to three months. S.T., Ex. 5 at 8. The BOR issued its decision, leaving the property's valuation/classification unchanged and thereafter, the appellant appealed such determination to us.

We must begin by noting that it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which supports its position. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *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 to support its position, the remaining parties then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra.

Appellant has appealed to this board pursuant to the provisions of R.C. 5715.19(A)(1)(a) wherein it states that a complainant can challenge “[a]ny classification made under section 5713.041 of the Revised Code,” the statute which provides for the classification of property as residential/agricultural or all other land and improvements. Further, R.C. 5713.041 provides that “[e]ach separate parcel of real property shall be classified by the county auditor according to its principal, current use.” That section goes on to provide that “[t]he commissioner shall adopt rules governing the classification of property under this section, and no property shall be so classified except in accordance with such rules.” One such rule, Ohio Adm. Code 5703-25-10, discusses the classification of property and the coding of records and provides that the auditor must “classify each parcel of taxable real property in the county into one of the two following classifications, which are: (1) Residential and agricultural land and improvements; (2) All other taxable land and improvements, including commercial, industrial, mineral and public utility land and improvements.”

When determining the proper classification for a property, pursuant to Ohio Adm. Code 5703-25-10, the auditor must use the following relevant definitions:

“***

“(4) ‘Commercial land and improvements’ - The land and improvements to land which are owned or occupied for general commercial and income producing purposes and where production of income is a factor to be considered in

arriving at true value, including, but not limited to, apartment houses, hotels, motels, theaters, office buildings, warehouses, retail and wholesale stores, bank buildings, commercial garages, commercial parking lots, and shopping centers.

“(5) ‘Residential land and improvements’ - The land and improvements to the land used and occupied by one, two, or three families.”

It appears from the record that the Erie County Auditor coded the subject property as “419,” or “other commercial housing.” S.T., Ex. 3.

Appellant contends that his property should be considered residential, for purposes of real property classification, and points to various provisions, including building codes, food service regulations, motel licensing requirements, and sales tax provisions, that treat similar establishments that have five or more rooms differently, and arguably, more strictly, than those that have fewer rooms. He also contends that the primary use of the subject property is as his residence, with his family, and that the use of the four rooms as a bed and breakfast is a seasonal occurrence, and certainly not the primary use of the property.

Thus, the sole issue before this board is whether the Erie County Auditor has properly classified appellant’s real property in conformity with R.C. 5713.041 and Ohio Adm. Code 5703-25-10. Initially, this board must reiterate that “there are but two classifications for real property and that the classes consist of residential and agricultural land and improvements, and all other land and improvements.” *Sharon Land Co./Sharon Club Company v. Medina Cty. Bd. of Revision* (July 29, 1983), BTA No. 1982-A-217, unreported at 11. Therefore, based upon the instant record, we must

determine whether the subject property should have been classified as “residential” or “all other land and improvements,” based upon its principal, current use.

While there is no statutory definition of “principal use” in the instant context, the Ohio Supreme Court, in considering whether a property qualifies for exemption from taxation, has adopted a primary use test, which requires more than merely calculating the amount of time that the property is used in a taxable as opposed to a nontaxable manner. Instead, the determination as to taxable status must include an examination of both the quantity and quality of the use for which the property is utilized. For example, “[t]o qualify for an exemption from real property taxation as a house used exclusively for public worship under [R.C. 5709.07](#), such property must be used in a principal, primary, and essential way to facilitate public worship.” *Faith Fellowship Ministries, Inc. v. Limbach* (1987), [32 Ohio St.3d 432](#), at paragraph two of the syllabus. Under the primary use test, the court has recognized that those uses of property sought to be exempted that are merely supportive are not entitled to exemption under [R.C. 5709.07](#). See *Bishop v. Kinney* (1982), [2 Ohio St.3d 52](#); *Summit United Methodist Church v. Kinney* (1983), [7 Ohio St.3d 13](#); *Faith Fellowship Ministries, Inc.*, supra. In addition, when determining whether real property qualifies for current agricultural use valuation status, this board discussed its interpretation of the phrase “land devoted exclusively to agricultural use” in *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-753, unreported. Therein, the board held “the word ‘exclusively’ to mean ‘primarily.’ Hence, where land is ‘devoted primarily to agricultural use’ and such use is consist [sic] with one or more of the

enumerated purposes set forth in R.C. 5713.30(A) it is clearly entitled to the CAUV classification.” See *Zoumberakis v. Coshocton Cty. Bd. of Revision* (July 7, 2006), BTA No. 2004-A-632, unreported, dismissed on appeal. Incidental use and/or activity does not qualify as exclusive or primary use. See *Dircksen v. Greene Cty. Bd. of Revision*, (Mar. 11, 2005), BTA No. 2004-A-452, unreported, affirmed, 109 Ohio St.3d 470, 2006-Ohio-2990.

Clearly, there is some evidence in the record to support that the property is being used in a residential manner, i.e., appellant and his family reside on the first floor of the subject, twelve months of the year. Further, appellant testified before the BOR and argued to this board that the subject’s use as a bed and breakfast was “seasonal,” i.e., during the summer months. Based upon such description, the subject property does not appear to share significant similarities with the examples of what constitutes commercial improvements, as set forth in Ohio Adm. Code 5703-25-10(4), e.g., apartment houses, hotels, motels, theaters, office buildings. The auditor must classify a property “according to its principal, current use” and we find that the subject’s principal use is as a residence, and that its use as a bed and breakfast is incidental to its use as the family’s home.

Accordingly, it is the decision of the Board of Tax Appeals that the subject property be classified as a residential property upon the records of the Erie County Auditor. As such, the subject’s real property tax bills from tax year 2006, and carrying forward according to law, shall be recalculated, taking into consideration the subject’s classification as a residential property.

ohiosearchkeybta