

OHIO BOARD OF TAX APPEALS

Board of Education for Toledo Public Schools,)
)
)
 Appellant,)
)
 vs.)
)
 Lucas County Board of Revision,)
 Lucas County Auditor, and K&B)
 Warehousing, LLC,)
)
 Appellees.)

CASE NO. 2007-A-1320
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Spengler Nathanson PLL
Michael W. Bragg
Four Seagate, Suite 400
Toledo, Ohio 43604-2622

For the County Appellees - Julia R. Bates
Lucas County Prosecuting Attorney
Carol Bruggeman
Assistant Prosecuting Attorney
One Government Center, Suite 500
Toledo, Ohio 43604

For the Appellee Property Owner - K&B Warehousing, LLC
3244 Wendover
Toledo, Ohio 43606

Entered May 12, 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 Lucas 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 and the statutory transcript certified to this board by the county board of revision. Although given an opportunity to appear at a hearing and/or file a brief in this matter, no party chose to do so.

The subject real property, three¹ industrial parcels, is located in the Toledo City School district taxing district, Lucas County, Ohio, and appears on the auditor's records as parcel numbers 03-13408, 03-13409, and 03-13407. The value of the parcels, as determined by the auditor and by the board of revision, is as follows:

¹ Appellant's notice of appeal, the county board of revision's decision letter, and the underlying original complaint and counter-complaint all reflect the three parcel numbers listed herein. However, the total valuation reflected in appellant's notice of appeal and the BOR's decision letter as well as the calculations made by the BOR on the reverse side of the original complaint and the property record cards seem to indicate an inclusion of a fourth parcel, namely, #03-13406, which apparently was granted an overall reduction in true value to \$25,000. However, by virtue of the original complaint filed herein, this board does not have jurisdiction to consider such fourth parcel. Further, based on the original complaint filed in this matter, the county board of revision did not have jurisdiction to consider such fourth parcel either and any reduction in valuation given to such parcel was granted improperly. See *Sunset Dev. v. Greene Cty. Bd. of Revision* (Apr. 30, 2004), BTA No. 2002-G-2000, unreported (county board of revision correctly concluded it did not have jurisdiction to consider value of a parcel not listed on a complaint). While there is no way to verify if a second complaint was filed involving said fourth parcel, we simply note that jurisdiction to review the valuation of the fourth parcel was not established through the original complaint in the instant matter.

PARCEL #03-13408

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 61,000	\$ 21,350
Bldg	271,800	95,130
Total	\$ 332,800	\$ 116,480

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 44,600	\$ 15,610
Bldg	5,400	1,890
Total	\$ 50,000	\$ 17,500

PARCEL #03-13409

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 19,700	\$ 6,900
Bldg	91,600	32,060
Total	\$ 111,300	\$ 38,960

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 13,600	\$ 4,760
Bldg	10,400	3,640
Total	\$ 24,000	\$ 8,400

PARCEL #03-13407

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ -0-	\$ -0-
Bldg	1,800	630
Total	\$ 1,800	\$ 630

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ -0-	\$ -0-
Bldg	1,000	350
Total	\$ 1,000	\$ 350

In its notice of appeal to this board, appellant contends that the board of revision has improperly reduced the subject's valuation and that it should be returned to that which the auditor previously determined.

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. According to the statutory transcript, the appellee property owner filed a complaint against the valuation of real property with the Lucas County Board of Revision seeking a reduction in the subject's total valuation to \$100,000. As the basis for the requested reduction, the property owner indicated that "[t]he neighborhood is very depressed, we purchased the parcels for \$38,000 total. We tore (demolished) the building in Dec. 06." S.T. The complaint also indicated that the property was purchased in October 2006 at a sale price of "\$13,000 (partial) Lexington" and that improvements were completed on various dates in the last 3 years totaling \$4,000. S.T. A counter-complaint was filed by the appellant BOE seeking to retain the auditor's valuation of the subject. The board of revision held a hearing at which the property owner did not appear. Counsel to the BOE appeared, but did not offer any evidence or testimony

regarding the property. Thereafter, by letter dated September 28, 2007, the BOR made its determination regarding the above-named parcels, reducing the total valuation² of the parcels to \$100,000.

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.

As indicated earlier, the property owner made no appearance before the BOR or this board. Therefore, there is no evidence of the value requested contained within the record. The property owner refers to a sale of the subject parcels in October 2006; however, a review of the property record cards contained in the statutory transcript does not indicate any sale information for parcel #03-13408 and #03-13407. The record cards indicate that parcel #03-13409 was the subject of a sale, but only in September 2001. Thus, without more, we have no evidence of the alleged sale of the subject in 2006. Further, there is no valuation evidence or testimony in the record to support the property owner's suggested valuation of \$100,000 for the three parcels.

² The BOR's decision letter only indicated the total valuation of parcels 03-13408, 03-13409, and 03-13407; however, the property record cards reflect the reduced valuations for land and building for each parcel, as determined by the BOR.

We must consider the BOR's ultimate valuation of the subject in light of this lack of evidentiary support for the valuation sought by the property owner. 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 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 no evidentiary support for the BOR's value herein.

Now, recently, 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 absolutely no evidence to support the valuation adopted by the BOR, as no one appeared on behalf of the property owner before the BOR to offer any evidence or testimony in support of the value sought. Essentially, no hearing occurred before the BOR, as only the BOE’s counsel appeared and he did not present any evidence or testimony. According to the contents of the transcript of the BOR hearing in the statutory transcript, none of the board members discussed the subject property and there was no discussion about the board’s valuation decision concerning the subject property. However, the BOR saw fit to ultimately reduce the subject’s valuation to the value requested by the property owner. S.T. Based upon the foregoing, we are constrained to find that the record before us demonstrates that there was no competent, probative evidence before the BOR upon which it could have based its determination, and, as such, the value of the

subject parcels as of January 1, 2006, must remain that which the auditor previously determined, as follows:

PARCEL #03-13408

	TRUE VALUE	TAXABLE VALUE
Land	\$ 61,000	\$ 21,350
Bldg	271,800	95,130
Total	\$ 332,800	\$ 116,480

PARCEL #03-13409

	TRUE VALUE	TAXABLE VALUE
Land	\$ 19,700	\$ 6,900
Bldg	91,600	32,060
Total	\$ 111,300	\$ 38,960

PARCEL #03-13407

	TRUE VALUE	TAXABLE VALUE
Land	\$ -0-	\$ -0-
Bldg	1,800	630
Total	\$ 1,800	\$ 630

The Auditor of Lucas 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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