

OHIO BOARD OF TAX APPEALS

Walmart Real Estate Business Trust,)
)
Appellant,) (CASE NO. 2007-M-526
) (REAL PROPERTY TAX)
)
vs.) (DECISION AND ORDER
)
Clark County Board of Revision,)
the Clark County Auditor, and)
Clark-Shawnee Local School District)
Board of Education,)
)
Appellees.)

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co. L.P.A.
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For the County Appellees - Stephen A. Schumaker
Clark County Prosecuting Attorney
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For the Appellee Means, Bichimer, Burkholder & Baker Co., L.P.A.
Bd. of Edn. - Robert M. Morrow
2006 Kenny Road
Columbus, Ohio 43221

Entered June 23, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed July 11, 2007. Appellant challenges a decision, mailed June 12, 2007, of the Clark County Board of Revision (“BOR”).

The procedural facts are gleaned from the statutory transcript¹ certified to this board by the Clark County Auditor under his duties as secretary of the BOR, and from the legal briefs presented by the parties. The subject property is located in the Clark-Shawnee Local School taxing district of Clark County, Ohio, and further identified as parcel no. 330-6-6-102-17. This matter originated when the Clark-Shawnee Local School District Board of Education (“BOE”) filed a complaint challenging the value of the above-captioned parcel for tax year 2006. The BOE sought an increase in the auditor’s value to comport with a recent sale of the subject property. On the face of the complaint filed by the BOE, the taxable value of the subject property as assessed by the Clark County Auditor was \$537,810. An assessed value of that amount calculates to a market value of \$1,536,600. The complaint was executed and filed by an attorney on behalf of the BOE and filed on March 29, 2007.

Counsel for the property owner, Walmart Real Estate Business Trust (“Walmart”), entered an appearance, but did not file a counter-complaint. A hearing was held before the BOR on May 21, 2007. At that time, counsel for the BOE attended and presented a general warranty deed which reflected a transfer of the subject property from North Bechtle Square I Investments, LLC to Walmart for a

¹ The record in this appeal is not fully developed. The parties opted not to present additional evidence at a hearing before this board. Counsel for the BOR attached certain exhibits to his brief. Such documents are generally not considered by the board, as attachments to a brief are not considered part of the record. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13. However, the documents attached are also found within the statutory transcript. Additionally, there appears to be general agreement among the parties as to the manner and timing of the valuation changes.

transfer price of \$2,489,500 and a conveyance fee statement reflecting the same information. According to the documentation submitted, the transfer took place June 10, 2005.

The BOR's hearing record reflects a discussion as to how the sale price was to be applied, as the transfer appeared to be for a vacant lot and the property, as valued by the auditor for 2006, included some value for partially constructed improvements. Ms. Nikki Crawford, a county employee, Mr. Steve Metzger, the county treasurer, and Mr. Robert Morrow, counsel for the BOE, had the following discussion:

“MS. CRAWFORD: I just want to make sure we're clear. But we're talking about the sale is just for the land only. Because what's on the tax bill right now is a partial value of Wal-Mart. It will go on a full value as of 11/07. But the sale was just for the land. So, I'm assuming that's what you want to increase it.

“CHAIRMAN METZGER: Well, the value we had January 1 of '06 was for what?

“MS. CRAWFORD: For the land and the building being a partial complete as of the lien date.

“CHAIRMAN METZGER: Do you know that percent of completion at that time? Is that still our report?

“MS. CRAWFORD: I don't –

“MR. MORROW: Do you show the improvements?

“MS. CRAWFORD: We show the improvements at –

“***

“MS. CRAWFORD: \$557,000.

“***

“MR. MORROW: Based upon my discussion, what I think the records reflect, we would be agreeable to – as - 06 – just using the land valuation without the partial because we did not – I did not talk to [counsel] about that. I indicated we would only be looking for the increase consistent with the sale price. And I think the records would show that the land transferred for the recorded sale price.”

“***.

“MR. MORROW: And therefore in ‘07 that ought to be a beginning number with whatever the improvements are on top of that figure.” S.T., Hearing Record, 4-5.

Counsel for the BOE urged the BOR to value the property at the sale price for tax year 2006 and to revalue the property for tax year 2007 to account for the improvements that had been constructed during that year. S.T., Hearing Record, 6.

The BOR’s determination letter, however, does not value the real property in accordance with the discussions held at the BOR. Instead, the BOR’s determination letter provides the following:

“You have filed a complaint as to the assessment of your real property located within Clark County. That complaint has not been heard, the property has been physically viewed, and a recommendation has been made.

“After a consideration of the information and evidence, which you presented, as well as the recommendation of the appraiser, it is the decision of the Clark County

Board of Revision that the following action takes place relative to your complaint.

A. The value of your real property has been confirmed as listed on the current Auditor's tax list and Treasurer's duplicate. Therefore the Board will make no change in value.

B. The value of your real property should be increased as shown below.

C. The value of real property has been reduced as shown below.

D. Dismissed."

Within the space allotted for changes in value, the determination letter provides "Clerical error values will be reinstated accordingly." S.T., Ex. F.

Within the time period provided by law, Walmart filed a notice of appeal with this board. Through its legal brief, Walmart claims that the auditor increased value after the BOR's hearing to a total market value of \$5,975,650. That value included a land value of \$2,438,100 and a building value of \$3,537,550. The calculated total taxable value is \$2,091,500.

Walmart's claim is supported both by the statutory transcript and the brief submitted by the representative of the BOR. Counsel explains that the subject parcel under consideration in this matter, no. 330-6-6-102-17, was created from a lot split of three parcels, nos. 330-6-6-102-13, 330-6-6-102-15, and 330-6-6-102-19. S.T., Real Property Conveyance Fee Statement. According to the computer screens reproduced in the statutory transcript, as of July 26, 2006, the value for parcel no.

330-06-00006-102-017 equaled a total of \$5,975,650. However, on October 3, 2006, a computer screen indicates that total value for the same parcel was changed to \$1,536,590. The entry identified as “Last Reason for Change” is filled with the words “split property.” The “Final Appraised Value” equals \$1,536,590, which calculates to a taxable value of \$536,810, the value indicated by the BOE’s complaint.

Through the Department of Tax Equalization (“DTE”) Form 3, the auditor presents certain information to the Board of Tax Appeals. In an effort to clarify the record in this appeal, the Clark County Auditor modified the form to display the changes in value and the timing of those changes as applied to the subject property. The auditor displayed values for 7/26/2006, 10/3/2006, and 5/23/2007. Above the date 7/26/2006, the words “Value from N/C” are found and the taxable value of the subject property is listed as \$2,091,480. Above the date 10/3/2006, the words “Override Removed” are found and the taxable value of the subject property is listed as \$537,800. Above the date 5/23/2007, the words “Clerical Reinstated” are found and the taxable value of the subject property is listed as \$2,091,480.

The parties’ arguments revolve around the validity of these changes. While all parties agree that the auditor has the statutory authority under R.C. 319.35 to correct clerical errors, Walmart claims that the change of value in the present appeal was not a correction of a clerical error. The BOE and the BOR argue the opposite. However, the board concludes that the BOR’s action in both dismissing

the BOE's complaint and finding value are mutually exclusive. As such, the BOR's determination fails, as its dismissal was improper and its finding of value was unclear.

The issue before this board is the propriety of the action of the BOR. R.C. 5713.03(B). In this appeal, the BOR's determination letter identifies two actions, a dismissal, and a value change. However, a dismissal, in effect, affirms the valuation assessed by the auditor. *LCL Income Properties v. Rhodes* (1995), 71 Ohio St.3d 652. However, the BOR's determination letter does not affirm the challenged auditor's valuation. Instead, through the language, "Clerical error values will be reinstated accordingly," the BOR ordered a value change.

Initially, we do not find that the BOR was correct in dismissing the complaint before it. County boards of revision are authorized by R.C. 5715.01, which provides, inter alia, that "[t]here shall also be a board in each county, known as the county board of revision, which *shall* hear complaints and revise assessments of real property for taxation." (Emphasis added.) Boards of revision are directed to hear complaints pursuant to R.C. 5715.11, which provides:

"The county board of revision *shall* hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer." (Emphasis added.)

In *Snavely v. Erie Cty. Bd. of Revision* (1997), 78 Ohio St.3d 500, the Ohio Supreme Court discussed the ability of a board of revision to dismiss a complaint filed before it. The property owner in that case had filed a complaint and attached valuation information regarding the subject property, but did not attend the BOR's hearing. The BOR dismissed the complaint for failure to prosecute the valuation question, but the Board of Tax Appeals reversed, remanding the matter to the BOR for a finding of value. The BOE challenged this board's finding; the Supreme Court affirmed.

In concluding that the BOR was without authority to dismiss the complaint before it, the court spoke directly to the issue of whether it was proper for a board of revision to dismiss a complaint when jurisdictional requirements had been met:

“We have permitted dismissal of real property valuation complaints only in very limited circumstances. For instance, we have permitted dismissal where the complaint is not completed properly, *Stanjim [v. Mahoning Cty. Bd. of Revision]* (1974), 38 Ohio St.2d 233], the complaint is filed for the second time in the same triennial, without a statutory justification, *Gammarino [v. Hamilton Cty. Bd. of Revision]* (1994), 71 Ohio St.3d 388] or there is a failure to prosecute, *LCL Income Properties [v. Rhodes]* (1995), 71 Ohio St.3d 652]. The facts presented by this case do not support dismissal.” Id. at 502.

In the present appeal, the complaint was properly and timely filed. Counsel appeared at the BOR's hearing armed with evidence of value. The BOR failed to

identify any reason for dismissing the complaint before it, other than to indicate that a clerical error had been discovered. However, the discovery of a clerical error is not a ground for dismissing a validly filed and prosecuted complaint.

Therefore, the board finds that the BOR erred in dismissing the complaint before it. The dismissal becomes even more problematic in the present matter, because the apparent effect of the dismissal was an increase in the reported auditor's value. At no point in any discussions before the BOR was a clerical error disclosed. Therefore, the BOR's determination letter is both unclear and inconsistent and cannot be understood in relation to the actions of the BOR.

The Board of Tax Appeals orders the matter remanded to the Clark County Board of Revision for that board to issue a finding of value.

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