

OHIO BOARD OF TAX APPEALS

Robert Birnbaum, et al.,)
)
 Appellants,) CASE NO. 97-B-693
)
 vs.) (REAL PROPERTY TAX)
)
 Cuyahoga County Board of Revision,)
 Cuyahoga County Auditor and) DECISION AND ORDER
 Cleveland Heights /University Heights)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Fred Siegel, Esq.
Fred Siegel Co., L.P.A.
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1900 East Ninth Street
Cleveland, Ohio 44114-3499

For the County - William D. Mason
Appellees Cuyahoga County Prosecuting
Attorney
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For the Appellee - No Appearance
Cleveland Heights/
University Heights
Board of Education

Entered: December 10, 1999

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant herein under date of June 24, 1997, from a decision of the Cuyahoga County Board of Revision (BOR), appellee herein.

The subject real property is located in the Cleveland Heights taxing district of Cuyahoga County and further identified as Parcel Number 684-32-013 on the Auditor's records. It is a mixed use complex of stores, offices and apartments. The subject property is located at 1637 Lee Road, Cleveland Heights, Ohio and was originally built in 1928.

The Cuyahoga County Auditor and Cuyahoga County Board of Revision found the true and taxable value of the subject properties for the tax year 1994 to total as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 95,400	Land	\$ 33,390
Building	<u>357,110</u>	Building	<u>124,990</u>
Total	\$ 452,510	Total	\$ 158,380

In its notice of appeal, appellant alleges that the total value for the subject property for the tax year 1994 to be as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 89,910	Land	\$ 31,470
Building	<u>336,690</u>	Building	<u>117,840</u>
Total	\$ 426,600	Total	\$ 149,310

Appellant appeared at the evidentiary hearing conducted by this Board and presented the testimony and appraisal report of Charles Ritley. There was no appearance made on behalf of the appellee Board of Education. The County Appellee was represented by counsel. Accordingly, this matter is submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Cuyahoga County Board of Revision, the brief filed by appellant herein, and the testimony and evidence adduced at the hearing before this Board.¹

At the outset, a preliminary administrative matter must be addressed. At the hearing, the county appellees objected to the admission of photographs of the subject property (R. 37.) These photographs, appellant's exhibits 2-9, were argued to be part of appellant's appraisal report and should have been produced seven days prior to hearing. Ruling was reserved on this objection and presentation of the exhibits continued. An opportunity to address the matter was provided in post-hearing briefs but the parties declined to visit the matter further. Upon review of the record, we find the objection is not well-taken and, therefore, we overrule it. We would note that there is no allegation or information in the record that the county appellees undertook any discovery action in this matter.

¹ This case was heard by the Board along with *B&H Investments v. Cuyahoga County Bd. of Revision*, B.T.A. Case No. 97-B-692. Although the cases involve separate parcels and different appellants, the cases were combined for administrative economy.

We begin our review of the evidence by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1990), 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 competent and probative evidence of value is presented by an appellant, other parties asserting a different value then have the corresponding burden of providing evidence which rebuts appellant's evidence of value. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*. While this Board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, *de novo* determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

It is well-established that the proper test for determining the true value of real property for taxation purposes is a recent arm's length sale of the property. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. In the absence of a recent arm's length sale, as in the case at bar, an appraisal or other relevant evidence is necessary to determine the true value of real property. *First Union Real Estate Equity & Mtg. Investments, supra*; *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. Absent a recent arm's length sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in OAC 5705-3-03: 1) the market data approach, where the value of property is estimated on the basis of recent sales of comparable properties in the market area, 2) the income approach, which capitalizes the net income attributed to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

As support for its claimed valuation, the appellant offered the appraisal report and testimony of Charles Ritley, an Ohio certified general appraiser.

Mr. Ritley considered all three appraisal approaches to value: the income approach, the sales approach and the cost approach. However, because of the extent of the depreciation and functional obsolescence involved with the

subject property, appellant's appraiser determined that the cost approach was not a reliable indicator of value and did not utilize this methodology. (Appellant's Exhibit 1, p. 45.)

Next, Mr. Ritley performed a sales comparison approach to valuation. In utilizing six somewhat generally comparable sales to reach an estimate of approximately \$351,720² for the subject property, Mr. Ritley adds:

“We have searched the area for multi-use properties similar to the subject and found no recent sales except for Comparable Sale Number One, upon which we have placed the most weight. The subject neighborhood is unique and compares only with nearby Coventry Village and Cedar/Fairmont in the same community as to the validity of comparable analysis. We have avoided analyzing sale properties which are exclusively retail properties or office properties in relation to the subject property. We considered sales in the Noble Road area, the Lee Road area in Cleveland Heights, and the Detroit and Madison Avenue areas in Lakewood and found none of them offer any reasonable degree of comparability. For this reason, we have relied on the sales that were provided in the appraisal report as being the best and most current available.” (Appellant's Exhibit 1, p.53.)

Mr. Ritley then conducted an income approach in order to value the subject property. The report indicates that Mr. Ritley examined numerous properties in and around the area of the subject property to determine market rents and expenses for the subject property as of January 1, 1994. He determined the overall capitalization rates plus tax additur to be 13.71% using typical mortgage terms and the “expectations of investors in this market”

² Mr. Ritley estimated a total value of \$850,000 for two parcels without identifying separate values for each parcel. The figure of \$351,720 is an approximation generated by this Board based on Mr. Ritley's “Analysis of Income and Expenses Between the Two Subject Buildings.” (Appellant's Exhibit 1, Addendum and S.T. 66.)

(Appellant's Exhibit 1, p. 58) and estimated the true value of the subject property to be \$360,000. (Appellant's Exhibit 1, Addendum and S.T. 66.)

Mr. Ritley's final estimation of value totalled \$360,000. He states that he relied primarily on the income approach because it was "the most market sensitive and is relied upon to the greatest extent in terms of deriving market value for the subject property." (Appellant's Exhibit Amended 1, p. 60.)

The Board of Tax Appeals finds that the appellant presented sufficient evidence to support the value of \$360,000 for the subject property as of the tax lien date. Accordingly, since competent and probative evidence of true value has been submitted by the appellant, the burden shifts to the appellees to provide evidence which tends to rebut appellant's evidence. *Cincinnati Board of Edn. v. Hamilton Cty. Bd. of Revision* (1997) 78 Ohio St.3d 325. However, the appellees have failed to carry this burden. Neither the county appellees nor the Board of Education offered appraisal testimony or evidence at the Board's evidentiary hearing other than to rely on the statutory record as support for their contention of value.

The statutory transcript contains a "valuation analysis" prepared by appraiser Sam D. Canitia. This analysis estimates a true value of \$599,000 for the subject property. However, the report is somewhat sketchy and unclear as to the arms-length nature of the purported comparables sales, their comparability to the subject property and the details of the valuation process

utilized by the appraiser. Nor was the appraiser brought forward to testify at the Board hearing. Therefore, we accord this appraisal very little weight.

For the reasons stated above, this Board finds that the limited amount of evidence contained in the records is insufficient to rebut the appellant's evidence.

The determination of value is a question of fact which is primarily within the province of the taxing authorities. *North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1990), 54 Ohio St.3d 98. The Board of Tax Appeals is vested with wide discretion in determining the weight to be given to the evidence. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Cardinal Federal Savings & Loan Association v. Board of Revision* (1975), 44 Ohio St.2d 13.

Thus, the Board of Tax Appeals finds Mr. Ritley's appraisal of the subject property to be the best evidence of value for the subject property for tax year 1994. Therefore, this Board finds that the true and taxable value of the subject property as of January 1, 1994 to be as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 95,400	Land	\$ 33,390
Building	<u>264,600</u>	Building	<u>92,610</u>
Total	\$ 360,000	Total	\$ 126,000

It is the order of the Board of Tax Appeals that the Auditor of Cuyahoga County list and assess the subject real property in conformity with

this decision and order. It is further ordered that the value be carried forward in accordance with the law.

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