

OHIO BOARD OF TAX APPEALS

Cincinnati School District)
Board of Education,)
) Case Nos. 98-J-1159
Appellant/Appellee,) 98-J-1273
)
and) (REAL PROPERTY TAX)
)
Western & Southern Life Insurance)
Company,) DECISION AND ORDER
)
Appellant/Appellee,) Remanded on Settlement Jan. 2, 2003
)
vs.)
)
Hamilton County Auditor and) Appeal Filed Jan. 14, 2002
Hamilton County Board of Revision,) Hamilton County Court of Appeals
)
Appellees.)

APPEARANCES:

For the Appellant/Appellee - Wood & Lamping, LLP
Board of Education David C. DiMuzio
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202-2491

For the Appellant/Appellee - Barrett & Weber
Property Owner C. Francis Barrett
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Cincinnati, Ohio 45202-4015

For the Appellee Auditor - Michael K. Allen
Hamilton County Prosecuting Attorney
Thomas J. Scheve, Assistant
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Cincinnati, Ohio 45202

Entered December 14, 2001

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by the Board of Education for the Cincinnati School District (“BOE”) in case 98-J-1159, and by Western & Southern Life Insurance Company (“Property Owner”) in case 98-J-1273. Appellants have appealed from a decision of the Hamilton County Board of Revision that determined the value of the subject real property for tax year 1997. The property is located in the Cincinnati taxing district and is identified on the auditor’s records as parcel 145-0002-0346-00.

The value determined by the Hamilton County Auditor is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$6,196,600	\$2,168,810
Building	\$2,803,400	\$ 981,190
Total	\$9,000,000	\$3,150,000

The value determined by the Hamilton County Board of Revision is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$6,196,600	\$2,168,810
Building	\$ 403,400	\$ 141,190
Total	\$6,600,000	\$2,310,000

The BOE has alleged that the property had a true value of \$9,000,000 on tax lien date. The property owner has alleged that the true value was \$6,000,000 on tax lien date. The matter has been submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified by the board of revision, (“BOR”) and the briefs filed by counsel for the BOE and property owner. The parties waived an evidentiary hearing herein. The subject

property is known as the Fifth and Race Tower formerly located at the northwest corner of Fifth & Race Streets in downtown Cincinnati.¹ The property owner acquired the Fifth and Race Tower in August 1997 at a sheriff's sale and began terminating leases. On tax lien date the property was operating as an office and retail building.

At the BOR hearing the property owner submitted the appraisal testimony of Mr. Bradley Plummer, and the appraisal report and supporting testimony of Mr. Thomas Willingham. Mr. Plummer's testimony was submitted as corroboration for Mr. Willingham who concluded that the property had a value of \$6,000,000 on the tax lien date. The auditor submitted the appraisal report and supporting testimony of Mr. Thomas M. Heywood who concluded that the property had a value of \$6,200,000 on tax lien date. The BOR adjusted the capitalization rates used by the appraisers in their income approach analyses and established the value at \$6,600,000.

Counsel for the School Board has argued that the appraisals submitted by the property owner and the auditor are unreliable because both deducted renovation costs prepared by a third party who did not appear at the BOR hearing. The appraisers did not consult the person who estimated the \$2,520,000 renovation costs and failed to make any independent verification of the renovation costs.

¹ Counsel for the Auditor informed this Board by letter dated November 20, 2000 that the building that stood on parcel 145-0002-0346-00 on tax lien date has been razed.

Based upon an examination of the record the Board finds that both the appraiser for the property owner and the appraiser for the auditor relied upon the unverified renovation costs. At page seventeen of the BOR hearing record the property owner's appraiser testified that he did not verify the accuracy of the renovation budget submitted by Messer Construction. The auditor's appraiser also adopted the Messer Construction renovation budget although he gave no evidence of having independently verified the budget. At page thirty-seven of the BOR hearing record the county treasurer's representative states that the BOR deducted the Messer Construction renovation budget from the property's value.

It is within this Board's discretion, when conducting its *de novo* review of the record, to reject an opinion of value that relies upon unverified renovation costs that are deducted dollar for dollar from the property's value. See, e.g., *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, 303-304 where the Supreme Court affirmed this Board's rejection of an appraisal that allowed a dollar for dollar reduction for the cost of asbestos removal from the property's value. The Court stated:

“* * * Kocinski made his deduction as though there was a one-to-one relationship between the cost of asbestos removal and the value of the real property, although no evidence of such a relationship was presented. In *Throckmorton v. Hamilton Cty. Bd. of Revision* (citation omitted), we stated, ‘Evidence of * * * the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.’ ”

As in *Hotel Statler v. Cuyahoga Cty. Bd. of Revision, supra*, the appraisers below made the deductions for renovation costs as though there were a dollar for dollar relationship between the renovation costs and the value of the property. However, no evidence of such a relationship has been presented. The burden is on the property owner to come forward with evidence to prove the value asserted. *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55. The Supreme Court has held that evidence of needed repairs, while a factor, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by this Board. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397; *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227. Absent some corroborating evidence, this Board cannot effectively place a dollar value upon the property. *Amsdell v. Bd. of Revision* (1994), 69 Ohio St.3d 572. Because the BOR's determination of value relied upon appraisals that contained unverified renovation costs, and since the BOR made a dollar for dollar deduction from the property's value for the estimates, the Board finds that the determination is unsupported by competent or probative evidence.

Having concluded that the BOR's determination is flawed, we must examine the remainder of the statutory transcript in order to perform our statutory duty of making a *de novo* finding of value. In this regard we acknowledge the Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, wherein the Court held:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland* [v. Bd. of Revision (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court’s review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision’s determination * * *.” *Id.* at 13-14.

The Supreme Court again addressed the review standard this Board must follow in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 wherein the Court stated:

“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

In reviewing the appraisal evidence, we find both appraisers opine to a value of approximately \$8,500,000 before the renovation costs are removed and such value is supported by probative evidence of value in developing the income yield for the property.

Both appraisers reduce their value conclusion by the \$2,520,000 cost for repairs that this Board finds objectionable and inappropriate. An inadequate foundation has been laid for the reduction since there has been no independent verification of the renovations required. No time frame for the renovations has been suggested and no probative evidence of their costs has been submitted. Mr.

Heywood included a reserve for replacements in his expense figure that is appropriate but inadequate in view of the testimony regarding the condition of the property.

After careful consideration of the record and the applicable law the Board finds that the appraisals support a value of \$8,500,000 when the unverified renovation costs are removed. Therefore, the Board finds and determines that the value of the subject property as of January 1, 1997 based upon a preponderance of the evidence is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$6,196,600	\$2,168,810
Building	\$2,303,400	\$ 806,190
Total	\$8,500,000	\$2,975,000

The auditor of Hamilton County is hereby ordered to cause his records to reflect the value determined for the subject real property and to assess the same in accordance therewith as provided by law. It is further ordered that a copy of the foregoing decision shall be sent to the parties by and through their respective counsel.

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