

OHIO BOARD OF TAX APPEALS

Wyandot Ltd., Inc.,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Franklin County Board of Revision,)
 Franklin County Auditor and the)
 Board of Education of the Columbus)
 City Schools,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Wayne E. Petkovic, Esq.
840 Brittany Drive
Delaware, Ohio 43015

For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
By: Matthew Chafin
Assistant Prosecuting Attorney
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Columbus, Ohio 43215

For the Appellee Board of Education of the Columbus City Schools - Rebecca Mills Green
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42 East Gay Street
Columbus, Ohio 43215-3119

Entered February 4, 2000

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

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed on May 11, 1999, by appellant, Wyandot Ltd., LLC. Appellant appeals a decision of the Franklin County Board of Revision (“BOR”), mailed on April 15, 1999, in which that tribunal determined that the subject property had a total taxable value of \$668,510 as of the tax lien date, January 1, 1997.

The subject property is located in the City of Columbus-Columbus City Schools taxing district and appears in the records of the Franklin County Auditor (“Auditor”) as permanent parcel number 010-67016. More precisely, the property is located in downtown Columbus and is improved with an eleven story office building which was originally constructed in the 1890’s.

Both the Auditor and the BOR concluded that the subject property had the following true and taxable values:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 526,500	Land	\$ 184,280
Building	<u>\$ 1,383,500</u>	Building	<u>\$ 484,230</u>
Total	\$ 1,910,000	Total	\$ 668,510

In its notice of appeal, appellant claimed that the following more accurately reflects the true and taxable values of the subject property on tax lien date:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 342,860	Land	\$ 120,000
Building	<u>\$ 500,000</u>	Building	<u>\$ 175,000</u>
Total	\$ 842,860	Total	\$ 295,000

Before we consider the merits of appellant’s appeal, we must first rule upon the admissibility of an exhibit offered by appellant at the hearing conducted by this Board. At hearing, appellant presented no witnesses. However, appellant’s counsel seemingly modified the value claimed for the subject property, stating that “it is the taxpayer’s position that the fair market value for the tax year in issue should be no higher than \$1,240,000.” H.R. at 13. In support of this claim, counsel sought to introduce into evidence an exhibit which he identified as a “copy of the new property record card with respect to the subject property.” H.R. 7. Counsel asserted that since

the subject property had been vacant for several years prior to the tax lien date in issue, *i.e.*, 1997, the values set forth on appellant's exhibit for a year when the property had an occupancy level of approximately sixty percent, *i.e.*, 1999, must establish the maximum amount of the property's value for the year in question. No other evidence was presented on appellant's behalf. The attorney examiner presiding at hearing reserved ruling on the admissibility of appellant's exhibit, according the parties an opportunity to amplify their arguments in writing. Although the appellees submitted post-hearing briefs challenging the admissibility of appellant's exhibit, as well as its claimed value for the subject property, no written argument has been forthcoming from appellant.

Although this Board is not bound by the Ohio Rules of Evidence, these rules provide some guidance in our determination of what may be considered. See, *e.g.*, *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 415, 416-417.¹ See, also, *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 452; *Columbia Twp. Trustees v. Williams* (1976), 11 O.O.3d 233.² The document in issue is represented to be a copy of a property

¹ In *Orange City School*, the court held:

"Evid. R. 101(A) does not mention administrative agencies as forums to which the Rules of Evidence apply. Indeed, the constitutional authority under which the rules were promulgated extends only to 'rules governing practice and procedure in all courts of the state.' Section 5(B), Article 4, Ohio Constitution. The rules, nevertheless, may guide the BTA in conducting its hearings. See *Castellano v. Kosydar* (1975), 42 Ohio St.2d 107 ***. Thus, the BTA need not comply with Evid. R. 703."

² In *Columbia Twp. Trustees*, the court set forth some guiding principles which we consider applicable herein:

"Although a hearing before an administrative agency, or as in this instance an administrative reviewing body, is not conducted, or reviewed in the same sense as a civil proceeding in a court of law, yet

record card for the subject property setting forth the Auditor's tentative values for tax year 1999. While counsel asserts that the document is self-authenticating, citing Evid. R. 901(B)(7), this rule actually contemplates a preliminary showing that the records are from a public office where records of that type are routinely kept. Specifically, Evid. R. 901(A) provides:

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by *evidence sufficient to support a finding that the matter in question is what its proponent claims.*” (Emphasis added.)

Appellant presented no extrinsic evidence to satisfy the requirement of authentication.

Further, the exhibit is not admissible under Evid. R. 902(4) as a self-authenticating public record because appellant failed to comply with the requirements imposed by that rule:

“A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of a

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certain of the aspects thereof must be treated similarly. These proceedings are known to be quasi-judicial in nature and they must be conducted with basic concepts of fair play. ***

“Generally in the absence of statutory provisions to the contrary, an administrative agency may adopt and follow procedures for hearings and fact finding which are not strictly in accord with rules of practice as followed in the trial of civil actions. ***

“However, administrative agencies may not be permitted to sanction as evidence something which is clearly not evidence. *** And, an administrative agency should not act upon evidence which is clearly not admissible, competent or probative of the facts which it is to determine.” *Id.* at 236.

jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.”

See, generally, *Seringetti Constr. Co. v. Cincinnati* (1988), 51 Ohio App.3d 1, 9-10.

Even if we were to find appellant’s exhibit to be admissible in these proceedings,³ it is not probative of the subject’s value for the tax year in question. While this Board may consider pre- and post-tax lien date factors that *affect* a given property, see, e.g., *Youngstown Sheet & Tube v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, a tentative valuation by a county auditor for years subsequent to a tax lien date does not *affect* that property’s value.

Moreover, a county auditor’s valuation of a property for a period other than the one in issue is entitled to no more weight than any appraisal exhibiting such a flaw.⁴ In *Freshwater, supra*, the Supreme Court addressed the importance of valuing a property as of the tax lien date:

“The BTA rejected Becker’s procedure and refused to assign any weight to his opinion of true value. The BTA stated that “[t]he mere fact that the tax lien date is approximately midway between the two appraisal dates does not mean that the 1994 value must also be midway between the two appraisals.

“In rejecting Becker’s opinion of true value, the BTA cited a passage from *The Appraisal of Real Estate* (10 Ed.1992) 75, which states that because market forces are constantly changing, ‘an estimate of value is considered valid only for the exact date specified.’

³ Counsel for the county appellees indicated at hearing that he provided the copy of the exhibit in question to appellant’s counsel and that the document reflected uncertified tentative values for the subject property for a tax year two years subsequent to the tax lien date in question. With this acknowledgment, it *could* be argued that a sufficient demonstration has been made. For that reason, we will proceed to review the document as if it were admissible. See, also, Evid. R. 803(8).

⁴ Pursuant to Ohio Adm. Code 5705-3-03(D), county auditors may use the same methods of estimating the true value of real property, *i.e.*, the market data, income and cost approaches, that are typically relied upon by appraisers in accomplishing the same task.

“R.C. 5715.19(D) requires that the determination of a complaint filed for a particular tax year ‘shall relate back to the date when the lien for taxes * * * for the current year attached.’ R.C. 323.11 provides that the lien for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that ‘[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year * * *.’ Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, ***.⁵

“The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. Becker’s approach to valuation was not based upon the facts as they existed as of January 1, 1994, the tax lien date. Becker’s appraisals were based upon facts as they existed on December 30, 1991 and April 5, 1996, the dates of his appraisals. Evidence of the valuation as of these two dates is not evidence of the valuation as of January 1, 1994. The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact. The BTA may accept all, part, or none of the testimony presented to it by an expert. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155 ***. In this case, the BTA chose not to accept Becker’s valuation, and we agree.” *Id.* At 29-30.

Having determined that appellant’s lone exhibit is inadmissible or, at best, irrelevant, we proceed to determine whether appellant has met its burden of proving that the BOR’s decision is erroneous. Although the value determination

⁵ In *Olmsted Falls Village Assn.*, the court stated: “We emphasize that the BTA *** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer’s property on the tax lien date.”

rendered by the BOR in this instance may not be presumptively correct, it nevertheless remains the burden of appellant to present evidence which supports any reduction claimed. See, e.g., *Zindle v. Summit Cty. Bd. of Revision* (1989), 44 Ohio St.3d 202; *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198. This burden is not satisfied merely because no evidence to the contrary is presented. See *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Glick's Furniture v. Franklin Cty. Bd. of Revision* (Mar. 18, 1997), Franklin App. No. 96APH07-847, unreported. As previously indicated, other than the above-discussed exhibit, appellant presented no additional evidence before this Board to support either the value claimed in its notice of appeal, i.e., \$842,860, or that to which its claim was amended at hearing, i.e., \$1,240,000.

Furthermore, our review of the evidence presented by appellant before the BOR reflects no patent error in that tribunal's election to retain the value originally assigned the subject property by the Auditor. The subject property has not recently sold, the last transfer having occurred in the 1970's when it was the subject of an acknowledged distress sale. Rather than presenting the BOR with an appraisal of the property, see, e.g., *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, appellant tendered various financial documents, i.e., rent rolls and income and expense summaries, and the testimony of George Nickerson, a partner in

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*** However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Id.* at 555.

the partnership which owns the subject property,⁶ and William McVeigh, a tax consultant with Midwest Property Tax Associates. The testimony at the BOR provided a description of the improvements to the subject property, the structural limitations resulting from its age and the challenges faced in attracting tenants. However, we consider this information, apparently as did the BOR, insufficient to determine the property's value as of the tax lien date in question. Historical income and expense figures for the property near the tax lien date have not been stabilized nor effectively compared to the market. In fact, little market data, other than the generalizations of appellant's witnesses, were provided. We are unable to reliably ascertain market rents, expenses or the manner in which a proposed capitalization rate was derived. For all of the foregoing reasons, we find appellant has failed to satisfy its burden of proof in this case.

It is therefore the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of tax lien date January 1, 1997, remain as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 526,500	Land	\$ 184,280
Building	<u>\$ 1,383,500</u>	Building	<u>\$ 484,230</u>
Total	\$ 1,910,000	Total	\$ 668,510

⁶ This Board recognizes that an owner is permitted to testify concerning the value of his property without being qualified as an expert on the basis that he is presumed to be familiar with it from having purchased or dealt with it. See *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621, paragraph two of the syllabus. However, there exists no requirement that the finder of fact accept that value as the true value of the property. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 32.

Accordingly, it is the order of this Board that the Franklin County Auditor list and assess the subject property in conformity with our decision as announced herein.