

OHIO BOARD OF TAX APPEALS

David W. Swetland Building Co., Ltd /)
David W. Swetland,)
)
Appellants,)
)
)
vs.)
)
)
Cuyahoga County Board of Revision,)
Cuyahoga County Auditor, and Cleveland)
Municipal School District Board of)
Education,)
)
Appellees.)

CASE NOS. 2003-A-1183,
2003-A-1184, 2003-A-2107,
2003-A-2108

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellants - Ralph D. Kovanda
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Novelty, Ohio 44072

For the County Appellees - William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy J. Kollin
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For the Appellee Bd. of Edn. - Britton, Smith, Peters & Kalail Co., LPA
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Entered June 30, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon four notices of appeal filed herein by the above-named appellants, from decisions of the Cuyahoga County Board of Revision. In said decisions, the board of revision determined the taxable value of the subject property for tax years 2000 and 2001.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal filed with this board, the statutory transcripts certified to this board by the county board of revision, the evidence and testimony presented at a hearing before this board in November 2004, and the briefs filed by counsel to the appellant and appellee school board in December 2004.

The property in question is located in the Cleveland taxing district and appears on the auditor's records as parcel numbers 101-26-027, 101-26-057, and 101-26-056. Located on the subject are two office buildings, specifically, the nine-story Park Building and the four-story Southworth Building.

Before considering the values assigned to these parcels for tax years 2000 and 2001, this board must first consider whether the Cuyahoga County Board of Revision properly exercised jurisdiction over the 2000 tax year. Specifically, the subject property had been the subject of a 1997 tax year complaint that was decided by the Cuyahoga County Board of Revision and appealed to the Board of Tax Appeals. Ultimately, the 1997 tax year values were stipulated by the parties at the Board of Tax Appeals, and this board's orders stipulating the taxable values in those appeals were issued on July 13, 2001.

In Cuyahoga County, tax year 1997 was the first year of the triennial period and tax year 2000 was a reappraisal year for the county. Because the tax year 1997 complaint was not finally decided until July 2001, the complaint “carried over” for tax year 2000, pursuant to the provisions of R.C. 5715.19(D). That section provides in pertinent part that:

“If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer *** or any other person or entity authorized to file a complaint under this section.”

However, instead of carrying over the 1997 values for tax year 2000, the Cuyahoga County Auditor assigned new values to the property, arguably as a result of the 2000 county-wide reappraisal. In reaction to this increase, on February 7, 2002, the property owner’s counsel wrote a letter to the county auditor, treasurer, and board of revision requesting that the recently generated tax bills for tax year 2000 be adjusted to reflect the stipulated values for tax year 1997. S.T. at Ex. 7. Apparently treating appellant’s counsel’s letter as a complaint regarding the subject property’s tax year 2000 valuation, filed pursuant to R.C. 5715.19(A), the board of revision held a hearing and ultimately reduced the subject property’s value from that which the auditor had

determined for tax year 2000, but not to the values stipulated by the parties for tax year 1997.¹

As we consider the foregoing, we are mindful of the Supreme Court's most recent pronouncement in this subject area in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, wherein the property owner/complainant argued that under R.C. 5715.19(D), the real property tax complaint it filed for tax year 1993 continued to be valid for 1996 because the value contested in the 1993 complaint was not finally decided until tax year 1996. The facts in *Columbus* further mirror those in the instant matter in that tax year 1996 began a new triennial period for the county, and tax year 2000 herein was a reappraisal year. The court stated:

“Under R.C. 5717.03, in appeals from boards of revision, the BTA must determine the taxable value of the property and certify the decision to, inter alios, the county auditor. When the BTA's order becomes final, the tax officials, including the county auditor, must ‘make the changes in their tax lists or other records which the decision requires.’ Evidently, the Franklin County Auditor did not execute this obligation in this case. The auditor should have automatically carried over the 1993 value determined in 1996 by the BTA for tax year 1996. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* *** [(1996), 74 Ohio St.3d 639].” Id. at 307.

The court went on to state that it “interpret[ed] R.C. 5715.19(D) to mean that the 1993 complaint continued to be valid for tax year 1996 and that Inner City was not required

¹ We also note that on January 22, 2002, appellant filed two valid complaints with the Cuyahoga County Board of Revision against the subject property's tax year 2001 real property tax valuation. Thus, by taking such action, appellant effectively stopped the carryover provision of R.C. 5715.19(D). See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1996), 74 Ohio St.3d 639.

to file a fresh complaint for that year. Of course, a fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the value determined in the 1993 complaint.” Id. at 307.

Most recently, in May 2005, in *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d, 2005-Ohio-2285, the court acknowledged and distinguished its prior holding in *Columbus* as it considered the facts before it. Specifically, in *Cleveland*, a value had been stipulated at the Board of Tax Appeals in January 1998 for a property for tax year 1994, which value carried forward, according to law. Thereafter, in April 2000, the auditor notified the property owner that the subject property’s values had been increased from the stipulated values for tax years 1997 through 1999. In June 2000, the property owner then filed a complaint for tax years 1997 through 1999, yet the BOR apparently only determined a value for tax year 1997. On appeal, this board determined that the property owner’s complaints for tax years 1997 and 1998 should have been dismissed and the court agreed, stating “a complaint for a 1998 tax year valuation had to be filed with the BOR by March 31, 1999. Royal’s June 27, 2000 complaint does not meet the requirements of R.C. 5715.19(A)(1) for the filing of a complaint concerning tax years 1997 and 1998.” The court clarified that because a complaint regarding the property’s valuation had been filed by the previous owner for tax year 1994, but had not been finally determined on appeal to the BTA until January 1998, the continuing complaints for tax years 1997 and 1998 remained open. Specifically, the court stated that in *Columbus*, “[t]he property owner sought merely to preserve the lower valuation it had obtained

from the BTA; it did not seek to further reduce that valuation.” In *Cleveland*, the property owner’s complaint sought to further reduce the property’s stipulated valuation.

Thus, based upon the foregoing, we find that the Cuyahoga County Auditor should have carried the values determined by the BTA for tax year 1997 forward into tax year 2000.² Accordingly, this board hereby remands BTA Nos. 2003-A-2107 and 2003-A-2108 to the Cuyahoga County Board of Revision with orders to vacate its earlier decisions with regard to the subject property for tax year 2000. Thereafter, the board of revision³ shall calculate taxable values for the subject property for tax year 2000, beginning such calculation with the carryover values established by the earlier stipulation, i.e., a total true value for all parcels of \$1,500,000.

While we acknowledge the Supreme Court’s suggestion in *Cleveland*, supra, that disputes regarding the carryover provisions of the law could “be resolved if county boards of revision and the Board of Tax Appeals *** specify the years covered by their orders,” we find that in most instances, the record before us does not allow us to definitively determine any year(s) to which our orders will apply, other than those specified in the applicable notice(s) of appeal. For example, if an appeal is taken from a decision of this board, the date upon which that complaint is “finally determined” becomes unknown. Further, this board has no means of determining whether

² Arguably, the property owner could have filed a mandamus action to force the auditor to take the appropriate action pursuant to R.C. 5715.19(D).

³ Because there is nothing in the record to indicate how the board of revision made its valuation determination for tax year 2000, it is necessary for its earlier decisions to be vacated so that it is ensured that the decisions are properly based in the carryover value.

complaints for tax years beyond the year(s) named in the appeals before us have been filed with the BOR, effectively cutting off the carryover provisions. Accordingly, this board can only speak to the year(s) named in the notices of appeal before it.

In the instant case, however, we do find that jurisdiction was properly established with the Cuyahoga County Board of Revision for tax year 2001 with the filing of the complaints by Swetland on January 22, 2002. Such filings suspended the application of the carryover provisions of R.C. 5715.19(D) and the board of revision properly found value. Therefore, we will proceed to determine value for the subject property for tax year 2001.

The value for the subject parcels for tax year 2001, as determined by the county auditor and by the board of revision, is as follows:

PARCEL #101-26-027

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 147,310	\$ 51,560
Bldg	-0-	-0-
Total	\$ 147,310	\$ 51,560

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 120,000	\$ 42,000
Bldg	-0-	-0-
Total	\$ 120,000	\$ 42,000

PARCEL #101-26-057

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land \$	693,000	\$ 242,550
Bldg	663,000	232,050
Total	\$1,356,000	\$ 474,600

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land \$	658,400	\$ 230,440
Bldg	221,600	77,560
Total \$	880,000	\$ 308,000

PARCEL #101-26-056

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land \$	1,197,200	\$ 419,000
Bldg	30,300	10,610
Total	\$1,227,500	\$ 429,610

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land \$	769,700	\$ 269,400
Bldg	30,300	10,610
Total \$	800,000	\$ 280,010

Appellant David W. Swetland Building Co., Ltd (“Swetland”) contends that the auditor and the board of revision have overvalued the parcels in question by

not relying upon the value, as opined by its appraiser, i.e., \$775,000, as the indicator of the subject property's value on the tax lien date in question.

As we review how the instant matter came to this board on appeal, we note that Swetland filed an original decrease complaint against the valuation of the subject parcels with the Cuyahoga County Board of Revision. S.T.s at Ex. A. As listed on the face of the complaints, Swetland sought a reduction because the subject property "is situated in a City of Cleveland Blighted Zone and is subject to appropriation. The leasing capabilities are severely reduced." The complaints also listed the 1997 tax year stipulation of value issued by this board as further basis for a reduction. S.T.s at Ex. A. Counter complaints were filed by the Board of Education for the Cleveland Municipal School District ("BOE"), wherein it sought a slight increase in the auditor's valuation of the subject based upon "[e]conomic valuation as determined by the sales comparison, cost, or income approach." S.T.s at Ex. B.

At the board of revision hearing on June 10, 2003, Swetland was represented by counsel and an appraiser appeared to offer testimony on its behalf. The board of education's counsel also appeared. Included in the statutory transcript from the board of revision proceedings are the exhibits presented by the parties, including the rent roll for the subject property, an income and expense report, and the stipulations of value issued by this board for tax year 1997. S.T. (BTA No. 2003-A-1183) at Ex. C. Upon consideration of the record before it, the county board of revision reduced the auditor's valuation. S.T.s at Exs. E, F.

In our review of this matter, we initially note 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.

Further, when determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St. 2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant case, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Before this board, Swetland offered the appraisal and testimony of William J. Braman, a state-certified general real estate appraiser in the state of Ohio. Mr. Braman presented what in effect appears to be a 1994 appraisal of the subject

property, including an addendum to that report from 1999, and a letter dated May 10, 2004, with a one-page attachment through which he attempted to “update” the appraisal through the tax years in question. Ex. A.

While it is not clear what tax year the original portion of the appraisal report reflects (either 1993 or 1994), we find that there is little to no support for the conclusions reached by Mr. Braman, i.e., \$775,000. He provided a general discussion of the subject property, including significant historical details concerning the area and the specific property. While the subject’s income and expense statements for 1990-1993 were included, there was no correlation of those figures to what the market was experiencing with income/expense comparables. No cost or sales comparison approach was utilized. Thereafter, Mr. Braman completed an addendum to the aforementioned report in 1999 which constituted a letter with attached income and expense information from 1988 through 1998. Finally, he provided a letter with attached income and expense figures from 1998 through 2003 to update his conclusions for the instant appeals.

Based upon the foregoing, we find that Mr. Braman’s report does not constitute sufficient, credible, probative evidence of the subject’s value for tax year 2001. Specifically, no real appraisal methodologies were provided for this board’s review to support Mr. Braman’s conclusions. It is apparently Mr. Braman’s position that the valuation conclusion he reached for the subject property in 1993/1994 is reflective of the subject’s value for tax year 2001. While even for argument’s sake, if this board were to assume that market conditions have only changed minimally during

those seven to eight years, which we believe to be doubtful, it remains incumbent upon the author of the appraisal report to confirm such an outcome and justify the use of a report originally generated for a date other than the tax lien date in question. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. See, also, *North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-T-1055, et seq., unreported. Neither Mr. Braman's additions to his earlier appraisal report nor his testimony to this board sufficiently justified the use of his earlier appraisal as the basis for the valuation of the subject property for tax year 2001 or any of the conclusions he reached regarding the subject property.

Thus, there being no other evidence of value offered to this board by the parties hereto, we will rely upon the board of revision's valuation of the subject, as supported by the testimony and evidence presented to the BOR at hearing, including the income and expense statements and rent rolls for the subject property.

Accordingly, based upon the preponderance of evidence currently before this board, the value of the subject property for tax year 2001 shall be that which was determined by the Cuyahoga County Board of Revision, as follows:

PARCEL #101-26-027	
TRUE VALUE	TAXABLE VALUE
Land \$ 120,000	\$ 42,000
Bldg -0-	-0-
Total \$ 120,000	\$ 42,000

PARCEL #101-26-057

	TRUE VALUE	TAXABLE VALUE
Land \$	658,400	\$ 230,440
Bldg	221,600	77,560
Total \$	880,000	\$ 308,000

PARCEL #101-26-056

	TRUE VALUE	TAXABLE VALUE
Land \$	769,700	\$ 269,400
Bldg	30,300	10,610
Total \$	800,000	\$ 280,010

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

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