

OHIO BOARD OF TAX APPEALS

Richard G. and Sandra L. Brown,)	CASE NO. 2003-B-1000
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Montgomery County Board of Revision)	
and Montgomery County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	-	Jablinski, Folino, Roberts & Martin Sean H. Harmon P.O. Box 10068 Dayton, Ohio 45402-7068
For the Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Douglas M. Trout Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422

Entered April 22, 2005

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by Richard G. and Sandra L. Brown (“appellants”). The appellants have appealed from a decision of the Montgomery County Board of Revision (“BOR”) that determined the value of the subject real property for tax year 2002. The property is located in the city of Dayton taxing district and is identified on the auditor’s records as parcel number R72-53-4-30.

The value determined by the Montgomery County Auditor and the BOR

was as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,770	\$ 2,370
Building	\$ 4,070	\$ 1,420
Total	\$ 10,840	\$ 3,790

In the notice of appeal, appellants have alleged that the correct total true value of the property is \$5,000 and the corresponding taxable value is \$1,750.¹ The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR, and the brief filed by counsel for the appellants. The parties waived an evidentiary hearing before this board.

The Ohio Supreme Court has held that where the only evidence is the record of the proceeding before the BOR, this board must examine the statutory transcript in order to perform our statutory duty of making a de novo finding of value. In this regard we acknowledge *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

¹ Actually appellants’ notice of appeal states that the valuation was determined to be \$37,750 and overvalued by \$10,000. This is obviously in error. But attached to appellants’ notice of appeal is a copy of their complaint before the BOR which indicates their opinion of true value for the subject property of \$5,000. The statutory transcript reveals that the auditor and BOR determined the true value of the subject property to be \$10,840.

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.”

With the proper standard of review in mind, we shall examine the evidence submitted to the BOR. The subject property is a boarded-up vacant house located at 239 Valley Street, Dayton, Ohio. It is currently used as storage by the appellants.

At the BOR hearing, Mr. Brown testified that “it costs money to tear (the subject property) down,” so he is simply using the property for storage. S.T. Appellants also attached a “market value approach” to their brief which valued their property at \$3,000.

We begin our review of this matter 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* (1994), 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 rights 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 to provide evidence which rebuts appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Upon review of the record, we find that there is no valuation evidence before us which would allow us to find a reduction in the value of the subject property.

We first note that appellants do not detail the renovation costs or repairs needed for the subject property, nor do they provide estimates to repair the building. We are simply told that it is vacant and used for storage.

As to the purported appraisal report attached to appellants' brief, we find that it does not rise to the level of competent or reliable evidence. There is no agreement in the record that additional evidence would be received by this board. This board has consistently held that documents submitted by parties outside the context of a hearing do not rise to the level of evidence upon which we may rely in making a determination. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported; *Montgomery v. Cuyahoga Cty. Bd. of Revision* (Aug. 14, 1998), BTA No. 1997-T-897, unreported; *Kemen v. Hamilton Cty. Bd. of Revision* (Jan. 2, 1998), BTA No.

1997-M-433, unreported; *Triple V's Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000), BTA No. 1997-K-1701, unreported.

Even if we were to admit the appraisal, we would find that it would be of no value in this matter. The appraisal is a short form type of report and values the subject property as of September 1, 2004. This is about 34 months after the subject tax lien date. The Ohio Supreme Court has specifically addressed this issue in its decision in *Olmsted Falls Village Association v. Cuyahoga County Board of Revision, et al.* (1997), 75 Ohio St.3d 552. In that decision, the court held that the Board of Tax Appeals “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.

Further, the report is written by a realtor rather than a certified appraiser. Therefore, we would not find the author to qualify as an expert in real estate appraisal.

And finally, this short form appraisal would be far too general to be of any real value to this board. There is no discussion of the arm’s-length nature of the comparable sales used, how they might be considered comparable in detail, or the methodology used in determining value.

Based upon the foregoing, we find that the appellants have not offered sufficient probative evidence of the subject’s value for the tax year in question. It is this board’s statutory duty to find taxable value herein. R.C. 5717.03. As such, one of our primary concerns relates to the market value of the subject property. Accordingly, with no other evidence of market value before us that we find to be probative and

credible, we will utilize the county board of revision’s valuation of the subject. As the Supreme Court stated in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, “(W)here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision’s valuation ***.” Thus, we adopt the valuation for the subject property, as established by the board of revision. Specifically, the value of the subject property, as of January 1, 2002, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,770	\$ 2,370
Building	\$ 4,070	\$ 1,420
Total	\$ 10,840	\$ 3,790

The Montgomery County Auditor is ordered to list and assess the subject property in conformity with this decision and order.

ohiosearchkeybta