

OHIO BOARD OF TAX APPEALS

Daystar Properties, Inc.,)	CASE NO. 2003-B-1227
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Hamilton County Board of Revision,)	
the Hamilton County Auditor, and)	
Cincinnati School District Board of)	
Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Wayne E. Petkovic, Esq. 840 Brittany Drive Delaware, Ohio 43015
For the County Appellees	-	Joseph T. Deters Hamilton County Prosecuting Attorney Thomas J. Scheve Assistant Prosecuting Attorney 230 E. Ninth Street, Suite 4000 Cincinnati, Ohio 45202-2151
For the Board of Education	-	David C. DiMuzio, Inc. David C. DiMuzio 1900 Kroger Building 1014 Vine Street Cincinnati, Ohio 45202

Entered February 25, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant, Daystar Properties, Inc. (“Daystar”) on August 21, 2003 from a decision of the Hamilton County Board of Revision (“BOR”).

The subject parcels are located in the 001-Cincinnati Corp. taxing district of Hamilton County, Ohio, and are further identified as parcel numbers 183-0002-0409; 183-0002-0534; 183-0002-0411; 183-0002-0412; 183-002-0413; 183-0002-0414; 183-0002-0415; and 183-0002-0419. The Hamilton County BOR found the true and taxable value of the subject parcels for tax year 2002 to be as follows:

Parcel No. 183-0002-0409

	True Value	Taxable Value
Land	\$ 264,100	\$ 94,440
Building	\$ 1,018,700	\$ 365,540
Total	\$ 1,282,800	\$ 448,980

Parcel No. 183-0002-0534

	True Value	Taxable Value
Land	\$ 43,400	\$ 15,190
Building	\$ 141,300	\$ 49,460
Total	\$ 184,700	\$ 64,650

Parcel No. 183-0002-0411

	True Value	Taxable Value
Land	\$ 25,300	\$ 8,850
Building	\$ 1,900	\$ 670
Total	\$ 27,200	\$ 9,520

Parcel No. 183-0002-0412

	True Value	Taxable Value
Land	\$ 22,400	\$ 7,840
Building	\$ 1,900	\$ 670
Total	\$ 24,300	\$ 8,510

Parcel No. 183-0002-0413

	True Value	Taxable Value
Land	\$ 19,600	\$ 6,860
Building	\$ 1,900	\$ 670
Total	\$ 21,500	\$ 7,530

Parcel No. 183-0002-0414

	True Value	Taxable Value
Land	\$ 16,500	\$ 5,770
Building	\$ 1,900	\$ 670
Total	\$ 18,400	\$ 6,440

Parcel No. 183-0002-0415

	True Value	Taxable Value
Land	\$ 13,300	\$ 4,650
Building	\$ 1,500	\$ 530
Total	\$ 14,800	\$ 5,180

Parcel No. 183-0002-0419

	True Value	Taxable Value
Land	\$ 10,700	\$ 3,750
Building	\$ 800	\$ 280
Total	\$ 11,500	\$ 4,030

Daystar contends that the property is overvalued and asserts the following combined values as the correct true and taxable values for the subject property:

Parcel No.	True Value	Taxable Value
183-0002-0409	\$ 700,000	\$ 245,000
183-0002-0534	\$ 100,000	\$ 35,000
183-0002-0411	\$ 20,000	\$ 7,000
183-0002-0412	\$ 20,000	\$ 7,000
183-0002-0413	\$ 20,000	\$ 7,000
183-0002-0414	\$ 10,000	\$ 3,500
183-0002-0415	\$ 10,000	\$ 3,500
183-0002-0419	\$ 10,000	\$ 3,500

The subject property consists of two medical office buildings and a supporting parking lot. It is known as the Western Hills Professional Center.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript certified by the Hamilton County Auditor as secretary of the BOR. The board was informed that the parties did not require a hearing on this matter. The county appellees and BOE filed legal briefs pursuant to dates assigned by this board, whereas Daystar did not file a brief.

As the parties have provided no further evidence, we consider the matter under the standard set forth in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. The Ohio Supreme Court held in that case that a common pleas court reviewing the action of a board of revision was not required to hold a de novo hearing, but was required to make a thorough and comprehensive review of the evidence before it and make an independent determination as to value. The court later held this board to the same standard in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the 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 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 an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

In an attempt to meet its burden, Daystar presented the testimony of Mr. William McVeigh and Ms. Karen Congdon, Senior Vice President of Property Management at Grubb and Ellis West Shell Commercial, before the BOR. Mr. McVeigh provided the BOR with a two-page report utilizing a "Direct Capitalization Analysis." This report rendered a value of \$1,020,000 for the subject property. In reviewing Mr. McVeigh's report and testimony before the BOR, we conclude that there is no basis upon which to give any weight to his opinion of value. There is almost no foundation laid as to his methodology, comparables, basis of information, opinion of market forces, or for many of his statements to the BOR. We also note that Mr. McVeigh's appraisal included parcels not identified on the complaint, adding to the confusion. S.T. at 2-12. Even if his methodology had been approved, this board has generally not accepted the type of testimony presented before the BOR. Mr. McVeigh did not provide the BOR with credentials which would have allowed that board to determine whether his opinion was worthy of consideration. While Mr. McVeigh described himself as an appraiser for the owner, he did not sufficiently describe his education, licenses, or other professional qualifications which may have

given his opinion some credibility. See *Monarch Properties, L.P. v. Medina Cty. Bd. of Revision* (Oct. 3, 2003), BTA No. 2003-M-1392, unreported; *Society Natl. Bank v. Franklin Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-1418, unreported; *Bowman v. Hamilton Cty. Bd. of Revision* (May 20, 1994), BTA No. 1992-T-1366, unreported.

As to the substance of his testimony, Mr. McVeigh gave no independent market support for any of his conclusions regarding rental rates, expenses, reserves, capitalization rates, etc. Without some market evidence, the opinion of value expressed before the BOR is based upon nothing more than unsubstantiated theory.

Ms. Congdon's limited testimony in support of Mr. McVeigh's estimates of value was of no help in overcoming the deficiencies of Mr. McVeigh's presentation.

Therefore, the board must find that Daystar failed to carry its burden of persuading this board that the value of the subject property is other than that assessed by the auditor and affirmed by the BOR. Considering the record before us, the Board of Tax Appeals concludes, based upon a preponderance of competent and probative evidence, that the value of the subject property as of January 1, 2002 was:

Parcel No. 183-0002-0409

	True Value	Taxable Value
Land	\$ 264,100	\$ 94,440
Building	\$ 1,018,700	\$ 365,540
Total	\$ 1,282,800	\$ 448,980

Parcel No. 183-0002-0534

	True Value	Taxable Value
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	True Value	Taxable Value
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It is the order of the Board of Tax Appeals that the Auditor of Hamilton County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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