

## OHIO BOARD OF TAX APPEALS

Richard G. and Sandra L. Brown,	)	CASE NO. 2003-B-999
	)	
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 Jefferson Township taxing district and is identified on the auditor’s records as parcel G29-182-22-10.

The value determined by the Montgomery County Auditor was as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,450	\$ 2,260
Building	\$ 4,460	\$ 1,560
Total	\$ 10,910	\$ 3,820

The value determined by the BOR was as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,450	\$ 2,260
Building	\$ 200	\$ 70
Total	\$ 6,650	\$ 2,330

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. 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 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 an old abandoned house located at 5468 West Third Street, Jefferson Township, Ohio. By final order of the board of health the subject property was declared a public nuisance and decreed to be subject to abatement or removal. This order was dated October 19, 2001.

At the BOR hearing, Mr. Brown testified that the property line of the neighboring property crosses 6-10 feet into his building. Therefore, although he concedes that the subject property is worth more with the building on it than if it was removed, he cannot afford to repair the structure until the property line issue is resolved.

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.

There is no valuation evidence before us which would allow us to find a reduction below that of the \$200 total valuation the BOR placed on the subject building.

We are not privy to repair and renovation costs, demolition costs, details of the property's condition or valuation estimates of a renovated building versus costs to rehabilitate. Nor do we have any information on the land value which might allow for a reduction.

It is this board's statutory duty to find taxable value herein. R.C. 5717.03. As such, we must determine the market value of the subject property based on the record below. Based upon the foregoing, we find that appellants have failed to offer sufficient probative evidence of value that would support the decrease they seek. Further, we find that the BOR had the requisite competent and probative evidence before it necessary to arrive at its determination of value.

Accordingly, we find and determine that the true and taxable values of the subject real property for tax year 2002 are:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 6,450	\$ 2,260
Building	\$ 200	\$ 70
Total	\$ 6,650	\$ 2,330

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

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