

OHIO BOARD OF TAX APPEALS

David Eby,)	CASE NOS. 2004-J-151; 2004-J-152
)	2004-J-153; 2004-J-154
Appellant,)	2004-J-155
)	
vs.)	(REAL PROPERTY TAX)
)	
Montgomery County Board of Revision,)	DECISION AND ORDER
and Montgomery County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- David Eby, pro se 7894 Chambersburg Road Huber Heights, Ohio 45424
	Eby Rentals, Inc. Eby Investments, Inc. P.O. Box 24172 Dayton, Ohio 45424

For the Appellee	- Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney 301 West Third Street 5 th Floor P.O. Box 972 Dayton, Ohio 45402
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Entered March 4, 2005

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

The Board of Tax Appeals is considering this matter pursuant to five notices of appeal filed by David Eby (“appellant”).¹ Appellant has appealed from decisions of the Montgomery County Board of Revision (“BOR”) that determined the value of the subject real property for tax year 2002. Four of the properties are

¹ The board notes that the four rental properties are titled in the name of corporations, i.e., Eby Rentals Inc., or Eby Investments, Inc. However, since counsel filed the complaints, an unauthorized filing issue has not been presented.

rental units located in the city of Dayton. The fifth property is appellant's residence located in the city of Huber Heights.

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

Parcel R72-115-8-12 (BTA No. 2004-J-151)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 11,810	\$ 4,130
Building	\$ 68,160	\$ 23,860
Total	\$ 79,970	\$ 27,990

Parcel R72-71-10-1 (BTA No. 2004-J-152)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 9,900	\$ 3,470
Building	\$ 54,100	\$ 18,940
Total	\$ 64,000	\$ 22,410

Parcel P70-39-4-15 (BTA No. 2004-J-153)

	TRUE VALUE	TAXABLE VALUE
Land	\$168,480	\$ 58,970
Building	\$423,010	\$148,050
Total	\$591,490	\$207,020

Parcel R72-70-6-53 (BTA No. 2004-J-154)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,800	\$ 3,780
Building	\$ 48,190	\$ 16,870
Total	\$ 58,990	\$ 20,650

Parcel R72-115-9-24 (BTA No. 2004-J-155)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,500	\$ 3,680
Building	\$ 54,410	\$ 19,040
Total	\$ 64,910	\$ 22,720

The value determined by the BOR is as follows:

Parcel R72-115-8-12 (BTA No. 2004-J-151)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 11,810	\$ 4,130
Building	\$ 46,300	\$ 16,200
Total	\$ 58,110	\$ 20,330

Parcel R72-71-10-1 (BTA No. 2004-J-152)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 9,900	\$ 3,470
Building	\$ 54,100	\$ 18,940
Total	\$ 64,000	\$ 22,410

Parcel P70-39-4-15 (BTA No. 2004-J-153)

	TRUE VALUE	TAXABLE VALUE
Land	\$168,480	\$ 58,970
Building	\$423,010	\$148,050
Total	\$591,490	\$207,020

Parcel R72-70-6-53 (BTA No. 2004-J-154)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,800	\$ 3,780
Building	\$ 48,190	\$ 16,870
Total	\$ 58,990	\$ 20,650

Parcel R72-115-9-24 (BTA No. 2004-J-155)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,500	\$ 3,680
Building	\$ 54,410	\$ 19,040
Total	\$ 64,910	\$ 22,720

In the notices of appeal the appellant has alleged that the correct value is as follows:

Parcel R72-115-8-12 (BTA No. 2004-J-151)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 11,810	\$ 4,130
Building	\$ 23,626	\$ 8,270
Total	\$ 35,436	\$ 12,400

Parcel R72-71-10-1 (BTA No. 2004-J-152)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 9,900	\$ 3,470
Building	\$ 25,536	\$ 8,930
Total	\$ 35,436	\$ 12,400

Parcel P70-39-4-15 (BTA No. 2004-J-153)

	TRUE VALUE	TAXABLE VALUE
Land	\$168,480	\$ 58,970
Building	\$208,870	\$ 73,102
Total	\$377,350	\$132,072

Parcel R72-70-6-53 (BTA No. 2004-J-154)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,800	\$ 3,780
Building	\$ 24,636	\$ 8,620
Total	\$ 35,436	\$ 12,400

Parcel R72-115-9-24 (BTA No. 2004-J-155)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,500	\$ 3,680
Building	\$ 24,936	\$ 8,720
Total	\$ 35,436	\$ 12,400

The matter has been submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcripts certified herein by the BOR, and the evidence submitted by the appellant at the hearing conducted herein. The appellees informed the board prior to hearing that counsel would not attend.

We note that while a determination of value of real property by a board of revision is entitled to consideration, such determination is not presumptively valid. *Amsdell v. Bd. of Revision* (1994), 69 Ohio St.3d 572. On appeal a taxpayer may successfully challenge a determination of a board of revision only where the taxpayer produces competent and probative evidence which establishes his right to a reduction in value. *Rocco v. Cuyahoga Cty. Bd. of Revision* (1994), 71 Ohio St.3d 103; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495; *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337.

The appellant has the ultimate burden of persuasion as to the value of the property. He is obligated to bring forth sufficient competent and probative evidence to cause this board to conclude that the value assessed by the board of

revision does not accurately reflect value. With the proper standard in mind we review the evidence submitted.

Parcel R72-115-8-12 contains a two-family side-by-side located at 2071-73 Auburn Avenue, Dayton, Ohio, owned by Eby Rentals Inc. It is an old-style frame dwelling constructed in 1930. Each side has three bedrooms. In 2003 appellant received income of \$12,575 and had expenses of \$5,989, leaving net income of \$6,586 for that property.

Parcel R72-71-10-1 contains a two-family side-by-side located at 96-98 Hudson Avenue, Dayton, Ohio, owned by Eby Rentals Inc. It is an old-style frame dwelling constructed in 1907 and remodeled in 1987. Each side has three bedrooms.

Parcel R72-70-6-53 contains a two-family side-by-side constructed in 1919 at 231-233 Fountain Avenue, Dayton, Ohio. It is a frame dwelling owned by Eby Investments, Inc. Each side also has three bedrooms.

Parcel R72-115-9-24 contains a two-family side-by-side constructed in 1927 and remodeled in 1993 at 2016-2018 Ravenwood, Avenue, Dayton, Ohio. It is an old-style frame dwelling owned by Eby Investments, Inc. Each side also has three bedrooms.

Mr. Eby testified that the area in which his four rental properties are located is depressed with high vacancies and drug activity. He has had difficulty keeping tenants in the properties. He submitted income statements in an attempt to show that the income does not support the county's value. However, the board is unable to compute the properties' value with this data. Mr. Eby has not

submitted evidence of an appropriate capitalization rate. He has not submitted evidence demonstrating whether the income and expense figures are representative of the market.

The appellant also submitted real estate listings for neighboring properties. However, the board finds that the listings are not helpful in establishing the value of the subject properties. The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual recent arm's-length sale. *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. A real estate listing is not a completed sale, but merely an offer. An offer is a preliminary step in the process of negotiating a possible sale and may not represent the final sale price. The listings are therefore not persuasive in determining a value for the subject property.

The tax valuations of the neighboring properties also are not helpful in determining the value of the subject property. "Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value." *Haydu*, supra, at 8; see also, *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No. 1992-B-879, unreported; *Benit v. Delaware Cty. Bd. of Revision* (Mar. 28, 1994), BTA No. 1993-B-722, unreported. Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner. *WJJK Investments Inc. v.*

Licking Cty. Bd. of Revision (1996), 76 Ohio St.3d 29. From appellant's evidence alone the board cannot conclude that the auditor has inaccurately valued the neighboring properties or the subject properties.

Appellant's residence sits on parcel P70-39-4-15. It is a two-story contemporary style brick structure constructed in 1997 on 10.848 acres. It contains eight total rooms with four full baths and two half baths. It has a full basement, gas heating, and central air conditioning. Appellant submitted the actual building costs of the house to demonstrate that his home is overvalued. However, the 1997 building costs are not helpful in determining value as of January 1, 2002. Appellant has not submitted any evidence showing whether the 1997 costs are equally applicable to the tax lien date.

The appellant also testified that he refinanced his home in October 2002. At that time the appraised value was \$468,000. However, the appraisal has not been submitted into evidence. In addition, the appraisal does not value the property as of the tax lien date. In *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, the Supreme Court addressed the importance of valuing a property as of the tax lien date:

“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, * * *.’²

Although the individual who prepared the appraisal may be qualified to render an opinion of value, we cannot rely upon his conclusion since it does not express an opinion as of tax lien date. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, supra; *Bd. of Ed. of the Westerville City School Dist. v. Franklin Cty. Bd. of Revision* (Feb. 7, 2003), BTA No. 2002-M-1740, unreported.

The BOR considered appellant’s evidence and granted a reduction on parcel R72-115-8-12 (BTA No. 2004-J-151). However, the evidence does not support the reduction. No explanation has been provided as to why only parcel R72-115-8-12 qualifies for a reduction. Appellant has not submitted any evidence specific to that parcel alone.

The board finds that the record supports the value determined by the auditor. It contains the property record card, which lists the cost data relied upon by the auditor in finding value. Although there is no presumption of validity in an appeal from a BOR decision, the burden is on the appellant to come forward with evidence to prove the true value of the property. *Crow v. Cuyahoga County Board of Revision* (1990), 50 Ohio St.3d 55. The appellant has failed to submit probative evidence refuting the auditor’s determination.

² In *Olmsted Falls Village Assn.*, the court specifically 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.’ *** 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.

Therefore, the Board of Tax Appeals finds and determines that the

value of the subject property as of January 1, 2002 is as follows:

Parcel R72-115-8-12 (BTA No. 2004-J-151)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 11,810	\$ 4,130
Building	\$ 68,160	\$ 23,860
Total	\$ 79,970	\$ 27,990

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	TRUE VALUE	TAXABLE VALUE
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	TRUE VALUE	TAXABLE VALUE
Land	\$ 10,500	\$ 3,680
Building	\$ 54,410	\$ 19,040
Total	\$ 64,910	\$ 22,720

The Auditor of Montgomery County is ordered to cause his records to reflect the values determined for the subject real property and to assess the same in accordance therewith as provided by law.

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