

OHIO BOARD OF TAX APPEALS

Board of Education of the Rocky River)
Schools,)
)
Appellant,)
)
vs.)
)
Cuyahoga County Board of Revision,)
the Cuyahoga County Auditor, and)
Kensington Club Limited Partnership,)
)
Appellees.)

CASE NO. 2005-M-178
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Armstrong, Mitchell, Damiani & Zaccagnini
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For the County Appellees - William D. Mason
Cuyahoga County Prosecuting Attorney
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For the Appellee Property Owner - Tucker Ellis & West
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Entered August 12, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant under date of February 11, 2005

from a decision, dated January 12, 2005, of the Cuyahoga County Board of Revision ("BOR"), appellee.

On March 18, 2005, this board issued an order seeking input from the parties regarding a potential jurisdictional issue. Counsel for both the property owner, Kensington Club Limited Partnership ("Kensington"), and the Board of Education of the Rocky River Schools ("BOE"), have responded to the board with letters indicating their doubt that the BOR acted properly in issuing the January 12, 2005 decision letter.

The record reflects that in January 2004, Kensington, through its counsel, challenged the valuation of the subject property for tax year 2003 by filing a complaint with the BOR. The BOE filed a countercomplaint. The matter came on for hearing before the BOR on November 1, 2004. At that hearing, counsel for Kensington explained that a valuation challenge regarding the value assessed by the auditor in the immediately preceding triennial (tax year 2000) had been made and only recently concluded by stipulation before the Board of Tax Appeals. As a result of a stipulation entered November 21, 2003, the value of the subject property for tax year 2000 had been adjusted to reflect a value of \$2,425,000.

The complaint under consideration by the BOR challenged the value of the subject property for tax year 2003.¹ After a review of current lease information,

¹ As a complaint for tax year 2003 had been filed, we need not consider carryforward issues recently considered by the Supreme Court in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* 105 Ohio St.3d 404, 2005-Ohio-2285.

the BOE agreed that the correct value for the subject property was not the \$2,649,500 assessed by the Cuyahoga County Auditor, but \$2,525,000. The parties' stipulation entered with the BOR reflected that the \$2,525,000 value represented a 4.1 per cent increase over the 2000 value, which was greater than the average increase of Cuyahoga County property, 3.3 per cent over 2000 value. (S.T., stipulation filed October 26, 2004).

On December 8, 2004, the BOR issued a decision letter reducing the value assigned by the auditor for 2003 to \$2,525,000, and indicating that the value represented a \$124,500 reduction in the market value of the subject property.

On January 12, 2005, the BOR issued a second determination letter.

That letter provides:

"As a result of further investigation by the Board of Revision, it was determined that the original market value assigned by the auditor for 2003 was \$2,424,000. Based on this information, the Board of Revision has vacated their previous decision issued on December 8, 2004.

"Therefore, the Board has rendered a new decision of no reduction or increase granted on the above parcel for tax year 2003."

There is no further explanation for the issuance of the second letter in the record or upon the tape of the hearing held before the BOR. It does appear that the auditor's records had been adjusted for tax years 2000, 2001 and 2002 and, through that adjustment, the total valuation had been transposed from the \$2,452,000 figure used in 2000 to \$2,425,000 used in 2001 and 2002. (Compare S.T. Ex. E, p. 3,

values listed for 2000, 2001 and 2002. The total value changes but the assessed values for land and building do not.) The agreed-upon value for the 2000 triennial is \$2,425,000 and the auditor may have been just attempting to correct his records in 2001 and 2002 by reducing the total value from \$2,452,000 to \$2,425,000.

For 2003, the auditor's records originally indicate an assessed value of \$2,649,500. However, the record reflects a "110-Miscellaneous" adjustment of the \$2,649,500 value to \$2,424,000. There is no explanation of the "110-Miscellaneous" adjustment. Even the correction of the transposition from tax year 2000 for tax years 2001 and 2002 does not explain why the auditor would lower the value for 2003 to \$2,424,000 when the value eventually stipulated to for 2000 was \$2,425,000 and the parties agreed to a value for 2003 of \$2,525,000.

The ability of the auditor to change value is not in issue. However, the BOR is not without some limitations on its ability to reconsider a valuation finding. In *Cincinnati School District Bd. of Edn. v. Hamilton County Bd. of Revision* (2000), 87 Ohio St. 3d 363, the Supreme Court concluded that a board of revision's authority to reconsider its own decision lasts until the expiration of the time for appeal. See, also, *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co., Lincoln-Mercury Div.* (1986), 28 Ohio St. 3d 20. Pursuant to R.C. 5717.01, that time period is thirty days.

As the BOR's second determination letter was issued more than 30 days after the first determination letter issued, it had no authority to modify its earlier determination. As the BOR speaks through its determination letters, the Board of Tax

Appeals finds that the BOR's decision letter of December 8, 2004 fixed the value of the subject property for tax year 2003. Therefore, the BOR erred in making a second determination on January 12, 2005. The January 12, 2005 finding must be vacated. This action should reinstate the values determined in the BOR's December 8, 2004 determination letter.

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