

**OHIO BOARD OF TAX APPEALS**

Kenneth A. Cannata,	)	
	)	CASE NO. 2005-V-265
Appellant,	)	
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Cuyahoga County Board of Revision and the	)	
Cuyahoga County Auditor,	)	DECISION AND ORDER
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- Kenneth A. Cannata, pro se 2529 Euclid Heights Blvd. Cleveland Heights, OH 44106
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, OH 44113

Entered September 30, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Kenneth A. Cannata from a decision of the Cuyahoga County Board of Revision (“BOR”). Upon consideration of a complaint filed before the BOR by Mr. Cannata, the BOR left the values originally assigned by the Cuyahoga County Auditor (“auditor”) unchanged for 2003.<sup>1</sup>

The values for the subject are as follows:

\_\_\_\_\_

<sup>1</sup> Mr. Cannata failed to appear at either of the two hearings scheduled before the BOR. Statutory Transcript (“S.T.”) Ex. E.

	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 45,500	\$15,900
BUILDING	<u>\$102,200</u>	<u>\$35,800</u>
TOTAL	\$147,700	\$51,700

The subject real property is improved with a three-unit apartment building constructed in 1927.<sup>2</sup> S.T., Ex. D. The subject property is located in the Cleveland taxing district, Cuyahoga County, Ohio, and appears on the auditor's records as permanent parcel number 685-25-041.

Mr. Cannata seeks to have the total true value of the subject property reduced to \$135,000, the price he paid for the property in 1994. S.T., Ex. D.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the evidence provided at this board's hearing ("H.R.").

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts

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<sup>2</sup> In his presentation before this board, Mr. Cannata alludes to the existence of "store fronts" in addition to the three apartment units. H.R., audio tape. However, the property record information in the statutory transcript indicates that there is a first floor office, a first floor apartment, and a second floor apartment. S.T., Ex. D. The record before us is unclear as to the unit mix of apartments and retail/office space on the subject property.

appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 1997-Ohio-212. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule *according to value* \*\*\*.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “true value”:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, *the true value* of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon \*\*\*.” (Emphasis added.)

*In State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175

Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in *In Re Estate of Sears* [(1961)], 172 Ohio St. 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” *Id.* at 412.

See, also, *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. Where parties rely upon appraisers’ opinions of value, this board may accept all, part, or none of those appraisers’ opinions. *American Steel & Wire Co. v. Bd. of Revision* (1942), 139 Ohio St. 388; *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 62 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 85 Ohio St.3d 609, 1999-Ohio-323.

At hearing before this board, Mr. Cannata presented his testimony concerning the economic challenges he has faced concerning the profitability of the subject property. In support of his position, Mr. Cannata provided this board with a

history of the subject's actual income and expenses from 1999 through 2003. H.R., audio tape, Ex. 1.

Additionally, Mr. Cannata provided information concerning sales of comparable properties. Ex. 2. Mr. Cannata testified that there is "no building like this (the subject) in my neighborhood." H.R., audio tape. Mr. Cannata obtained information about two sales that occurred in 2000 and calculated an average selling price of \$102,500. Mr. Cannata also obtained data with respect to five other comparable sales that occurred between 2001 and 2003, and found the average selling price to be \$94,133. Mr. Cannata offered these comparables as evidence that the values are declining in his neighborhood. H.R., audio tape.

Mr. Cannata, as the owner of the property, is competent to present testimony, including his opinion of the value of the property. *Smith v. Padgett* (1991), 32 Ohio St.3d 344. That testimony is subject to this board's determination of the appropriate weight to be accorded it. *Id.*, at 348. Assuming that there is an inherent bias in any owner's opinion of the value of property, we must determine whether the value claimed is supported by competent, reliable and probative evidence.

Mr. Cannata's presentation of the subject's actual income and expense data fails to demonstrate the reduction he seeks. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, the Ohio Supreme Court held: "an appraiser *may* employ actual income as reduced by actual expenses if both amounts conform to the market." (Emphasis added.) See, also, *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 595 ("While the BTA

could have selected the actual income presented in the income statements, Northern View did not present anyone to testify about these amounts, nor did it present an appraiser to testify about market rents.”) We are unable to determine whether the actual data supplied by Mr. Cannata represents market rents or market expenses.

With regard to his comparable sales, Mr. Cannata has failed to provide sufficient probative or credible evidence to demonstrate that any of the sales are comparable to the subject. Mr. Cannata testified that even though the subject contains a mix of retail and residential space, the comparables are all residential properties. H.R., audio tape. There is no evidence before us (i.e., age, quality of construction, amenities, occupancy, rental rates) to provide any meaningful comparison to the subject.

The evidence provided by Mr. Cannata does not constitute probative credible evidence of value. See *Western Industries*, supra.

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 upon the foregoing, we find that appellant has failed to demonstrate any right to a reduction.

Accordingly, we find and determine that the true and taxable values of the subject real property for tax year 2003 are:

	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 45,500	\$15,900
BUILDING	<u>\$102,200</u>	<u>\$35,800</u>
TOTAL	\$147,700	\$51,700

It is the decision and order of the Board of Tax Appeals that the Cuyahoga County Auditor shall list and assess the subject property in conformity with this decision and carry the same values forward in accordance with applicable law.

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