

ORIGINAL

SUPREME COURT OF OHIO

Board of Education for Toledo Public Schools, )  
 )  
 )  
 Appellee )  
 )  
 vs. )  
 )  
 Lucas County Board of Revision and Lucas County Auditor )  
 )  
 Appellees )  
 and )  
 River View Yacht Club, Inc. and Dale Osten )  
 )  
 Appellants )

10-0692

Supreme Court Case No. \_\_\_\_\_

Appeal from Ohio Board of Tax Appeals Case No. 2007-A-1077

**NOTICE OF APPEAL**

Joseph M. D'Arcangelo, Esq.  
 Supreme Court #0027155  
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 Fax: (419) 473-0218  
 Attorney for Appellants

Now come Appellants River View Yacht Club, Inc. and Dale Osten, by and through counsel, pursuant to Ohio Supreme Court Practice Rule 2.3, and provide their Notice of Appeal from the Board of Tax Appeals Decision and Order entered March 23, 2010 under the above-captioned case number. A copy of said Decision and Order is attached hereto, marked as "Exhibit A" and incorporated herein by reference.

Pursuant to Supreme Court Practice Rule 2.3(A) Appellants set forth the following claimed errors:

1. Appellants' expert witness testimony at the Board of Revision was probative and credible as to market value, justifying a reduction in value for the tax year of 2006.

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FILED  
 APR 21 2010  
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2. Appellants state that the Board of Revision's evaluation was probative and credible as to market value justifying a reduction in value for the tax year of 2006.

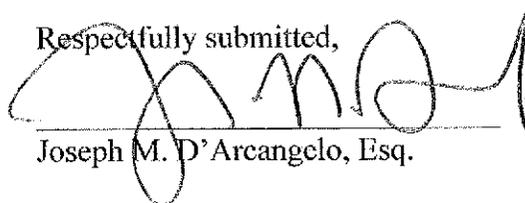
3. Appellants state that Appellee Board of Education for Toledo Public Schools did not submit any expert testimony challenging the values submitted by both Appellants and the Board of Revision. Therefore, the only evidence of value before the Board of Tax Appeals justified a reduction in value as submitted by Appellants.

4. Appellants state that the March 23, 2010 Decision and Order determined the value of the subject parcels as of January 1, 2005. No complaint was filed regarding tax year 2005 and therefore the Board of Tax Appeals did not have jurisdiction to issue its Order for tax year 2005.

5. Appellants state that their original Complaint Against the Valuation of Real Property was filed March 30, 2007 for tax year 2006. The hearing before the Board of Tax Appeals was scheduled for January 5, 2009. The Board of Tax Appeals Decision was not entered for almost 15 months prejudicing Appellants' ability to file Complaints against tax value for calendar years 2008 and 2009. From a practical standpoint, the administrative delay further prejudiced Appellants' ability to challenge the tax value for year 2007. Appellants argue that this administrative delay should not disturb the Board of Revisions' valuation for tax years 2007, 2008, or 2009.

6. Appellants respectfully reserve the right to supplement their list of claimed errors as part of their Merit Brief.

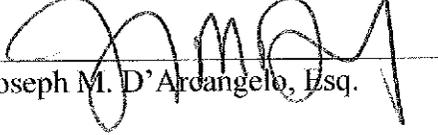
Respectfully submitted,



Joseph M. D'Arcangelo, Esq.

## CERTIFICATION

This is to certify that a copy of the foregoing pleading was sent by certified mail this 20 day of April, 2010 to: Michael W. Bragg, Esq., attorney for Appellee Board of Education for Toledo Public Schools, Four SeaGate, Ste. 400, Toledo, OH 43604; and Carol Bruggeman, Esq., Assistant Prosecuting Attorney, attorney for Appellees Lucas County Board of Revision and Lucas County, Auditor, One Government Center, Ste. 500, Toledo, OH 43604.

  
Joseph M. D'Arcangelo, Esq.

**OHIO BOARD OF TAX APPEALS**

Board of Education for Toledo Public Schools,	)	
	)	
	)	CASE NO. 2007-A-1077
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
Lucas County Board of Revision, Lucas County Auditor, and Dale Osten,	)	
	)	
Appellees.	)	

APPEARANCES:

- For the Appellant - Spengler Nathanson  
Michael W. Bragg  
Four Seagate, Suite 400  
Toledo, Ohio 43604-2622
  
- For the County Appellees - Julia R. Bates  
Lucas County Prosecuting Attorney  
Carol Bruggeman  
Assistant Prosecuting Attorney  
One Government Center, Suite 500  
Toledo, Ohio 43604
  
- For the Appellee Property Owner - Kroncke, D'Arcangelo, Sutter & Furey  
Joseph M. D'Arcangelo  
Aquarius West Building  
2255 West Laskey Road  
P.O. Box 5760  
Toledo, Ohio 43613-5760

Entered  
**MAR 23 2010**

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a

decision of the Lucas County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2006.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the county board of revision. All parties hereto waived their right to appear at a hearing before this board and also chose not to file a brief in support of their respective positions.

The subject real property, a private, non-profit boating club, with associated parking and yard storage, is located in the Toledo City School District taxing district, Lucas County, Ohio, and appears on the auditor's records as parcel numbers 03-02583 and 18-55850. The value of the subject parcels, as determined by the auditor and by the board of revision, is as follows:

PARCEL # 03-02583

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 92,300	\$ 32,310
Bldg	19,300	6,750
Total	\$ 111,600	\$ 39,060

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 66,200	\$ 23,170
Bldg	19,300	6,750
Total	\$ 85,500	\$ 29,920

PARCEL # 18-55850

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 440,300	\$ 154,100
Bldg	30,600	10,710
Total	\$ 470,900	\$ 164,810

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 286,500	\$ 100,270
Bldg	30,600	10,710
Total	\$ 317,100	\$ 110,980

In the notice of appeal to this board, appellant contends that the board of revision has undervalued the subject property and seeks a valuation for the subject of \$582,540, i.e., the auditor's valuation.

Since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. We note that in March 2007, a complaint against the valuation of real property was filed with the Lucas County Board of Revision by a member of the property owner seeking a decrease in the subject's total true value to \$402,583. The complaint indicated that a decrease in valuation was justified because "[b]oth parcels are for parking and storage. NO improvements to either parcel have occur [sic] last valuation period. The current valuation is in excess of 38% and 30% increase from prior valuation." S.T. A counter-complaint was filed by the board of education.

The board of revision held a hearing at which Mr. John O'Leary, a real estate broker/court probate appraiser and member of the property owner appeared on behalf of the complainant and counsel appeared on behalf of the BOE. Mr. O'Leary described the subject property and indicated that the complainant was not contesting the value assigned to the yacht club building itself. S.T., Transcript at 1. However, he testified that the complainant questioned the valuation attributable to "the lots, because there hasn't been anything done to them \*\*\* [other] than general maintenance we black top and we keep them clean." S.T., Transcript at 1. He went on to state that "[r]eally the only value to them would be [to] our Yacht Club. I mean nobody wants to buy them they are not going to be sold." S.T., Transcript at 2. Thereafter, the BOR issued its decision, reducing the total value of the subject for tax year 2006 to \$402,600, virtually the amount sought by the complainant. Appellant BOE then appealed the BOR's determination to us.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court 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 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.

We acknowledge that while Mr. O’Leary may have been competent to testify about the subject property and offer an opinion as to the value of the subject property, the testimony he offered must also be probative and credible as to market value. It is not clear from the record what Mr. O’Leary’s background or training in the appraisal of real property is. Further, regardless of Mr. O’Leary’s credentials, we note that he never actually offered an opinion of value regarding the subject, other than to apparently endorse the value proposed by the complainant. No valuation analysis, e.g., a written or oral appraisal by a real estate appraiser, specific to the subject property, was offered. Thus, without more, we find that the property owner did not offer sufficient, probative evidence of the subject’s value for the tax year in question that would justify reducing its value.

Having found no evidentiary support for the valuation sought by the complainant, we must also consider the BOR’s valuation. Our analysis of the BOR’s determination routinely has begun with the Supreme Court’s holding in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1988), 81 Ohio St.3d 47, 49 that “[w]here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision’s valuation, without the board of revision’s presenting any evidence.” However, the foregoing holding in *Simmons*, supra, appeared to have been tempered in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 567, where the court held “[w]hen the BTA reviews the evidence in a case in which the statutory transcript is the only

evidence, the BTA must review the transcript and ‘make its own independent judgment based on its weighing of the evidence contained in the transcript.’ *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 \*\*\*. When the BTA reviewed the transcript in this case, it found that ‘there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.’ By affirming the BOR’s valuation, the BTA affirmed a valuation that was not supported by any evidence.” Under the latter pronouncement, we would find little evidentiary support for the BOR’s value herein.

Now, recently, in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-5237, the Supreme Court concluded that “the BTA erred in reinstating the auditor’s determination of value when the taxpayer had presented sufficient evidence to the BOR to justify the reduction the BOR ordered.” The court relied on its holding in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, where it held “when the evidence presented to the board of revision or the BTA contradicts the auditor’s determination in whole or in part, and when no evidence has been adduced to support the auditor’s valuation, the BTA may not simply revert to the auditor’s determination.” *Id.* at ¶27. Even though this board did not find a stated explanation for the BOR’s adjustment, the court criticized the board for reinstating the auditor’s determination as the default value. *Bedford Bd. of Edn.*, *supra*.

Thus, the question for us becomes what constitutes “sufficient” evidence to justify a reduction in valuation. In the instant record, there is absolutely no

evidence to support the valuation adopted by the BOR, which was essentially the complainant's suggested valuation. When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. See, also, *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Absent a recent sale, as in the instant case, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value. None of these approaches was utilized by the complainant as support for its suggested valuation, nor were they apparently utilized by the BOR in its derivation of value. Therefore, we are constrained to adopt the value which the auditor previously determined for the subject parcels, as of January 1, 2005, as follows:

PARCEL # 03-02583

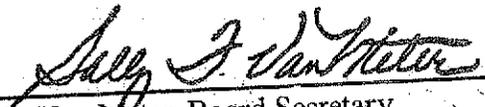
	TRUE VALUE	TAXABLE VALUE
Land	\$ 92,300	\$ 32,310
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PARCEL # 18-55850

	TRUE VALUE	TAXABLE VALUE
Land	\$ 440,300	\$ 154,100
Bldg	30,600	10,710
Total	\$ 470,900	\$ 164,810

The Auditor of Lucas County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary