

IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

WEC 98H 1100 LLC/REVCO DISCOUNT DRUG CENTER, INC./WEC 98H-2 LLC,	)	SUPREME COURT CASE
	)	NUMBER: _____
)	
Appellant,)	
)	
v.)	
)	
CUYAHOGA COUNTY BOARD OF REVISION, CUYAHOGA COUNTY FISCAL OFFICER, AND TAX COMMISSIONER OF THE STATE OF OHIO,	)	BOARD OF TAX APPEALS
	)	CASE NO. 2013-1563
)	
Appellees,)	
)	
and)	
)	
WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT BOARD OF EDUCATION,)	
)	
Appellee.)	

NOTICE OF APPEAL

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SCHOOL DISTRICT BOARD OF
EDUCATION

IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

WEC 98H 1100 LLC/REVCO DISCOUNT	)	SUPREME COURT CASE
DRUG CENTER, INC./WEC 98H-2 LLC,	)	NUMBER: _____
)	
Appellant,)	
)	
v.)	
)	
CUYAHOGA COUNTY BOARD OF	)	BOARD OF TAX APPEALS
REVISION, CUYAHOGA COUNTY	)	CASE NO. 2013-1563
FISCAL OFFICER, AND TAX)	
COMMISSIONER OF THE STATE)	
OF OHIO,)	
)	
Appellees,)	
)	
and	)	<u>NOTICE OF APPEAL TO THE</u>
	)	<u>SUPREME COURT OF OHIO</u>
	)	<u>PURSUANT TO SECTION</u>
WARRENSVILLE HEIGHTS CITY SCHOOL	)	<u>5717.04 REVISED CODE</u>
DISTRICT BOARD OF EDUCATION,)	
)	
Appellee.)	

The Appellant, WEC 98H 1100 LLC/Revco Discount Drug Center, Inc./WEC 98H-2 LLC, by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 20th day of March, 2015, a copy of which is attached hereto as "Exhibit A" and which is

incorporated herein as though fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B" which is incorporated herein by reference.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA



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INC./WEC 98H-2 LLC

OHIO BOARD OF TAX APPEALS

WEC 98H 1100LLC/REVCO DISCOUNT DRUG
CENTER, INC./WEC 98H-2 LLC, (et. al.),

CASE NO(S). 2013-1563

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- WEC 98H 1100LLC/REVCO DISCOUNT DRUG CENTER, INC./WEC
98H-2 LLC
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For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
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WARRENSVILLE HTS CITY SCHOOL DISTRICT BOARD OF
EDUCATION

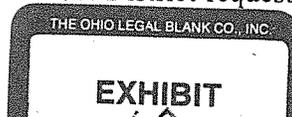
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Entered Friday, March 20, 2015

Mr. Williamson and Mr. Harbarger concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 761-22-023, for tax year 2011. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject's total true value was initially assessed at \$1,683,800. A decrease complaint was filed with the BOR seeking a reduction in value to \$750,000. A counter complaint was filed on behalf of the Board of Education of the Warrensville Heights City School District requesting that the initially assessed valuation



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be maintained. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, “[t]he 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. *** However, such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, Justice Pfeifer’s concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930. The court has also held that “[w]hile an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property.” *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 32. Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405; *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraph two of the syllabus.

In this instance, there exists no evidence the subject property “recently” transferred through a qualifying sale, nor does the record contain an appraisal report upon which this board may rely. Here, counsel appeared on behalf of the property owner before the BOR and submitted an owner’s opinion of value which calculated value utilizing an income and sales-comparison approach. Notably, no sworn testimony of any witness was provided in support of the owner’s opinion of value either before the BOR, or before this board. In fact, there were only the statements of counsel. However, it is well established that statements of counsel are not evidence. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299. See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, at ¶13, (discussing adverse consequences which may result from a party’s failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel).

On appeal, counsel submitted an appraisal report on behalf of the property owner, which report found value for the subject property as of January 1, 2011 and January 1, 2012. Notably, however, the author of the appraisal report did not appear before this board; indeed, appellant waived the opportunity to appear at a hearing before this board. Consequently, the report’s author was unavailable to authenticate the report, provide professional credentials, methodologies utilized, or be cross-examined/questioned by this board’s attorney examiner. This board relies on the fundamental proposition that “[a]n expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.” *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 30. “We have repeatedly acknowledged that the appraisal of real property is not an exact science. Instead, it is but an opinion, the reliability of which depends upon basic competence, skill, and ability demonstrated by the appraiser.” *Brown v. Hamilton Cty. Bd. of Revision* (February 1, 2008), BTA No. 2006-K-764, unreported, at 9. As a result of the foregoing, we are unable to rely upon the appraiser’s conclusions of value for the subject property.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 (“Where 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.”).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2011, were as follows:

PARCEL NUMBER
761-22-023
TRUE VALUE
\$1,683,800
TAXABLE VALUE
\$589,330

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order is unreasonable and unlawful because it does not recognize the settlement of the parties.

ASSIGNMENT OF ERROR NO. 2

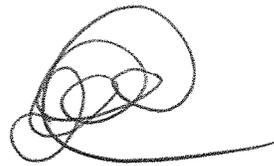
The Board of Tax Appeals order denying the parties the opportunity to settle the issues in the appeal is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals order is an abuse of discretion. The Board of Tax Appeals rules do not place any time limit on settlements in appeals.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via certified United States mail, postage prepaid, to Sandra Curtis-Patrick, Assistant County Prosecutor, Courts Tower - 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, Attorney for Appellees, Cuyahoga County Board of Revision and County Fiscal Officer; Thomas A. Kondzer, Esq., Kolick & Kondzer, 24650 Center Ridge Road, #110, Westlake, OH 44145-5697, Attorney for Appellee Warrensville Heights City School District Board of Education; and Mike DeWine, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, OH 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 16th day of April, 2015.



Todd W. Sleggs