

Pursuant to S.Ct.Prac.R. 17.09(B), Appellant Board of Education of the Columbus City

School District presents the following authority decided after oral argument:

1. *Board of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2013-521, on remand from *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 14AP-729, 2015-Ohio-1780.

Respectfully Submitted,

/s/ Mark H. Gillis

Mark Gillis (0066908)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
PH: (614) 228-5822
FAX: (614) 540-7476

Attorneys for Appellant
Board of Education of the Columbus City
School District

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Presentation of Additional Authority was served on the following via email transmission this 27th day of August, 2015:

Mary Jane McFadden, McFadden
Winner, Savage & Segerman
175 South Third Street, Suite 350
Columbus, Ohio, 43215
m_mcfadden@earthlink.net

William J. Stehle
Assistant County Prosecutor
373 South High Street, 20th Floor
Columbus, Ohio, 43215
wstehle@franklincountyohio.gov

Mike DeWine
Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio, 43215
Christine.Mesirow@OhioAttorneyGeneral.gov

/s/ Mark H. Gillis
Mark Gillis (0066908)
Attorney for Appellant

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE
SOUTH-WESTERN CITY SCHOOLS, (et. al.),

CASE NO(S). 2013-521

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s) - BOARD OF EDUCATION OF THE SOUTH-WESTERN CITY SCHOOLS
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BANK STREET PARTNERS
Represented by:
MICHAEL SCHAEFFER
KEMP, SCHAEFFER, ROWE & LARDIERE CO. LPA
88 WEST MOUND STREET
COLUMBUS, OH 43215-5018

Entered Thursday, August 27, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

This matter is considered by this board, on remand, after the Tenth District Court of Appeals determined that this board failed to make certain determinations relating to the evidence and testimony presented to both the board of revision and this board. Giving effect to the decision of the Court of Appeals of Ohio, Tenth District, in *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision*, Case No. 14AP-729, remanding this matter to this board for further proceedings, and acting under pertinent provisions of R.C. 5717.04, the Board of Tax Appeals gives effect to the court's decision and certifies this matter is once again before this board for a determination of the subject property's valuation for tax year 2011. This matter is considered once

again upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01 ("S.T."), and the record of this board's hearing ("H.R.").

For tax year 2011, the auditor determined that the total true value of the subject property, approximately 6.1 acres of vacant land, parcel #570-278106-00, parcel #570-278107-00, and parcel #570-278108-00, was \$661,800. The property owner ("owner") filed a decrease complaint with the board of revision ("BOR"), seeking a reduction in value to \$430,000; we note that at the BOR hearing, the value sought by the owner was listed by the BOR as \$420,000. A countercomplaint was filed by the Board of Education of the South-Western City Schools ("BOE"), seeking maintenance of the auditor's valuation. After convening a hearing, the BOR reduced the parcels' total valuation to \$420,000, resulting in the instant appeal.

At the proceedings before the BOR, the owner, a real estate broker/developer/builder for over forty years, appeared before the BOR, testifying to his extensive experience in the real estate market, including, specifically, his efforts to develop the subject property since its purchase in 2006. While he did not testify regarding a specific methodology he utilized in deriving the value sought for the subject property, he indicated that he generally reviewed other listings and sales of comparable properties in the market, a few identified, but most, unidentified; further, he related that he had no exact expectation or requirement regarding the amount of money he would require to enter into a sale, lease, or build-to-suit transaction involving the subject.

Before this board, the owner again testified, reiterating and expanding upon his prior testimony at the BOR. He discussed the circumstances relating to a sale of property located near the subject in December 2012 to the appellant BOE; the BOE objected to such testimony, claiming it constituted hearsay since he was not a party to the sale. H.R. at 15-16, 24. The BOE's objection is hereby sustained. He also testified that in April 2013, he acted as the broker in a sale of land, located about 1.9 miles from the subject, that sold for \$40,000 per acre. H.R. at 17-18. He also restated that the value he sought through his decrease complaint was based upon "[o]ther sales. Even other asking prices of what they were asking and what they sold for, ultimately." H.R. at 21. When asked, on cross examination, for the calculation he utilized in comparing his sales and listings to the subject in order to derive his final value, he testified, "I made my own comparables based on my experience, and what I've done in the past, and what properties have sold for, and what they were listed for, and so on." When pressed whether he utilized a mathematical calculation, he responded "[n]o, not really." H.R. at 26. Further, he indicated that the sale he testified about in which he was involved served as "a portion of" the value he sought, but "[i]t wasn't everything." H.R. at 30. Finally, he apportioned his overall value among the three subject parcels, acknowledging the unique physical and locational characteristics of each parcel that require differing values, but again, providing no basis as to how those values were actually derived. H.R. at 20-21.

On remand, the court has directed this board to consider the evidence and testimony presented in light of the standards enunciated in *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St. 3d 248, 2014-Ohio-3620, ¶35 and *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385.

"[W]hen the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation." *Worthington*, supra, at ¶35. The court explained that this rule "addresses circumstances in which the board of revision relies on specific and plausible evidence to reach a valuation different from that originally found by the auditor." *Id.* at ¶ 38. This reaffirms the court's holding in *Dublin City Schools Bd. of Edn. v.*

Franklin Cty. Bd. of Revision, 139 Ohio St.3d 193, 2013-Ohio-4543, ("Dublin I"), when it considered a situation in which a board of revision had reduced the value of the property in issue, leading to an appeal by the affected board of education. The court first noted that because the board of revision adopted the property owner's evidence to establish value, the "burden of going forward with evidence [shifted] to the board of education on appeal to the BTA to present 'competent and probative evidence to make its case.' *** However, the board of education did not present any evidence to support its own valuation or the auditor's valuation and instead chose to attack [the owner's expert's] valuation through cross-examination. The board of education thereby failed to sustain its burden." Id. at ¶ 16. Continuing, the court held that "when a taxpayer presents evidence contrary to the auditor's valuation and no evidence is offered to support the auditor's valuation, the BTA may not simply reinstate the auditor's determination." See, also, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

The Court of Appeals also explained in its decision that "*Vandalia-Butler* is significant in this appeal for several reasons. First, the case stands for the proposition that even though the BOR has accepted the owner's evidence of a lower value, the BTA is justified in reinstating the auditor's valuation if it finds that the owner's witness was not competent to provide an opinion of fair market value. *** Second, *** the Supreme Court in *Worthington* has cited *Vandalia-Butler* for the proposition that a board of education, in an appeal from the BOR's decision to decrease the value assessed by the auditor, may 'meet its burden of proof before the BTA by showing – through cross-examination of [the witness] *** - that the board of revision had erred when it reduced the value from the amount first determined by the auditor.' *Worthington* at ¶40. Finally, *** even though the owner presents the additional testimony of a competent expert witness in proceedings before the BTA, the BTA may reinstate the auditor's valuation if it finds that the opinion of the owner's witness does not have probative value. *Vandalia-Butler* at ¶12."

For real property taxation purposes, it is clear that an owner of property is competent to testify as to its value. While we acknowledge that an owner is entitled to provide an opinion of a property's worth, in order for such opinion to be considered probative, it must be supported with tangible evidence of the property's value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. The weight to be accorded an owner's evidence is left to the sound discretion of this board. *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs two and three of the syllabus.

In this instance, using the sparse evidence of value provided by the owner, we cannot replicate the owner's, and consequently the BOR's, values. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 227, 2013-Ohio-3028, 35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."). The owner apparently relied upon many factors, including sales and listings of properties for sale, both identified and unidentified, in addition to his own experience, to arrive at his estimate of value. As established through the BOE's cross examination of the owner, he did not adjust the comparables he relied upon in deriving his opinion of value, stating "I just submitted what was given to me and what I searched, and what was given to me by the Haines report, an appraisal service that provides sales." H.R. at 25. The owner did not provide a written list of the sales and listings to which he referred; in his testimony, he specifically identified only a few of the sales or listings he considered. Thus, the record is devoid of any competent, probative evidence of value upon which

the BOR could have relied and, in turn, this board may rely, in determining value. The BOE, through its cross examination, successfully impugned the probity of the owner's testimony, demonstrating the owner's lack of specific evidence of value, and, as such, we are constrained to conclude that there exists insufficient evidence to support the BOR's reductions in value. As no evidence has been offered that negates the value determined by the auditor, we must reinstate such values, as originally assessed by the auditor. See, e.g., *Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision* (Aug. 3, 2015), BTA Nos. 2014-3607, et seq., unreported; *Akron City Schools v. Summit Cty. Bd. of Revision* (July 30, 2015), BTA No. 2014-3944, unreported; *Huber Heights City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Feb. 17, 2015), BTA No. 2013-5696, et seq., unreported.

Accordingly, 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 #570-278106-00
TRUE VALUE
\$263,600
TAXABLE VALUE
\$ 92,260

Parcel #570-278107-00
TRUE VALUE
\$242,300
TAXABLE VALUE
\$ 84,810

Parcel #570-278108-00
TRUE VALUE
\$155,900
TAXABLE VALUE
\$ 54,570

It is the order of the Board of Tax Appeals that the Franklin County Auditor list and assess the subject properties in conformity with this decision and order.

BOARD OF TAX APPEALS

RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
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