

OHIO BOARD OF TAX APPEALS

LION ISLAND LLC, (et. al.),

CASE NO(S). 2015-1231, 2015-1232, 2015-1233

Appellant(s).

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s) - LION ISLAND LLC  
Represented by:  
CHARLES L. BLUESTONE  
BLUESTONE LAW GROUP, LLC  
141 EAST TOWN STREET  
SUITE 100  
COLUMBUS, OH 43215

For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION  
Represented by:  
JASON M. DOLIN  
ASSISTANT PROSECUTING ATTORNEY  
FAIRFIELD COUNTY  
239 WEST MAIN STREET, SUITE 101  
LANCASTER, OH 43130

Entered Tuesday, May 10, 2016

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

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 048-02503-00, 048-02504-00, 048-02505-00, 048-02506-00, 048-02507-00, 046-02130-00, 046-02131-00, 046-02132-00, 046-02133-00, 046-02135-00, 048-02510-00, 048-02511-00, 048-02512-00, and 048-02515-00, for tax year 2014. These consolidated matters are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing before this board ("H.R.").

Before proceeding to the merits of these appeals, we first turn to the continuing complaint issue relating to tax year 2013, which was identified on the underlying complaints, and raised at the BOR's hearing. On January 23, 2015, decrease complaints were filed with the BOR, on behalf of the owner, which identified the applicable tax years as "2013 & 2014," and on line nine, represents the "requested change in value is justified," in part, based upon a "continuing complaint." S.T., Exhibit ("Ex.") A. On May 7, 2015, the BOR convened a hearing, during which, a BOR member confirmed with owner's counsel that the complaints, filed in January 2015, were the "first time that a complaint against valuation was filed for 2013." S.T., Ex. E at 124. Nevertheless, owner's counsel moved for the BOR to take jurisdiction over tax year 2013 and argued that the BOR may exercise jurisdiction over tax year 2013 pursuant to the "continuing complaint" provision, based upon the owner's prior appeal of the BOR's tax year 2012 decisions, relating the subject

property, to the Board of Tax Appeals ("BTA"). A BOR member then noted the BTA, tax year 2012, consolidated case numbers, i.e., 2013-5535, 2013-5536, and 2013-5537, and noted, a decision was issued for such consolidated appeals by the BTA on December 22, 2014. S.T., Ex. E at 124, 128.

Thereafter, upon consideration of the owner's motion, a BOR member commented "while the complainant's legal counsel suggested that they were waiting for a decision from the BTA before filing for 2013, 2013 was a reappraisal year so continuing jurisdiction argument has no weight, and besides, complainant had every opportunity to file for 2013 with the Board of Revision and chose not to do so." S.T., Ex. E at 27-28. Accordingly, the BOR denied the complainant's continuing complaint motion and dismissed the underlying complaints as they relate to tax year 2013.

R.C. 5715.19(D) is commonly known as "the continuing-complaint provision, and its operation is triggered when the BOR does not issue a decision within the time frame set forth in R.C. 5715.19(C). \*\*\* Once the continuing-complaint provision has been triggered, the original complaint \*\*\* continues as a valid complaint through the year in which the final decision, by the board of revision or on appeal, is rendered in the proceedings on that complaint. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 305, 307, \*\*\*." *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468 at ¶12.

This board has previously discussed the appropriate time to invoke continuing complaint jurisdiction where a final determination for one tax year is made after the deadline to file a complaint on the subsequent tax year. In *MDM Holdings, LLC v. Cuyahoga Cty. Bd. of Revision* (June 2, 2015), BTA No. 2015-60, unreported, pending on appeal, S.Ct. No. 2015-1065, this board acknowledged that R.C. 5715.19(D) does not establish an outer deadline for requesting that a complaint be deemed continuing, but we held that a complaint cannot be deemed continuing in perpetuity. We then cited to the court's decision in *AERC*, which stated that the original complaint "continues as a valid complaint through the year in which the final decision\*\*\* is rendered" and concluded that the BOR's continuing complaint jurisdiction ended at the end of the year during which the earlier complaint was finally determined. *AERC*, supra, at ¶12.

In this case, the appellant property owner failed to request that its tax year 2012 complaint be deemed continuing prior to December 31, 2014. Thus, we find that the BOR correctly determined that it lacked jurisdiction to consider the subject's value for tax year 2013 and properly denied appellant's motion.

Proceeding to the merits of this appeal, and focusing on the applicable tax year at issue, i.e., tax year 2014, the subject property consists of fourteen vacant residential lots located "within Compass Point, a residential, leisure or recreational community at Buckeye Lake." H.R., Appellant's Ex. 1 at 1. The subject's total true values were initially assessed at \$125,690; \$146,480; \$140,180; \$137,030, \$137,030, \$161,760; \$134,560; \$140,300; \$139,810; \$170,820; \$152,780; \$167,310; \$159,240; and \$219,600, respectively. Decrease complaints were filed on behalf of the property owner, with the BOR, seeking reductions in value for each parcel to \$75,000, with one exception, parcel number 048-02515-00, for which the property owner sought a reduction in value to \$90,000. No counter complaint was filed.

At the hearing before the BOR, a representative of the owner, Mr. William J. Schottenstein, appeared and was identified as a principal in the ownership LLC entity. At that time, Mr. Schottenstein was represented by counsel, and in support of the decreases requested, provided testimony regarding marketing efforts he undertook to sell the subject and difficulties he experienced. Counsel then offered the appraisal and testimony of Donald E. Miller, MAI, a state-certified general real estate appraiser in Ohio. S.T., Ex. E and F. In his report, Mr. Miller determined values for the subject property, for tax year 2012. At hearing, a BOR member asked Mr. Miller if his tax year 2012 values would be "accurate as of the 2013 tax year" and Mr. Miller replied, "[y]es[,] I haven't done a formal look, but I would say the value would be the same or lower." S.T., Ex. E at 133.

Thereafter, upon consideration of the information available to it, the BOR found the owner failed to provide

competent and probative evidence upon which it could rely to reduce value and it issued a decision maintaining the initially assessed valuations of each parcel, which led to the present appeals. See, S.T., Ex. E at 28-29.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-379. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, \*\*\*. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, \*\*\*." Id. at ¶5-6. (Parallel citations omitted.)

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. Such is the case in this matter, as the record does not indicate that the subject property "recently" transferred through a qualifying sale.

On appeal, the property owner relies on appraisal evidence in support of the decrease in values sought. At the hearing before this board, Mr. Schottenstein testified regarding defects affecting the subject property. Counsel for the owner offered the appraisal and testimony of Mr. Miller. In his report, Mr. Miller employed the sales comparison approach to value, and with the exception of parcel number 048-02515-00, determined a value for each parcel, in an amount of \$75,000, as of January 1, 2013; for parcel number 048-02515-00, Mr. Miller determined a value of \$90,000, as of January 1, 2013. H.R., Appellant's Ex. 1 at 2, 32. No other evidence of value was presented to this board.

When, as here, parties rely on an appraiser's opinion of value, this board may accept all, part, or none of that appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155. Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of" the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555 ("We emphasize that the BTA '\*\*\* may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, \*\*\*, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 30 ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. \*\*\* The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

Upon review of the owner's appraisal evidence, we observe the valuation determinations are "as of" January

1, 2013. Therefore, based upon the foregoing, the owner's appraisal report does not provide competent and probative evidence upon which this board may rely to reduce value for tax year 2014.

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, 2014, are as follows:

PARCEL NUMBER 048-02503-00

TRUE VALUE

\$125,690

TAXABLE VALUE

\$43,990

PARCEL NUMBER 048-02504-00

TRUE VALUE

\$146,480

TAXABLE VALUE

\$51,270

PARCEL NUMBER 048-02505-00

TRUE VALUE

\$140,180

TAXABLE VALUE

\$49,060

PARCEL NUMBER 048-02506-00

TRUE VALUE

\$137,030

TAXABLE VALUE

\$47,960

PARCEL NUMBER 048-02507-00

TRUE VALUE

\$137,030

TAXABLE VALUE

\$47,960

PARCEL NUMBER 046-02130-00

TRUE VALUE

\$161,760

TAXABLE VALUE

\$56,620

PARCEL NUMBER 046-02131-00

TRUE VALUE

\$134,560

TAXABLE VALUE

\$47,100

PARCEL NUMBER 046-02132-00

TRUE VALUE

\$140,300

TAXABLE VALUE

\$49,100

PARCEL NUMBER 046-02133-00

TRUE VALUE

\$139,810

TAXABLE VALUE

\$48,930

PARCEL NUMBER 046-02135-00

TRUE VALUE

\$170,820

TAXABLE VALUE

\$59,790

PARCEL NUMBER 048-02510-00

TRUE VALUE

\$152,780

TAXABLE VALUE

\$53,470

PARCEL NUMBER 048-02511-00

TRUE VALUE

\$167,310

TAXABLE VALUE

\$58,560

PARCEL NUMBER 048-02512-00

TRUE VALUE

\$159,240

TAXABLE VALUE

\$55,730

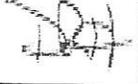
PARCEL NUMBER 048-02515-00

TRUE VALUE

\$219,600

TAXABLE VALUE

\$76,860

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