

[Cite as *Bowman v. Cuyahoga Cty. Fiscal Officer*, 2015-Ohio-2866.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102492

TED BOWMAN

PLAINTIFF-APPELLANT

vs.

CUYAHOGA COUNTY FISCAL OFFICER ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-819934

BEFORE: Celebrezze, A.J., Blackmon, J., and Stewart, J.

RELEASED AND JOURNALIZED: July 16, 2015

ATTORNEY FOR APPELLANT

Michael Aten
3800 Lakeside Ave., Suite 400
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEES

For Cuyahoga County Fiscal Officer

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Reno J. Oradini
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For Olmsted Falls City School District

Thomas A. Kondzer
Matthew S. Marsalka
Kolick & Kondzer
24650 Center Ridge Road, Suite 110
Westlake, Ohio 44145

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Appellant, Ted Bowman, appeals the trial court's affirmance of the decision of the Cuyahoga County Board of Revision ("BOR") leaving the appraised value of Bowman's property at \$201,800.00. Bowman claims he offered sufficient evidence to establish a lower value, or at the very least, sufficient evidence for the common pleas court or the BOR to independently review the value. After a thorough review of the record and law, this court reverses the decision of the common pleas court and remands.

I. Factual and Procedural History

{¶2} According to county records submitted in this case, in 2001, Bowman purchased real property identified as parcel number 291-10-007 for \$178,800.00. This parcel consists of roughly 7.5 acres¹ of undeveloped property situated on Columbia Road in the city of Olmsted Falls, Ohio (the "City"). For tax years prior to 2011, the property was classified by the county auditor or fiscal officer as residential vacant land. As part of a settlement between Bowman and the taxing authority, a value of \$72,100.00 was assigned to the property for tax years 2006 onward. In 2011, the use classification of the property changed to "equipment and machinery storage yard." With this change came

¹ The appraisal submitted by Bowman states the property is 328,255 square feet.

an increase in the appraised value of the property.² For the 2012 tax year, the property was valued at \$201,800.00.

{¶13} On April 1, 2013, Bowman filed a complaint against the valuation of real property with the BOR. Bowman claimed that the appraised value was based on an industrial use, which was not allowed under the current zoning ordinances. He claimed a fair market value of the property to be \$37,400.00. A hearing date was set for November 22, 2013. Bowman and his attorney appeared for the hearing. Bowman testified that he has had trouble with local and county officials and the proper valuation of the property since its purchase. He testified that officials improperly reclassified the property to industrial storage when the City's zoning regulations did not allow for such use. Bowman explained that in 2007 he and the county settled a property value dispute by setting the appraised value of the property at \$72,100.00. It remained at that amount until 2011 when county officials reclassified the property from vacant residential land to an equipment storage yard. Bowman also testified that he is, in fact, using the property as an equipment storage yard in violation of the zoning regulations in place. He further stated that he is being prosecuted for this by the City. He argued that a valuation for tax purposes may only be based on a legal use to arrive at a fair market value. Apart from this argument, Bowman did not offer any probative evidence for his claimed value of \$37,400.00. The Board of Education of the Olmsted Falls City School District ("BOE") argued that there was no evidence tying the change in value to the reclassification of the

² The property value was \$226,100.00 for the 2011 tax year.

property. Further, it argued that Bowman offered no evidence, other than a 2007 consent decree, to contradict the 2012 appraised value.

{¶4} The BOR issued a decision on December 12, 2013, finding no change in valuation. The BOR's determination was "based on either; [sic] insufficient evidence, evidence didn't support a value change, testimony didn't support opinion of value, taxpayer or witnesses could not be cross examined."

{¶5} On January 10, 2014, Bowman filed a notice of appeal in the Cuyahoga County Common Pleas Court challenging the decision of the BOR. Bowman submitted a professional appraisal that was not submitted to the BOR. The appraisal listed the fair market value of the property, using the sales comparison approach, at \$132,000.00. Bowman also submitted a brief arguing that the county inappropriately reclassified his property when the new classification was illegal under the zoning regulations of the City.

The BOE filed a brief in opposition arguing that the appraisal report should not be considered by the trial court, or if it was to be considered, it contained too many errors to be reliable. The BOE also argued that Bowman failed to show any improper reclassification or that if the property was improperly reclassified, that it led to an increase in the assessed value. Bowman filed a reply brief attacking the arguments made by the BOE and its lack of evidence in support of the fiscal officer's valuation of the property.

{¶6} On December 17, 2014, the common pleas court issued its decision:

To successfully challenge a determination of a board of revision, the taxpayer must produce competent and probative evidence to establish the

correct value of the subject property. *Amsdell v. Cuyahoga Cty. Bd. Of Revision* (1994), 69 Ohio St.3d 572, 574. A taxpayer is entitled to the reduction claimed only when he has presented evidence sufficient to meet the requisite burden of proof. On the contrary, where the county auditor and the board of revision are appellees, they are not required to present any evidence. *Western Indus., Inc. v. Hamilton Cty. Bd. of Revision* (1960) 170 Ohio St. 340. Based upon a review of the record and attendant briefs, this court finds that appellant has not submitted competent and probative evidence sufficient to establish the lower figure and to overcome the presumption.

{¶7} From this decision, Bowman now appeals assigning one error for review:

“The trial court erred and abused its discretion in affirming the decision of the board of revision finding the value of the subject property to be \$201,800.00.”

II. Law and Analysis

{¶8} Bowman appealed the decision of the BOR to the common pleas court pursuant to R.C. 5717.05. When such an appeal is filed,

[t]he court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of, or if the complaint and appeal is against a discriminatory valuation, shall determine a valuation that shall correct the discrimination, and the court shall determine the liability of the property for assessment for taxation, if that question is in issue, and shall certify its judgment to the auditor, who shall correct the tax list and duplicate as required by the judgment.

Id.

{¶9} On appeal from a decision of a board of revision, the common pleas court must perform an independent investigation and re-evaluation of the board’s decision. *In re Complaint Against the Valuation of Real Property of Houston*, 12th Dist. Madison No. CA2004-01-003, 2004-Ohio-5091, ¶ 6, citing *Black v. Bd. of Revision of Cuyahoga Cty.*,

16 Ohio St.3d 11, 475 N.E.2d 1264 (1985), paragraph one of the syllabus. This court reviews the decision of the common pleas court for an abuse of discretion. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11, 14, 475 N.E.2d 1264 (1985). Such an abuse is noted by a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} The auditor or fiscal officer³ is charged with setting the value of real estate within the county for taxing purposes.

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner.

R.C. 5713.03.

³ Pursuant to Article X, Section 3 of the Ohio Constitution and the Charter of Cuyahoga County, Article V, Sections 5.01, 5.02, and Article XIII, Section 13.01, the offices of auditor and recorder were replaced by a fiscal officer in 2011.

{¶11} The change in value in this case came as a result of a normal six-year reassessment. During these assessments, “[c]ounty auditors are charged with assessing the ‘true value’ of real property.” *Dublin City School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶ 25, citing R.C. 5713.01(B). “‘True value’ means either the amount the property recently sold for on the open market or the amount of an appraisal predicting what that sale price would be.” *Id.*, citing O.A.C. 5703-25-05(A); *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶ 23; *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412, 195 N.E.2d 908 (1964).

{¶12} Bowman argues that the increase from a previous value of \$72,100.00 that resulted from a settlement of a 2006 valuation complaint was the result of a reclassification of the property from vacant residential land to an equipment storage yard.

Bowman claims that such use is not allowed under the City zoning ordinances, which he presented to the BOR and common pleas court.

{¶13} Bowman’s property is situated in an area zoned for “mixed use.” The Codified Ordinances of the City of Olmsted Falls (“C.O.O.F.”) contains zoning regulations defining acceptable uses for property falling within the mixed use designation.

C.O.O.F. 1260.01 et seq. defines the allowed industrial uses, but none of those uses fits the classification of an open lot equipment storage yard.

{¶14} When valuing property for tax purposes “the taxing authority may not consider an appraisal of property in which the appraiser, believing the property to be more

valuable than its permitted uses under current zoning laws indicate, values the property as if it were already zoned for its most profitable use.” *Porter v. Cuyahoga Cty. Bd. of Revision*, 50 Ohio St.2d 307, 364 N.E.2d 261 (1977), syllabus. In *Porter*, the court dealt with an appraisal by the county auditor that used a zoning classification of “U-7” for a parcel of property that was zoned “U-1 A-1.” *Id.* at 312. As the concurring opinion explained,

[t]he owner of the property sought a zoning change to a more valuable use than that permitted under present zoning law. The local governmental authority denied the change. At the same time, the local governmental taxing authority [was] seeking a tax valuation which [was] based upon the zoning use sought by the owner and denied to him by the zoning decision.

Id. at 314, O’Neill, J., concurring. The court rejected the assessment where the record lacked evidence on which the county appraiser could rely to demonstrate the use would be allowed. *Id.* at 312. The concurring opinion noted, “[i]t can hardly be contended that it is fair, just or equitable for a property owner to be taxed upon a property use which is of greater value than that use which he can legally make of his property.” *Id.* at 314, O’Neill, J., concurring.

{¶15} Based on this case and others, the Ohio Supreme Court indicated that zoning regulations should be factored into an assessment of value. *Health Care Reit, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574, 14 N.E.3d 1009, ¶ 33. In *Health Care Reit*, the court analyzed prior case law on the subject of valuation for tax assessment purposes and reiterated that “a highest and best use must be one that is legally permissible in order to qualify as the basis for assessing the property.” *Id.* at ¶

35, citing International Association of Assessing Officers, *Property Assessment Valuation* 32 (2d Ed.1996). The court cited *Porter* approvingly and reaffirmed that a highest and best use must be a legal use under existing zoning regulations or the record must support anticipated zoning changes. *Id.* at ¶ 35.

{¶16} In the present case, Bowman offered his testimony that existing zoning regulations did not allow for the operation of an equipment storage yard. He submitted a zoning map of the City that showed his property was zoned “mixed use.” Bowman also offered the ordinances that defined the appropriate uses for property zoned for mixed-use.

C.O.O.F. 1260.04(a), defining conditional uses, only allows for limited industrial use and even then, only when conducted in fully enclosed buildings. Bowman testified there are no buildings on the property. Bowman also testified that he was being prosecuted for the improper use of his property as an equipment storage yard. The unrebutted testimony before the BOR established that the county appraisal was based on an improper classification, for which Bowman was being prosecuted. This cannot be considered a lawful use. This casts doubt on the validity of the fiscal officer’s valuation.

{¶17} R.C. 5715.11 sets forth the duty of the BOR:

The county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment

complained of, or it may order a reassessment by the original assessing officer.

{¶18} Here, the BOR was faced with evidence that an assessed value was based on a use that was improper. Rather than set about determining a proper value or having the property reassessed by the taxing authority, the board ignored the issue and ruled that Bowman had not presented sufficient evidence establishing his suggested value. While Bowman's claimed value of \$37,400.00 likely cannot be justified, there is at least sufficient evidence in the record to trigger the BOR's duty to find a lawful value.

{¶19} This also implicates the common pleas court's duty to independently determine a proper value. No evidence exists in the record that Bowman's property could be legally used as an equipment or machinery storage yard. In fact, the only evidence in the record is that Bowman was being prosecuted by the City for such use. An appraisal based on a use not allowed by current zoning regulations is improper. *Porter*, 50 Ohio St.2d 307, 364 N.E.2d 261, citing *Hedberg & Sons Co. v. Hennepin*, 305 Minn. 80, 92, 232 N.W.2d 743 (1975) ("Evidence of value for uses prohibited by an ordinance may be introduced and considered only where there is evidence showing a reasonable probability that the ordinance will be changed in the near future."). Generally, the fiscal officer or board of revision does not have to offer evidence to justify the fiscal officer's value. However, "the [fiscal officer's] duty to defend his valuation is triggered once the taxpayer does present competent, probative evidence to support a right to a reduction." *Scranton-Averell, Inc. v. Cuyahoga Cty. Fiscal Officer*, 8th Dist.

Cuyahoga Nos. 98493 and 98494, 2013-Ohio-697, ¶ 25, citing *Murray & Co. Marina, Inc. v. Erie Cty. Bd. of Revision*, 123 Ohio App.3d 166, 172-174, 703 N.E.2d 846 (6th Dist.1997).

{¶20} Here, the fiscal officer's appraisal relied on a prohibited use for which no evidence exists in the record regarding the likelihood of approval of the use by the local zoning authority. However, the evidence submitted by Bowman is also insufficient to arrive at a proper value. The court apparently allowed Bowman to submit additional evidence in the form of an independent appraisal, but the BOE asserts that Bowman did not seek a hearing where testimony could be adduced. The BOE raised significant questions about the appraisal supplied by Bowman. The trial court implicitly rejected the appraisal Bowman offered because of errors pointed out by the BOE.⁴ While it is fundamental that an appealing party has the burden of establishing entitlement to an increase or decrease in value, *Powderhorn v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2007-L-071, 2008-Ohio-1024, ¶ 19, when a homeowner successfully demonstrates that the fiscal officer's appraisal was improper, but fails to provide sufficient evidence of value, the BOR should employ its statutory authority to have the property reassessed. The result of that reassessment may not be to the homeowner's liking, but the appraisal must be done in compliance with the taxing authority's duty to fairly and uniformly appraise the real property within its territory.

⁴ These included, among others, the fact that the sales used for comparison were not recent and that one of three comparators had a more recent sale for a higher price, which the appraiser ignored.

III. Conclusion

{¶21} Bowman demonstrated that the fiscal officer's appraisal was based on a use that was improper under the applicable zoning ordinances. The trial, court, therefore, could not rely on the value set by the county fiscal officer where that assessment was based on a use for which the homeowner was being prosecuted. However, Bowman also failed to offer sufficient evidence of value such that the trial court could properly determine a value. Thus, the case is remanded to the common pleas court with instruction to remand to the BOR for reassessment.

{¶22} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
PATRICIA ANN BLACKMON, J., CONCUR