

1 Olmsted Falls Village Association, Appellant, v. Cuyahoga County Board
2 of Revision; Olmsted Falls Board of Education, Appellee.

3 [Cite as *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*
4 (1996), _____ Ohio St.3d _____.]

5 *Taxation -- Valuation of apartment complex -- Board of Tax Appeals'*
6 *decision reversed and remanded when it is based on*
7 *evidence that did not value the property as of the tax lien date.*
8 (No. 95-839 -- Submitted December 14, 1995 -- Decided June 5,
9 1996.)

10 Appeal from the Board of Tax Appeals, No. 93-X-998.

11 The Olmsted Falls Village Association, appellant, complained to the
12 Cuyahoga County Board of Revision (“BOR”), (“association”), about the
13 true value of its apartment complex as of January 1, 1991. It sought to
14 decrease the value of this complex from \$2,432,914 to \$1,870,000. The
15 Olmsted Falls Board of Education (“BOE”), appellee, filed a counter-
16 complaint seeking to increase the value of this property to \$2,480,000.

17 The property at issue is a 5.468-acre parcel of land containing five
18 two-story, frame apartment buildings, built in 1971. Each building contains
19 sixteen suites for a total of eighty suites. This total number of suites divides

1 into forty one-bedroom apartments, twenty two-bedroom apartments, and
2 twenty three-bedroom apartments. Each apartment unit has central air-
3 conditioning, a forced-air, gas furnace, and a thirty-gallon, hot water tank.
4 Each building contains a laundry room with one washer and one dryer. The
5 complex includes an in-ground swimming pool with pool building and
6 associated land improvements and landscaping, and several service
7 buildings.

8 The BOR, after hearing, retained the true value determined by the
9 auditor, and the Association appealed to the Board of Tax Appeals (“BTA”).

10 The Association presented the testimony of Wesley Baker, a real
11 estate appraisal expert, to the BTA. He testified that the true value of the
12 property was \$1,950,000 as of January 1, 1991. The BOE presented the
13 expert real estate appraisal testimony of Sam D. Canitia, who testified that
14 the true value of the property was \$2,476,000. In testifying about
15 supporting data for selecting a capitalization rate, Canitia engaged in the
16 following colloquy with counsel for the Association:

17 “Q. Did you have a quarterly report for the last quarter of 1990?

18 “A. Yes, ma’am.

1 “Q. You also had a quarterly report for the first quarter of 1991; is
2 that correct?

3 “A. Yes, ma’am.

4 “Q. Wouldn’t those reports be more reflective of the market as of
5 January 1st, 1991?

6 “A. We’ve got a nomenclature problem here. 1/1/91 is a reflective
7 date, and that’s a tax lien date, it’s not a date of valuation. The date of
8 valuation is for the year -- the activity of the year 1991. I would not look
9 into ‘90 at all, I would look into the year of ‘91.

10 “So I could not answer your question if you’re talking about 1990
11 because that’s not part of my appraisal.

12 “Q. I believe the taxes became a lien on January 1st, 1991 and the
13 auditor determined value as of January 1st, 1991.

14 “A. As a reflective date, not as a date certain.

15 “Q. That is your opinion.

16 “A. We got a problem here, I don’t know whether we are going to
17 cure it, but I can indicate to you that there is a problem with respect to 1991
18 as against the year 1991, tax lien date ‘91 and date of valuation ‘91.

1 “Q. You on your first page of your appraisal report say ‘As of
2 January 1, 1991.’

3 “A. That’s a reflective date. It reflects the activity for the year
4 1991.”

5 The BTA valued the property based on Canitia’s opinion.
6 Consequently, it determined the true value of the property to be \$2,476,000
7 as of January 1, 1991.

8 This cause is before this court upon an appeal as of right.

9 *Fred Siegel Co., L.P.A., and Annrita S. Johnson*, for appellant.

10 *Kolick & Kondzer, Daniel J. Kolick and John P. Desimone*, for
11 appellee.

12 *Per Curiam.* We reverse the BTA’s decision and remand this matter
13 to the BTA because the BTA based its decision on evidence that did not
14 value the property as of the tax lien date.

15 R.C. 5715.19(A)(1)(d) authorizes a property owner to file complaints
16 with a board of revision against determinations made by the county auditor
17 concerning the true value of the owner’s property. According to R.C.
18 5715.19(D), “[t]he determination of any such complaint shall relate back to

1 the date when the lien for taxes * * * for the current year attached * * *.”

2 The lien for taxes for each year attaches on the first day of January. R.C.
3 323.11.

4 To emphasize the importance of this date, R.C. 5715.01, which
5 authorizes the Tax Commissioner to direct and supervise the assessment of
6 real property for taxation, including adopting rules to that end, states:

7 “The commissioner shall neither adopt nor enforce any rule that
8 requires true value for any tax year to be any value other than the true value
9 in money on the tax lien date of such tax year * * *.”

10 The BTA valued the property according to Canitia’s opinion of value.

11 However, Canitia did not value the property as of any certain date.

12 According to his testimony, he valued the property as of the entire year. To
13 him, the tax lien date was a reflective date, not the valuation date. Thus, the
14 evidence on which the BTA relied for its ultimate decision is unlawful. *SFZ*
15 *Transp., Inc. v. Limbach* (1993), 66 Ohio St.3d 602, 613 N.E. 2d 1037.

16 We emphasize that the BTA “* * * may consider pre- and post-tax
17 lien date factors that affect the true value of the taxpayer’s property on the
18 tax lien date.” *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of*

1 *Revision* (1981), 66 Ohio St.2d 398, 20 O.O. 3d 349, 422 N.E. 2d 846,
2 paragraph two of the syllabus. However, the BTA must base its decision on
3 an opinion of true value that expresses a value for the property as of the tax
4 lien date of the year in question.

5 We also stress that the BTA decides the factual matters in these cases,
6 *Wolf v. Cuyahoga Cty. Bd. of Revision* (1984), 11 Ohio St.3d 205, 207, 11
7 OBR 523, 524, 465 N.E. 2d 50, 52, and that “[w]e will not overrule BTA
8 findings of fact that are based upon sufficient probative evidence.” *R.R.Z.*
9 *Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, 201,
10 527 N.E. 2d 874, 877.

11 We turn now to some other specific claims of error presented by the
12 Association. First, the Association claims that the BTA erred when it did
13 not employ the actual income and expenses for the property. In *Webb Corp.*
14 *v. Lucas Cty. Bd. of Revision* (1995), 72 Ohio St.3d 36, 647 N.E. 2d 162, we
15 held that an appraiser may employ actual income as reduced by actual
16 expenses if both amounts conform to the market. We did not require such
17 use. Moreover, we did not, in *Villa Park Ltd. v. Clark Cty. Bd. of Revision*
18 (1994), 68 Ohio St.3d 215, 625 N.E. 2d 613, reject the use of a *pro forma*

1 expense rate. Instead, we required the BTA to make factual findings,
2 supported by the record, of the appropriate market rents and expenses to be
3 used in the income approach to value. *Id.* at 218, 625 N.E. 2d at 615.

4 Furthermore, we did not require the BTA to deduct a reserve for
5 replacement in *Freshwater v. Belmont Cty. Bd. of Revision* (1991), 58 Ohio
6 St.3d 140, 568 N.E. 2d 1215, as claimed by the Association. In that case,
7 the BTA refused to consider such a deduction, but we reversed and
8 remanded the matter for the BTA to reconsider the components included in
9 and the deductibility of reserves for replacement. We ruled that such an
10 expense category was a proper element in an income approach analysis. We
11 did not require the deduction of a reserve for replacement. In this case, we
12 note, neither appraiser proposed a reserve for replacement. Thus, the record
13 does not support such a reserve deduction.

14 In summary, as to these latter claims, “[w]e decline to bind the BTA
15 to a particular method of valuation because the imposition of rigid
16 methodological strictures would necessarily impinge upon the BTA’s wide
17 discretion to weigh evidence and assess the credibility of witnesses.”

1 *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision, supra*, 66
2 Ohio St. 2d at 402, 20 O.O. 3d at 352, 422 N.E. 2d at 849.

3 Finally, the Association claims that Canitia is not qualified to testify,
4 since he has not obtained a certificate under R.C. Chapter 4763, the chapter
5 governing real estate appraisers. However, R.C. 4763.13(F) states:

6 “Nothing this in this chapter shall preclude a person who is not
7 licensed or certified under this chapter from appraising real estate for
8 compensation.”

9 Thus, Canitia may testify about the true value of real estate if the BTA
10 decides he is qualified.

11 Accordingly, we reverse the BTA’s decision because it is based on an
12 opinion of true value that did not value the property as of the tax lien date.

13 We remand the cause to the BTA to revalue the property.

14 *Decision reversed*

15 *and cause remanded.*

16 MOYER, C.J., F.E. SWEENEY, PFEIFER and COOK, JJ., concur.

17 DOUGLAS and RESNICK, JJ., dissent.

18 WRIGHT, J., not participating.

1 DOUGLAS, J., dissenting. The semantical argument made by the
2 majority does not change, in any way, the true value of the property in
3 question as of tax lien date. Once again, a majority of the court is invading
4 the province of the BTA. I would affirm the decision of the BTA.

5 RESNICK, J., concurs in the foregoing dissenting opinion.

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