

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

EUCLID REALTY LLC,	:	O P I N I O N
Appellant,	:	
- VS -	:	CASE NO. 2012-L-027
LAKE COUNTY AUDITOR, et al.,	:	
Appellees.	:	

Administrative Appeal from the Lake County Court of Common Pleas, Case No. 10CV002671.

Recommendation: Reversed and remanded.

Thomas W. Palmer, Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215 (For Appellant).

Charles E. Coulson, Lake County Prosecutor, and *Joshua S. Horacek*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellees).

MARY JANE TRAPP, J.

{¶1} Euclid Realty LLC appeals from a judgment of the Lake County Court of Common Pleas regarding its appeal from a decision of the Lake County Board of Revision, which valued a property owned by Euclid Realty at \$36 million dollars for tax year 2009, based on a 2007 sale of the property.

{¶2} Because it appears from the trial court’s written decision that it failed to discharge its duty of independently determining the value of the subject property, we

reverse the judgment of the trial court and remand the matter for further proceedings consistent with this opinion.

Substantive Facts and Procedural History

{¶3} The property at issue consists of four parcels totaling 43.726 acres, listed as parcels 29-A-003-0-00-005-0, 29-A-003-A-00-036-0, 29-A-003-A-00-016-0, and 29-A-003-A-00-017-0 on the records of the Lake County Auditor. Located at 29801 Euclid Avenue in the City of Wickliffe, Ohio, the property's improvements include various buildings for office and manufacturing use, with a total of 546,802 square feet of floor space.

{¶4} In March 2007, the property was sold by Townsend Wickliffe, LLC, to appellant Euclid Realty for \$36,093,000.

{¶5} For tax year 2009, the first year of the new triennial assessment period, the auditor assigned a combined value of \$36 million dollars based on the 2007 sale price. Euclid Realty filed a complaint with the Lake County Board of Revision ("BOR") challenging the auditor's value of the property. It sought a reduction from the auditor's value of \$36 million dollars to \$10.5 million dollars.

{¶6} The BOR held a hearing, at which both Euclid Realty and the Wickliffe City School District Board of Education ("school board") participated. Euclid presented an appraisal report dated January 1, 2009 prepared by its expert Richard Racek, MAI, which appraised the property at \$10.5 million. The school board asserted a value of \$36,093,000, presenting as evidence the purchase agreement and the conveyance fee statement relating to the 2007 sale of the property.

{¶7} The BOR reduced the value to \$33,342,340. Euclid Realty appealed the BOR's decision to the Lake County Court of Common Pleas. Because the value was reduced, the school board cross-appealed the decision, asserting a value of \$36,093,000 based on the sale price.

{¶8} The trial court held a hearing, and subsequently remanded the case to the BOR to explain the reduction from the auditor's value to \$33,342,340. The BOR then filed with the court an amended findings of fact and conclusions of law, explaining the reduction in value was due to the presence of asbestos in one of the buildings on parcel 29-A-003-0-00-005-0, which caused a diminished utility of the building.

{¶9} In its decision, the trial court found the property to be the subject of a recent, arm's-length transaction. However, its entire analysis of the issue consisted of the following two sentences: "Appellant Euclid Realty asks the Court not to consider the recent, arms-length transaction as the best method of valuation for this property and instead asks the Court to consider the recent economic downturn as evidence that the property valuation should be reduced from \$33,342,340.00 to \$10,500,000.00. The Court declines to adopt Appellant Euclid Realty's reasoning." Stating that the BOR's decision is supported by substantial evidence, the court found the decision "not contrary to law," and therefore "affirmed" the decision and the value of the property at \$33,342.340.00.

{¶10} Euclid Realty now appeals and assigns the following errors for our review:

{¶11} "[1.] The trial court abused its discretion and committed reversible error by failing to discharge its legal duty to independently determine the value of the Property

considering all evidence properly before it and without deference to the Board of Revision.”

{¶12} “[2] The trial court abused its discretion and committed reversible error when it determined that the March 2007 sale of the Property was ‘recent’ even though commercial real property values crashed between that sale and the Tax Lien Date.”

{¶13} Initially, we note that an appeal of a decision of a county board of revision may be taken to either the Board of Tax Appeals (“BTA”) pursuant to R.C. 5717.01, or, to a county court of common pleas, pursuant to R.C. 5717.05. *Cincinnati Sch. Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 367 (2000). The common pleas court and the BTA perform the same function when reviewing a decision of a board of revision. *Beechwood II, L.P. v. Clermont Cty. Bd. of Revision*, 12th Dist. No. CA2011-04-033, 2011-Ohio-5449, fn. 1, citing *Murray & Co. Marina v. Erie Cty. Bd. of Revision*, 123 Ohio App.3d 166 (6th Dist.1997). For that reason, the BTA case law may be applied to the common pleas court proceedings in such appeals. *Murray* at 172.

Appellate Standard of Review

{¶14} The fair market value of property for tax purposes is a question of fact, and a reviewing court will not disturb a decision of the Board of Tax Appeals (or the Common Pleas Court) with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶17. Such findings of value are to be affirmed if supported by reliable and probative evidence; furthermore, the tax board or the trial court’s determination of the credibility of witnesses and its weighing of the evidence are subject to a highly deferential abuse-of-discretion

review on appeal. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010-Ohio-1040, ¶15.

{¶15} This court has also stated that when reviewing a trial court's decision in real property valuation cases, we will not disturb the trial court's decision absent an abuse of discretion. *Cattell v. Lake Cty. Bd. of Revision*, 11th Dist. No. 2009-L-161, 2010-Ohio-4426. See also *Beechwood* at ¶16; *JRB Holdings, LLC v. Wayne Cty. Bd. of Revision*, 9th Dist. No. 05CA0048, 2006-Ohio-1042, ¶6, quoting *Fairlawn Assn., Ltd. v. Summit Cty. Bd. of Revision and Fiscal Officer*, 9th Dist. No. 22238, 2005-Ohio-1951, ¶10.

{¶16} As this court has stated, the term “abuse of discretion” is one of art, “connoting judgment exercised by a court, which does not comport with reason or the record.” *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). The Second Appellate District also recently adopted a similar definition of the abuse-of-discretion standard: an abuse of discretion is the trial court's “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11. When an appellate court is reviewing a pure issue of law, “the mere fact that the reviewing court would decide the issue differently is enough to find error (of course, not all errors are reversible. Some are harmless; others are not preserved for appellate review). By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.* at ¶67.

{¶17} Under the first assignment of error, Euclid Realty argues the trial court failed to fulfill its duty of independently determining the value of the property.

The Trial Court's Duty Upon an Appeal From the Board of Revision

{¶18} The duty of both the court and the BTA upon an appeal from a decision of the BOR is to “determine the taxable value of the property.” *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996), citing R.C. 5717.03 and 5717.05. Pursuant to R.C. 5717.05, “the common pleas court has a duty on appeal to independently weigh and evaluate all evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision's determination.” *Black v. Bd. of Revision*, 16 Ohio St.3d 11, 13-14 (1985).

{¶19} The Supreme Court of Ohio further explained that the statute does not require a *trial* de novo, but it does contemplate a *decision* de novo. *Black* at 14. The court emphasized again the de novo nature of the trial court's determination of value in *Park Ridge Co. v. Franklin County Bd. of Revision*, 29 Ohio St.3d 12 (1987), stating, “[i]n reviewing a board of revision's valuation of property, the common pleas court should make its own independent decision * * *. It should reach its own decision *without any deference* to the administrative finding.” (Emphasis added.) *Id.* at paragraph one of the syllabus. This court has adhered to that principle in reviewing a trial court's decision regarding an appeal from the BOR's valuation of property. See *Cattell* at ¶15.

{¶20} In *Concord Plaza General Partnership v. Lake Cty. Auditor*, 11th Dist. No. 90-L-15-113, 1991 Ohio App. LEXIS 5984 (Dec. 13, 1991), this court, in reversing a decision of the trial court, reminded the trial court that “the standard of review under R.C. 5717.05 is substantially different than in most administrative appeals. In determining an appeal from a decision of a county board of revision, a common pleas court does not merely review the judgment and decide whether it is supported by the manifest weight of the evidence. Instead, the court must render its own decision on the merits[.]” *Id.* at *14.

{¶21} In *Teamster Hous. v. McCormack*, 8th Dist. No. 69583, 1996 Ohio App. LEXIS 1880, *7-8 (May 9, 1996), the Eighth District similarly reversed a decision of the court of common pleas because it erroneously applied an abuse of discretion standard when entertaining an appeal from a board of review’s decision. The Eighth District court explained that the value determination of the BTA and the court of common pleas are accorded deference upon further appeal, but the BTA and the court of common pleas themselves have a different role: they act as fact-finders and issue decisions of value de novo, and it is because of this role that their decisions enjoy a deferential standard of review. *Id.* at *8.

{¶22} Turning to the case at hand, in a series of recent decisions, the Supreme Court of Ohio adopted the principle that the sale price of a property in a recent arm’s-length transaction is the best indicator of the property’s true value for taxation purpose. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Cummins Property Serv., LLC. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473.

{¶23} Here, Euclid Realty argued the recent economic downturn rendered the 2007 sale not “recent,” and therefore, not determinative of its value. The trial court summarily rejected the claim without setting forth any analysis, thus giving no indication that it had independently analyzed the claim. Indeed, the language employed by the trial court in its decision, such as finding the BOR’s decision “not contrary to law” and “affirming” its decision, indicates the trial court may have improperly accorded deference to the BOR’s value, rather than determining the value of the property de novo, based on its own review and analysis of the administrative record and any additional evidence before it.

{¶24} Because we are unable to ascertain from a careful review of the trial court’s decision that it properly discharged its duty of independently evaluating Euclid Realty’s claim that the 2007 sale should not be adopted as the value, we must remand the matter to the trial court for further proceedings. The first assignment of error is sustained.

{¶25} Upon remand, the trial court is to determine the value of the property de novo, based on the record before it and on the appropriate burden of proof by the proponent and opponent of the sale price. If the trial court finds the 2007 sale to be a “recent,” arm’s-length transaction - without any deference to the BOR’s decision - the sale price would determine the value of the property for tax purposes; however, if the trial court finds the sale not to be “recent,” the court should then determine the value of the property based on the evidence of value before it, including the appraisal report prepared by its expert.

{¶26} Because our disposition of the first assignment of error determines the outcome of this appeal, we do not reach the merit of the claim raised by Euclid Realty in the second assignment of error.

{¶27} The judgment of the Lake County Court of Common Pleas is reversed and remanded for further proceedings consistent with this opinion.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.