

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SCRANTON-AVERELL, INC.,)	CASE NO. CV 13 813694
)	
Appellant,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY DETERMINING</u>
)	<u>THE TAXABLE VALUE OF P.P.N.</u>
CUYAHOGA COUNTY FISCAL)	<u>004-25-020 FOR TAX YEAR 2012 UPON</u>
OFFICER, <i>et al.</i> ,)	<u>APPEAL FROM THE BOARD OF</u>
)	<u>REVISION'S AUGUST 13, 2012</u>
Appellees.)	<u>DECISION</u>

John P. O'Donnell, J.:

This is an appeal by Scranton-Averell, Inc. from the Cuyahoga County Board of Revision's August 13, 2013 denial of Scranton-Averell's complaint against the county fiscal officer's valuation of permanent parcel number 004-25-020 for tax year 2012. Scranton-Averell filed the transcript and exhibits of proceedings before the board and a merit brief in support of the appeal, the Board of Education of the Cleveland Municipal School District filed a brief in opposition, and Scranton-Averell filed a reply.

This decision follows.

STATEMENT OF FACTS

Scranton-Averell owns the property at 1515 Fairfield Avenue, permanent parcel number 004-25-020. For tax year 2012, the fiscal officer assessed the total value of the property at

\$297,900. The fiscal officer attributed \$27,500 of that total to the value of the land, with the remainder - \$270,400 – to the value of the building.¹

Scranton-Averell filed a complaint against the fiscal officer's valuation, seeking to have the value reduced from \$297,900 to \$27,500 – i.e., the value of the land only – because the building was razed before January 1, 2012 upon the property being taken by The Ohio Department of Transportation through eminent domain. The board of education filed a counter-complaint requesting that the fiscal officer's valuation be retained.

A hearing was held before the board of revision. Thomas Stickney, the president of Scranton-Averell, was the only hearing witness. He testified that:

[T]he building did not exist there on that parcel January 1st, 2012. It was demolished under a taking by the State of Ohio Department of Transportation. . . . [T]here was no building, so I don't know how [the fiscal office] can say they appraised the building on January 1st having a value.

The eminent domain case was adjudicated before The Cuyahoga County Court of Common Pleas, Probate Division, as *Jolene M. Molitoris, Director, ODOT v. Scranton-Averell, Inc., et al.*, case number 2010 ADV 0162154. The judgment entry of settlement in that case was not put into evidence at the board of revision hearing but is part of the record here on appeal as the plaintiff's Exhibit 1 to its merit brief. That entry shows that the state's interest in the land through eminent domain was vested on August 22, 2011. Stickney testified that the building was destroyed before that date.

¹ It is not clear to me whether there was more than one building on the parcel number at issue here. If there was more than one building (see, e.g., page 9 of Hearing Exhibit D, the fiscal officer's parcel value notes, showing "building data" for buildings A, B, C and D), any reference in this entry to building should be taken to mean buildings.

The record also demonstrates that, at least as of the hearing date of July 18, 2013, a picture from Google Maps showed that the building was gone.

The only other record evidence that a building did exist on the property as of the beginning of 2012 is the fiscal officer's parcel listing, Exhibit D to the transcript of proceedings, showing an appraisal date on November 8, 2012. The parcel listing shows the "appraiser ID" as MBB-AUSDS.

The board of revision affirmed the fiscal officer's building valuation of \$270,400 on the basis that Scranton-Averell failed to prove that the building was taken by eminent domain prior to 2012.

LAW AND ANALYSIS

Scranton-Averell's sole assignment of error is that the board of revision "erred by finding the true value of the building on the parcel 004-25-020 to be \$270,400 despite the uncontradicted testimony before it."

An appeal from the decision of a board of revision is made pursuant to section 5717.05 of the Ohio Revised Code. Under that statute the court may rely on the record of the hearing and "may hear and consider additional evidence." After considering the evidence, the court "shall determine the taxable value of the property. . . and shall certify its judgment" to the fiscal officer. The court should consider all evidence and determine the taxable value through its independent judgment. *Black v. Board of Revision*, 16 Ohio St.3d 11, 13-14 (1985). In effect, R.C. 5717.05 contemplates a decision *de novo*. *Id.* It does not, however, provide for an original action or trial *de novo*. *Id.*

Scranton-Averell's complaint against valuation was based on a fact that should not have been difficult to prove: that the building the county wanted to exact a tax on no longer existed at

the beginning of the tax period. The evidence of that fact before the board of revision was Stickney's sworn testimony. Circumstantial evidence in support of the testimony was seen in the form of the Google Map photo showing – albeit perhaps only as of mid-2013 – that the building was gone. But at the same time, no countervailing evidence was produced. Such evidence could have easily included the testimony of the fiscal officer's own appraiser who apparently claims to have appraised the property – and presumably seen a building on it – on November 8, 2012, more than a year after Stickney testified that the building was razed.

Since the hearing, the evidence has been supplemented with the probate court's entry affirming the State of Ohio's title to the property and any buildings as of August 22, 2011.

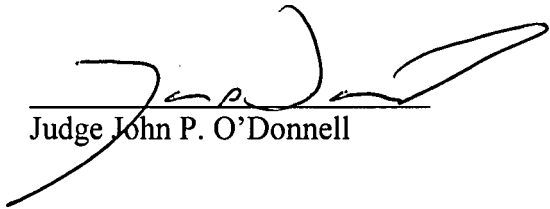
Having considered all of this evidence, it is my independent judgment that the taxable value of the building on Permanent Parcel No. 004-25-020 at 1515 Fairfield Avenue in Cleveland as of January 1, 2012 was zero dollars. The reason the building had no value is it did not exist, a conclusion supported by Stickney's sworn testimony – which I find to be credible, in part because I am not inclined to believe he would lie about such an easily verifiable proposition – and the judgment of settlement in the probate case.

CONCLUSION

For the reasons given here, the total taxable value as of January 1, 2012 of the property located at 1515 Fairfield Avenue in Cleveland and designated as Permanent Parcel No. 004-25-020 is a total of \$27,500, consisting of land valued at \$27,500 and a building valuation of zero. That value is hereby certified to the Fiscal Office of Cuyahoga County through service of a

certified copy of this judgment entry.

IT IS SO ORDERED:



Judge John P. O'Donnell

March 10, 2017
Date

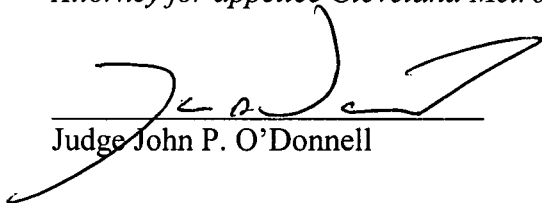
SERVICE

A copy of this journal entry was sent by email on March 10, 2017 to the following:

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Judge John P. O'Donnell