

1 Elsag-Bailey, Inc., d.b.a. Bailey Controls Company, Appellee, v. Lake
2 County Board of Revision et al; Wickliffe City School District Board of
3 Education, Appellant.
4 [Cite as *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), _____ Ohio
5 St.3d _____.]

6 (No. 95-537--Submitted November 30, 1995--Decided March 1,
7 1996.)

8 Appeal from the Board of Tax Appeals, Nos. 93-M-828, 93-M-829,
9 93-M-830 and 93-M-831.

10 On March 26, 1993, Elsag-Bailey, Inc., d.b.a. Bailey Controls Co.
11 (“Elsag-Bailey”), filed a complaint with the Lake County Board of Revision
12 (“BOR”) contending that three parcels of real estate (Nos. 29A-3-5, 29A-
13 3A-16, and 29A-3A-36) owned by it were overassessed for tax year 1992.
14 The three parcels constitute 41.89 acres of a 43.726-acre tract owned by
15 Elsag-Bailey on the north side of Euclid Avenue at Bailey Drive (formerly
16 Worden Road) in Wickliffe, Ohio. The three parcels had been valued by the
17 Lake County Auditor at a true value of \$13,662,300; Elsag-Bailey

1 contended before the BTA that the three parcels had a true value of
2 \$3,000,000.

3 The Wickliffe City School District Board of Education (“BOE”) filed
4 a counter-complaint, stating the true value of the property should be
5 \$13,662,300.

6 On October 31, 1989, title to the three parcels, along with that of a
7 vacant fourth parcel of minor value, was transferred, and a conveyance fee
8 statement was filed with the Lake County Auditor, which set forth a
9 purchase price of \$13,700,000. The 1989 transfer was part of a worldwide
10 buyout of numerous properties for a lump sum. Elsag-Bailey hired Arthur
11 Andersen & Company to allocate the lump-sum purchase price; the
12 Wickliffe, Ohio real property was allocated a purchase value of
13 \$13,700,000.

14 There are two primary buildings located on the Elsag-Bailey property.
15 The smaller of the buildings is a brick office building built in 1963 that
16 contains 257,425 square feet of space. The office building consists of a
17 front and a rear part connected by a service corridor. Because the office
18 building is built into a hillside, only two floors of the three-floor front part

1 can be seen from Euclid Avenue. All four floors of the back part of the
2 building are visible from the rear. The office building houses executive,
3 engineering, sales, and various other administrative offices.

4 An enclosed walkway connects the office building with a separate
5 manufacturing-office building, part of which is one-story high, with the
6 remainder being three stories. The three-story portion of the manufacturing-
7 office building contains offices and an assembly area, the one-story portion
8 of the building is used for manufacturing. The manufacturing-office
9 facility, which contains 270,977 square feet, was constructed in several
10 sections between 1955 and 1978. The total area of all facilities on the
11 property is 545,403 square feet.

12 Heat for both buildings is provided by high-pressure boilers located
13 in the manufacturing-office building. The air conditioning system for the
14 office building is also located in the manufacturing-office building;
15 however, there is essentially no air conditioning provided to the one-story
16 manufacturing facility. The utilities are transmitted to the office building
17 through ducts located in the tunnel connecting the buildings.

1 The BOR determined the true value of the property to be
2 \$13,662,300. Elsag-Bailey appealed this decision to the Board of Tax
3 Appeals (“BTA”).

4 At the BTA, appraiser Lawrence A. Kell testified on behalf of Elsag-
5 Bailey. He stated that, while he considered the standard three approaches to
6 valuation, only the sales-comparison or market approach fit this property.
7 Kell rejected the cost approach because he considered that, under the cost
8 approach, the buildings would be assumed to be rebuilt as they are
9 currently, and he said he would not do that. The income approach was
10 rejected by Kell because of the difficulty in subdividing the property. Kell
11 therefore used the sales-comparison approach to value the property. Kell
12 chose nine building sales and two listings, one of which sold subsequent to
13 his written appraisal, as comparables. Kell reviewed his nine comparables
14 and two listings, which ranged in size from over 1,700,000 square feet to
15 just over 225,000 square feet. He compared the comparables to the Elsag-
16 Bailey property, made adjustments, came to the conclusion that the property
17 should be valued in the range of \$2,700,000 to \$3,200,000, and finally
18 determined a fair market value of \$3,000,000.

1 Appraiser Richard P. Van Curen, testifying on behalf of the BOE,
2 also chose not to value the property by the cost approach. Van Curen
3 considered comparable lease rates as the basis for his income-capitalization
4 approach. Based on his estimated rental income, deductions for various
5 expenses, and a capitalization rate of twelve percent, he calculated a fair
6 market value of \$8,600,000. In addition, Van Curen prepared two different
7 sales-comparison approaches to estimate the value of the property. First, he
8 compared sales of office buildings similar to Elsag-Bailey's office building;
9 in addition, he compared sales of manufacturing-office buildings similar to
10 Elsag-Bailey's manufacturing-office building. Based on the assumption the
11 two Elsag-Bailey buildings could be sold separately, he estimated a fair
12 market value of \$3,525,000 for the manufacturing-office building, and
13 \$5,790,000 for the office building, for a total of \$9,315,000.

14 For his second sales comparison approach Van Curen valued the
15 Elsag-Bailey property as though it would be sold as one entity. Using this
16 assumption, he estimated a fair market value of \$9,250,000. Van Curen
17 stated that he believed the sales approach should be the primary approach

1 for the valuation of this property, and his final estimate of fair market value
2 was \$9,250,000.

3 After hearing the testimony, the BTA determined the true value of the
4 Elsag-Bailey property to be \$5,811,550.

5 This matter is before this court upon an appeal as of right.

6 *Wayne E. Petkovic*, for appellant.

7 *Baker & Hostetler, Lawrence V. Lindbergh* and *George H. Boerger*;

8 and *George W. Hawk, Jr.*, for appellee.

9 *Per Curiam.* The BOE contends that the \$13,700,000 allocated price
10 set forth in the October 31, 1989 conveyance fee statement established the
11 best evidence of value. However, there is no evidence in the record to
12 explain how the allocated price set forth on the conveyance fee statement
13 was derived. When the BOE's own appraiser was asked about the more
14 than four-million-dollar difference in values between his appraisal and the
15 allocated value, he referred to his appraisal, in which he stated, "[c]ertainly
16 the market did not change that much in 26 months, but we believe that the
17 [allocated] sale price included 'value in use' aspects that our value
18 indication does not." Likewise Elsag-Bailey's appraiser stated in his

1 appraisal, “[t]he allocation was done without, to the best of our knowledge,
2 the input of a qualified real estate appraisal.”

3 In a prior case involving an allocated purchase price, *Consol.*
4 *Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St.2d 410,
5 20 O.O.3d 357, 423 N.E.2d 75, we stated, “[t]he Board of Tax Appeals is
6 not required in every instance, and in all events, to accept as the true value
7 in money of real property, an allocation of a portion of a lump sum purchase
8 price paid for a group of assets ***.” *Id.* at 414-415, 20 O.O.3d at 360, 423
9 N.E.2d at 78. We further stated in *Consolidated Aluminum Corp.*, in
10 referring to a prior opinion in the same case, “[t]his court did not instruct
11 that the board must use the value as allocated by the appellant. The court, in
12 its opinion, stated that the board must receive all competent evidence in
13 order to determine the true value of the property.” *Id.* at 414, 20 O.O.3d at
14 359, 423 N.E.2d at 78. In this case the BTA considered all the evidence,
15 and based upon its evaluation of that evidence the BTA determined the true
16 value of the property.

17 The BOE further contends that if the BTA rejected the appraisal
18 offered by the taxpayer, it had to accept the value set by the BOR. The BOE

1 ignores the fact that two different appraisals of the fair market value of the
2 property were presented to the BTA. The opinions of the taxpayer's
3 appraiser and the BOE's appraiser were widely divergent. The BTA
4 evaluated the strengths and weaknesses of the two appraisals and
5 determined its own value. In *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty.*
6 *Bd. of Revision* (1975), 44 Ohio St.2d 13, 73 O.O.2d 83, 336 N.E.2d 433,
7 we held in paragraph two of the syllabus that "[t]he Board of Tax Appeals is
8 not required to adopt the valuation fixed by any expert or witness." In
9 paragraph four of the syllabus, we further held that "[t]he fair market value
10 of property for tax purposes is a question of fact, a determination of which
11 is primarily within the province of the taxing authorities, and this court will
12 not disturb a decision of the Board of Tax Appeals with respect to such
13 valuation unless it firmly appears from the record that such decision is
14 unreasonable or unlawful."

15 In this case, the BTA first analyzed the points upon which the two
16 appraisers agreed. Both appraisers agreed on the highest and best use of the
17 property, and both agreed the cost approach was not proper in this case.
18 Only the BOE's appraiser considered the income approach to value;

1 however, having considered it he stated he believed the sales-comparison
2 approach should be the primary approach to value. Thus both appraisers
3 believed that the sales-comparison approach was the best appraisal method
4 of estimating value.

5 After reviewing the work of both appraisers, the BTA found it was
6 unable to agree with the conclusions of either appraiser. The BTA rejected
7 the income-capitalization approach. The BTA found the sales-comparison
8 approach to valuation to be the most accurate approach for determining the
9 value of this property. The BTA then reviewed the sales comparables of
10 both appraisers, and found certain comparables upon which it believed it
11 could place some weight. Based on these comparables the BTA arrived at its
12 valuation.

13 The BOE contends that the BTA's determination of value was a
14 "quotient verdict," in that the fair market value determined by the BTA was
15 approximately 47.5 percent of the sum of the appraisals. The BOE cites no
16 evidence to substantiate its claim that the BTA arrived at a quotient verdict.
17 We reject the BOE's contention. Any time the BTA is presented with a
18 range of values and determines a value within that range, it could be

1 accused of arriving at a quotient verdict. In this case, the BTA adequately
2 explained its reasons for determining fair market value.

3 We conclude that there was sufficient evidence to support the BTA's
4 determination of fair market value. The decision of the BTA was
5 reasonable and lawful, and, accordingly, it is hereby affirmed.

6 *Decision affirmed.*

7 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER
8 and COOK, JJ., concur.

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