

## OHIO BOARD OF TAX APPEALS

Jerry L. Saunders,	)	CASE NO. 00-M-1311
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor and the	)	
Board of Education of the Columbus	)	
City School District,	)	
	)	
Appellees.	)	

### APPEARANCES:

For the Appellant -	Jerry L. Saunders, <i>pro se</i> 3411 Josephine Circle Grove City, OH 43123
For the Appellee - Board of Education	Martin J. Hughes III Green & Hughes Co., LPA 100 East Wilson Bridge Road, Suite 210 Worthington, OH 43085
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney By: Paul A. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215

Entered: February 15, 2002

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant herein under date of August 22,

2000 from decisions,<sup>1</sup> dated August 3, 2000, of the Franklin County Board of Revision (“BOR”), appellee herein.

The subject property is located in the Columbus City Schools taxing district of Franklin County, Ohio, and further identified as Parcel Nos. 010-35037, 010-33573, 010-63652 and 010-047856. The Franklin County Auditor found the true and taxable values of the subject property for tax year 1999 to be as follows:

Parcel No. 010-035037

	True Value	Taxable Value
Land	\$ 8,300	\$ 2,910
Building	\$41,500	\$14,530
Total	\$49,800	\$17,440

Parcel No. 010-33573

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$37,700	\$13,200
Total	\$47,000	\$16,460

Parcel No. 010-063652

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$26,700	\$ 9,350
Total	\$36,000	\$12,610

Parcel No. 010-047856

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$ 24,700	\$ 8,650
Total	\$ 34,000	\$11,910

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<sup>1</sup> In fact, two notices of appeal were filed with this Board, arising from a single complaint filed by the appellant. However, the BOR treated a single parcel as if it were filed on a separate complaint form and issued a separate decision regarding that parcel. Mr. Saunders then filed a separate notice of appeal and the BOR filed a supplementary statutory transcript containing the information relating to that parcel.

Upon consideration of the complaint filed by Mr. Saunders and the countercomplaint filed by the Board of Education of the Columbus City School District (“BOE”), the BOR determined the true and taxable values of the subject property for the 1999 tax year to be as follows:

Parcel No. 010-035037

	True Value	Taxable Value
Land	\$ 8,300	\$ 2,910
Building	\$27,500	\$ 9,630
Total	\$35,800	\$12,540

Parcel No. 010-33573

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$32,000	\$11,200
Total	\$41,300	\$14,460

Parcel No. 010-063652

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$21,000	\$ 7,350
Total	\$30,300	\$10,610

Parcel No. 010-047856

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$19,000	\$ 6,650
Total	\$28,300	\$ 9,910

Through his notices of appeal, Mr. Saunders has alleged that the correct values for all parcels for tax year 1999 are as follows:

All Parcels

	True Value	Taxable Value
Land	\$36,256	\$12,690
Building	\$57,218	\$20,026
Total	\$93,474	\$32,716

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notices of appeal, the statutory transcripts certified by the Franklin County Auditor as secretary of the BOR and the testimony adduced at the hearing before this Board.

The subject properties are four parcels located on the south side of the City of Columbus. All are improved with rental units. Three parcels are located on Parsons Avenue and the fourth is located on Sheldon Avenue, directly behind the others. One of these properties was Mr. Saunders' boyhood home. His mother and father owned most or all of the others for many years. Mr. Saunders may have purchased one of the properties from a childhood neighbor. His parents owned the remainder. A number of years ago, his mother sold her properties and personally financed the transaction. The new owners eventually defaulted on the mortgages and, in 1990, Mr. Saunders purchased the properties through a mortgage foreclosure. Mr. Saunders testified that his purchase price was merely intended to protect his mother's initial sale price. It was his hope that another would outbid him at the foreclosure sale, but such was not the case.

Since his purchase Mr. Saunders has managed the properties, maintaining the buildings and surrounding yards. However, Mr. Saunders contends that his management is made more difficult by the attitude of the City of Columbus towards the properties' neighborhood. Mr. Saunders' principal complaint, and that which he believed was not fully addressed at the BOR, is that the Parsons Avenue area receives fewer city services than other areas of the city. Mr. Saunders describes the Parsons Avenue area as a decaying area. According to Mr. Saunders, unlike the more cared-for areas within the city, the Parsons Avenue area has many abandoned properties. These abandoned properties are unkempt and quickly lend themselves to illegal activities, such as crack or prostitution houses. Mr. Saunders testified that he has repeatedly contacted various departments of the City of Columbus in order to persuade city employees to clean up the properties, but he has had little success. The city has not pressured the owners to maintain their properties, nor, according to Mr. Saunders, has the city taken the responsibility upon itself. Because of the condition of the neighborhood, Mr. Saunders claims he has lost his best tenants and has trouble retaining even the most marginal of renters. He complains that some of the property owners, purchasing their properties on speculation of future development, do not share his interest in the current condition of the neighborhood.

Mr. Saunders provided evidence of the actual income earned and expenses incurred on his units for the period of 1997 through 1999. The rent rolls

do reflect vacancies occurring in almost every unit during that period, supporting Mr. Saunders' claim of high turnover. Only one unit has retained the same tenant during those years.

While he admitted that he was a novice investor/rental manager, Mr. Saunders did express an opinion for each property. For example, Mr. Saunders testified that based upon the cash flow of 423 Sheldon Avenue (Parcel No. 010-035037), it was his opinion that the property was worth \$27,903. While he did not provide market evidence of rental income or expenses, Mr. Saunders did testify that the condition of the neighborhood reduced his potential income from the properties by approximately 30 per cent. He therefore deducted 30 per cent from the value of each property to account for lack of city services. In this manner, he valued each of the subject properties and concluded to a total value of \$93,474.

Upon cross-examination, Mr. Saunders admitted that the properties were currently encumbered by a \$108,000 mortgage to his mother. He also admitted that he had earlier attempted to sell the properties for an asking price of \$144,000, and the asking price was based on the then-current cash flow. However, Mr. Saunders stated that he was not currently making payments on the mortgage, as the income from the properties did not provide for sufficient cash flow. As to his attempt at marketing the properties, Mr. Saunders stated he received no offers to purchase.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn., supra*; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

“The auditor shall assess all the real estate situated in the county \*\*\* at its true value in money \*\*\*.”

In determining what constitutes “true value in money,” the Supreme Court has held that the best evidence of a property's fair market value or “true value in money” for tax purposes is the amount for which the property would sell on the open market

between willing parties. *State, ex rel. Park Investment Co., v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears*, (1961), 172 Ohio St. 443.

In the absence of data from a recent sale of a subject property, or concurrent with such data in some cases, Ohio Adm. Code 5703-3-03 provides that “true value in money” may be arrived at by considering any or all of the three recognized approaches to value: (1) the market data approach, in which recent sales of comparable properties are weighed; (2) the income approach, in which income attributed to a property is capitalized; and (3) the cost approach, which adds the depreciated cost of the improvements to the land to the value of the land itself. We also note that while an owner is entitled to provide an opinion of his property’s worth, to be considered probative such an opinion must be supported with tangible evidence of a property’s value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. The weight to be accorded an owner’s evidence is left to the sound discretion of this Board. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs 2 and 3 of the syllabus.

While Mr. Saunders attempted to provide evidence of value through the income capitalization approach, we are unable to place any significant weight on such evidence. Mr. Saunders did not provide a market review of similarly situated properties in the vicinity of the subject properties so as to allow this Board to verify

that his actual rents were comparable to the general market. Such a market review may have supported Mr. Saunders' 30 per cent valuation reduction. We are unable to make any determination concerning such a deduction, as there is no support for such a deduction in the record before us. Similarly, we have no support for Mr. Saunders' expenses. We note that the BOR, in making its determination, indicated that Mr. Saunders' reported expenses included gas and mileage, depreciation, interest and taxes -- items generally removed from the expense equation when concluding to value for *ad valorem* taxation purposes.

While we recognize the herculean effort Mr. Saunders is expending in maintaining his properties in face of a changing landscape, given the evidence before us, we are unable to reflect such efforts in the value of the properties. Mr. Saunders was aware of the nature of the neighborhood even before he purchased the properties. He was raised in the neighborhood and his mother sold the properties because she was the victim of random violence. The fact that the City of Columbus responds to his complaints in a manner which appears unsatisfactory to Mr. Saunders does not allow this Board to accept a reduction to the value of his properties which is simply not tied by any objective evidence to value. See *Burnich v. Mahoning Cty. Bd. of Revision* (June 21, 1996), B.T.A. No. 94-R-887, unreported wherein this Board held "As to the depressed condition of the neighborhood, again Mr. Burnich failed to provide the Board with any objective evidence as to the affect of this condition upon the value of the subject property." Value is based upon a

property's potential sales price in an open market. Mr. Saunders has not brought forth evidence of the sales prices of comparable properties, or even the sales prices of similarly situated properties in other parts of the city. While we acknowledge the vacancies as well as the limited pool of potential renters, we note that Mr. Saunders' records reveal his ability to increase rents over the last three years. The ability to raise rents certainly is a testament to his efforts in protecting his tenants. However, higher rentals do reflect properties that are potentially of greater value.

If the taxpayer does not prove a right to a reduction in value, we may approve the BOR's values without the BOR presenting any evidence. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Such is the case in this appeal. Mr. Smith has not proved his right to a reduction in value. Therefore, this Board finds that the correct values of the subject property as of tax year 1999 are as follows:

Parcel No. 010-035037

	True Value	Taxable Value
Land	\$ 8,300	\$ 2,910
Building	\$27,500	\$ 9,630
Total	\$35,800	\$12,540

Parcel No. 010-33573

	True Value	Taxable Value
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Parcel No. 010-047856

	True Value	Taxable Value
Land	\$ 9,300	\$ 3,260
Building	\$19,000	\$ 6,650
Total	\$28,300	\$ 9,910

It is the order of the Board of Tax Appeals that the Auditor of Franklin County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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