

OHIO BOARD OF TAX APPEALS

Tony Nicolaci,)	
)	CASE NO. 01-N-740
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Hamilton County Board of Revision and)	
Hamilton County Auditor,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Tony Nicolaci, <i>pro se</i> 7828 Mitchell Park Drive Cleves, Ohio 45002
For the Appellees -	Michael K. Allen Hamilton County Prosecuting Attorney By: Thomas J. Scheve Assistant Prosecuting Attorney 230 East Ninth Street, Suite 4000 Cincinnati, Ohio 45202

ENTERED: February 15, 2002

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

This matter is considered by the Board of Tax Appeals pursuant to a notice of appeal filed by Tony Nicolaci from a final decision of the Hamilton County Board of Revision ("BOR") determining the value of the subject real property for tax year 1999. The subject property is identified on the Hamilton County Auditor's records as parcel number 570-0030-0443.

The value of the subject property, as determined by the Auditor and then the BOR, is as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 27,300	\$ 9,560
BUILDINGS	<u>\$130,700</u>	<u>\$45,750</u>
TOTAL	\$158,000	\$55,310

In his notice of appeal and before this Board, Mr. Nicolaci maintains the Auditor and BOR have overvalued his property. Mr. Nicolaci contends the subject property should be valued as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 27,300	\$ 9,560
BUILDINGS	<u>\$112,700</u>	<u>\$39,440</u>
TOTAL	\$140,000	\$49,000

An evidentiary hearing was held where Mr. Nicolaci appeared and testified. The county appellees waived appearance at the hearing. Consequently, this matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board by the Auditor ("ST."), the record of the hearing held before this Board ("R"), and the exhibit submitted at the hearing. ("Ex.")

Initially, this Board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, wherein the Supreme Court of Ohio held that an appealing party has the burden of coming forward with evidence in

support of the value claimed. Once competent and probative evidence of value has been presented, any opposing parties then have a corresponding burden of providing evidence rebutting appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this Board that the appellant is entitled to the value that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this Board must proceed to examine the available record and determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

"The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in *In Re Estate of Sears*

[(1961)], 172 Ohio St. 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market." *Id.* at 412.

See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to offer an opinion as to the fair market value of his property. *Smith v. Padgett* (1987), 32 Ohio St.3d 344. While a property owner may be competent to offer an opinion as to the value of his property, his testimony must also be probative and credible.

In the present case, there was no recent sale of the subject property, Mr. Nicolaci having purchased the home in 1992. Therefore, this Board must consider other evidence relating to the value of the subject property. In his Exhibit 1, Mr. Nicolaci compared four different homes in his neighborhood, all on his street, with the subject property. He obtained his data from the Auditor's records, and from an organization called First American Real Estate Solutions, L.P. Copies of the source documents are included in the statutory transcript. These properties sold in 1998, 1999, and 2000. The sales of these properties range from \$160,000 to \$200,000. The

square footage of the properties ranges from 1814 to 2284 square feet. The sales price per square foot of the four sales is \$71.50, \$85.50, \$87.00 and \$95.50. Mr. Nicolaci argued these sales are probative in showing that his property is overvalued.

Mr. Nicolaci discussed that the comparables were built by Douglas Homes, while his home was built by a less expensive contractor. Mr. Nicolaci stated he simply could not afford a Douglas home. (R. 9) He discussed that the Douglas homes were all brick or half brick and half vinyl, while his home is all vinyl with some man-made brick veneer. He also stated the Douglas homes have other features his home does not, such as marble, quality carpeting, full basement, solid doors, and higher quality windows. Mr. Nicolaci testified that a buyer would certainly choose a different home in his neighborhood over his if the prices were close.

The subject property is 1754 square feet and is valued at \$158,000 by the BOR, or \$90.00 per square foot. Mr. Nicolaci testified that he purchased his home for \$113,800 in 1992, at \$64.88 per square foot. He disagreed with the value placed on his home, and also the percentage increase.

The comparables were built in 1992, 1994 and 1995. Mr. Nicolaci prepared a chart indicating the percentage increase from sales price when purchased to price at resale. Three of the four are in the low 20% range, while the fourth was 3%. The valuation placed on Mr. Nicolaci's home represents an increase of 39% over the price paid for his home. Although Mr. Nicolaci has shown that the BOR's valuation of his home represents a percentage increase over purchase price when new greater than that of the neighboring properties, this is not convincing evidence that his home is

overvalued at tax lien date. Mr. Nicolaci testified he could not afford a Douglas home, and hired a different contractor. We do not know if this contractor performed similar quality work, but perhaps for a lower cost. Although Mr. Nicolaci testified to several parts of the home that were not of the same quality as a Douglas home, the record indicates his home is very similar to the neighboring homes. Although he claims his home should be valued lower because the original windows were of a lower quality than those of the neighboring homes, he testified that he replaced every window in the house prior to tax lien date. (R. 13) Although he claims his carpet was of a lower quality, we do not know what condition the carpet was in at tax lien date in the neighboring properties, or in Mr. Nicolaci's home.

The differences Mr. Nicolaci referenced between his property and the comparable properties were not major, structural issues, and some of these differences have been remediated. Furthermore, his home is valued by the BOR at \$90.00 per square foot, which is within 5% of three of the four comparables.

In *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, the taxpayer presented auditor records of valuation for similar properties, mobile home parks. The taxpayer argued that because his property was valued at a higher value than the other four mobile home parks, both per acre and per mobile home site, his property was overvalued. In rejecting this argument, the court stated "Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."

For the reasons set forth above, we find Mr. Nicolaci has not submitted competent, probative evidence as to the fair market value of his property as of January 1, 1999. Accordingly, this Board finds appellant has not met his burden of showing the subject property has a value less than that set by the BOR.

Accordingly, we find and determine that the true and taxable value of the subject real property for tax year 1999 is:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 27,300	\$ 9,560
BUILDINGS	<u>\$130,700</u>	<u>\$45,750</u>
TOTAL	\$158,000	\$55,310

It is the decision and order of the Board of Tax Appeals that the Hamilton County Auditor shall list and assess the subject property in conformity with this decision and carry the same values forward in accordance with applicable law.

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