

OHIO BOARD OF TAX APPEALS

Red Hawk Home Owners Association)
Inc.,)
)
Appellant,)
)
vs.)
)
Summit County Board of Revision)
and Summit County Fiscal Officer,)
)
Appellees.)

CASE NO. 2006-N-1822
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Property Owner - Sleggs, Danzinger & Gill Co., LPA
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For the County Appellees - Sherri Bevan Walsh
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Entered May 19, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This matter is before the Board of Tax Appeals as a result of a notice of appeal filed by the appellant, Red Hawk Home Owners Association. Appellant's notice of appeal was filed November 6, 2006, and challenges a decision of the Summit

County Board of Revision (“BOR”), which, in its decision dated October 11, 2006, determined the value of parcel numbers 45-05349 through 45-05355 for tax year 2005.

Although counsel for appellant and the county appellees appeared at a hearing convened before this board, no briefs were filed by the parties. Accordingly, we proceed to consider this appeal based upon the notice of appeal, the statutory transcript (“S.T.”), and the testimony and evidence adduced at the hearing before this board (“H.R.”).

The subject property, as of the relevant tax lien date of January 1, 2005, consisted of vacant land owned by a residential development company. Located upon the vacant land are two streams, wetlands, and other natural areas. The streams are encumbered with easements from a utility company. The subject, before being assigned seven parcel numbers by the Summit County Fiscal Officer (“fiscal officer”), originally existed as part of a larger tract of land (“original parcel”). In September of 2005, a plat for this original parcel was approved by Summit County and recorded by the fiscal officer. Once the plat was recorded, the owner of the subject property began to transfer ownership of individual lots to purchasers. The subject property was transferred to appellant in December of 2005, and remained in its natural, undeveloped state.

The true and taxable values of the subject property, as originally determined by the fiscal officer, are as follows:

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05349 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$5,850 | \$2,050 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$5,850 | \$2,050 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05350 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$20,420 | \$7,150 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$20,420 | \$7,150 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05351 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$149,310 | \$52,260 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$149,310 | \$52,260 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05352 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$50,720 | \$17,750 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$50,720 | \$17,750 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05353 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$2,940 | \$1,030 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$2,940 | \$1,030 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05354 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$6,220 | \$2,180 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$6,220 | \$2,180 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05355 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$37,760 | \$13,220 |
| BUILDINGS | \$ <u>0</u> | \$ <u>0</u> |
| TOTAL | \$37,760 | \$13,220 |

A total true value of \$100 for each parcel was asserted by appellant in its complaint to the BOR, while the Nordonia Hills City School District Board of Education (“BOE”), in its counter-complaint, claimed the subject property should essentially be valued at the fiscal officer’s values.¹ At the hearing before the BOR, appellant presented the testimony of Harry Davis, president of the development company that purchased the original parcel and trustee of appellant. Mr. Davis testified that a portion of the subject property classified as wetlands could not be developed, and that the use of the subject property as “green space” was a factor in the economics of developing the area. As noted above, Mr. Davis testified that the subject property was transferred to appellant in December 2005. Mr. Davis stated that the subject was undevelopable, and may add value to certain lots in the area as “green space,” but not to others. Upon questioning from the BOE’s counsel, Mr. Davis stated that the subject was part of another parcel as of the subject’s January 1, 2005 tax lien date, and that the original parcel was held by the developer, not appellant. Mr. Davis also stated that he never had the subject appraised. Finally, Mr. Davis testified that the amount assigned to the subject by the fiscal officer, per acre, was more than that assigned to the lots in the development. Upon review of the testimony and evidence before it, the BOR voted to maintain the fiscal officer’s value of the subject property.

We begin our review of this matter by noting that “[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or

¹ A review of the attachment to the BOE’s counter-complaint shows minor differences in its opinion of value for the subject property, as compared to the fiscal officer’s. The total difference for all parcels amounts to \$30 in true value.

decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. In determining value, 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.

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 offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

In the absence of a recent arm’s-length sale, an appraisal or other relevant evidence is necessary to determine the true value of real property. *First Union Real Estate Equity & Mtg. Investments v. Morrow Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. Under such circumstances, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, where the value of property is estimated through a comparison of the subject to recent sales of comparable properties in the market area, 2) the income approach, which capitalizes the net income attributable to the property,

and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

At this board's hearing, appellant again presented the testimony of Mr. Davis. The county appellees submitted the testimony of Mark Mehen, a licensed general real estate appraiser employed by the fiscal officer. Mr. Davis generally reiterated his testimony before the BOR, describing the attributes and limitations of the subject property, when the property was platted, approved, and recorded, and the easements that encumber the subject. H.R. at 14-26. Mr. Davis stated that, in his opinion, the original parcel had value, but once the subject property was split from that original parcel, it had no value. Id. at 27.

Mr. Mehen initially testified that the total value for the original parcel, for tax year 2005, was \$563,800. H.R. at 55-56, Ex. A. Mr. Mehen testified that the value assigned to each parcel, including the subject property, was based only upon the square footage of the entire parcel, and other considerations, such as a wetland designation, were not considered for purposes of valuing the subject. Id. at 56-58. Further, Mr. Mehen testified that no value was "set" for the parcels, only that the value was "maintained" from the prior tax year. Mr. Mehan testified that the subject property, after being transferred to appellant in late 2005, was classified as nontaxable for tax year 2006. H.R., Ex. 4. With regard to the December 2005 transfer, Mr. Mehen stated that the actual date of transfer would not apply for valuation purposes, but would be applied prospectively for the following tax year. H.R. at 59-60. Upon cross-examination, Mr. Mehen stated that, in his belief, the fiscal officer's actions complied with the requirements set forth in the Ohio Revised Code. Id. at 71-72.

We will initially review any information related to a sale of the subject property contained in the record. With regard to the sale of the original parcel, Mr. Davis' testimony reflects that the development company, of which he is president, apparently purchased this parcel from a school board prior to the subject property being transferred to appellant. H.R. at 33. However, Mr. Davis could not remember when the original parcel was purchased, and no documentation was entered into the record that shows the terms and details of the sale. No conveyance fee statement or deed was submitted, and we have no information before us that shows whether or not the sale was arm's length in nature. As such, we cannot rely on this apparent sale for purposes of determining a value for the subject property.

With respect to the transfer of the subject property from Mr. Davis' company to appellant, the record contains a warranty deed and a document showing why the transfer is not subject to a conveyance fee, but does not contain any evidence regarding the circumstances surrounding the sale, a sale price, or other evidence that would assist this board in finding a value for the subject property. The aforementioned document related to a conveyance fee exemption shows that the grantee referenced the language "[t]o or from a person when no money or other valuable and tangible consideration readily convertible into money is paid or to be paid for the real estate and the transaction is not a gift" as its reason for exemption from a conveyance fee. See, generally, R.C. 319.54(F)(3)(m). While the documents submitted by appellant evidence a transfer of the property taking place within twelve months of the relevant tax lien date, such documents do not provide this board with sufficient evidence upon which we can assign a value to the subject property. We have no sale price or

evidence of whether or not the sale was arm's length. The document before us indicates that the transfer was exempt from a conveyance fee, thereby giving rise to questions concerning the circumstances surrounding the sale.

Furthermore, we do not have before us an appraisal report or other information that assists the board in assigning a value. Appellant has only argued that the subject property is encumbered with an easement, and may be undevelopable due to wetlands restrictions or other restrictions that may limit its use. Citing *Muirfield Assoc., Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710 and *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, this board has held that, for real property tax purposes, the fee simple estate must be valued as if unencumbered. See *J.S. Davis Co. v. Montgomery Cty. Bd. of Revision* (July 22, 2008), BTA No. 2006-K-1598, unreported. In *Muirfield*, supra, the Supreme Court rejected a claim, similar to that in the instant appeal, that a development association's fee simple interest in common property should be reduced because of zoning easements and other restrictions. Recently, the Supreme Court distinguished *Muirfield* and *Alliance Towers*, rejecting the argument that a recent, arm's-length sale "is not indicative of value because of the existence of an encumbrance ***." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶18. The court stated that while *Muirfield* and *Alliance Towers* could be interpreted to stand for the proposition that a sale price could be adjusted because of an encumbrance, where evidence of a recent, arm's-length sale exists, such sale is controlling. *Id.* at ¶26. The court again addressed this issue in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588,

holding that a recent, arm's-length sale controls, even though the property was encumbered by a voluntary easement that allowed customers of an adjacent store to park on the property. The appellant in *Dublin City Schools* relied upon *Muirfield* and *Alliance Towers* to support its assertion that the property must be appraised without regard to any restrictions or easements. However, in the instant matter, we are not presented with evidence of a recent, arm's-length sale. Therefore, similar to the holding in *Muirfield*, the subject property should be valued as if unencumbered.

With regard to appellant's contention that the subject property's value should be decreased because of factors that make it undevelopable, this board, in *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, held that the existence of a condition does not itself mandate a reduction in the value of the real property. "A recitation of defects in a taxpayer's property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the [diminution] in value caused by the defects, or some evidence of the value of the property as so diminished." *Id.* at 7. The Supreme Court has held that "[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA." *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227. See *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397. See, also, *Natl. Golf Links, Ltd. v. Clark Cty. Bd. of Revision* (Mar. 12, 2004), BTA No. 2002-V-2555, unreported (taxpayer referenced existence of wetland bogs and quicksand);

Fisher v. Morrow Cty. Bd. of Revision (Feb. 15, 2008), BTA No. 2006-V-717, unreported.

Here, we have not been presented with any evidence showing a decrease in value to the subject property because of the subject's alleged defects. Without this evidence, in the form of an appraisal report or otherwise, we cannot determine how the subject property's value was affected.

Based upon the above, we do not find that appellant has met its burden of proof in this matter. *Columbus*, supra. While, according to appellant, the various parcels that comprise the subject property may be overvalued in comparison to the values assigned by the fiscal officer, insufficient evidence has been presented to this board to merit a change in the value of the subject property.

Accordingly, it is the decision of the Board of Tax Appeals that the true and taxable value of the subject property, as of January 1, 2005, is as follows:

| Parcel No. 45-05349 | TRUE VALUE | TAXABLE VALUE |
|---------------------|-------------------|----------------------|
| LAND | \$5,850 | \$2,050 |
| BUILDINGS | \$ <u> 0</u> | \$ <u> 0</u> |
| TOTAL | \$5,850 | \$2,050 |

| Parcel No. 45-05350 | TRUE VALUE | TAXABLE VALUE |
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| LAND | \$149,310 | \$52,260 |
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| Parcel No. 45-05352 | TRUE VALUE | TAXABLE VALUE |
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| TOTAL | \$50,720 | \$17,750 |

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|---------------------|-------------------|----------------------|
| Parcel No. 45-05353 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$2,940 | \$1,030 |
| BUILDINGS | \$ <u> 0</u> | \$ <u> 0</u> |
| TOTAL | \$2,940 | \$1,030 |

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| Parcel No. 45-05354 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$6,220 | \$2,180 |
| BUILDINGS | \$ <u> 0</u> | \$ <u> 0</u> |
| TOTAL | \$6,220 | \$2,180 |

| | | |
|---------------------|-------------------|----------------------|
| Parcel No. 45-05355 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$37,760 | \$13,220 |
| BUILDINGS | \$ <u> 0</u> | \$ <u> 0</u> |
| TOTAL | \$37,760 | \$13,220 |

We order the Summit County Fiscal Officer to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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