

OHIO BOARD OF TAX APPEALS

Herbert & Karen Seil,)
)
 Appellants,) CASE NO. 2007-A-1009
)
)
 vs.) (REAL PROPERTY TAX)
)
)
) DECISION AND ORDER
 Erie County Board of Revision and)
 Erie County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellants - Herbert & Karen Seil, pro se
5231 Portage Drive
Vermilion, Ohio 44089

For the County
Appellees - James R. Gorry
Attorney at Law
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered May 12, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellants from a decision of the Erie County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2006.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, and the record of the hearing before this board at which the appellants and counsel to the county appellees appeared. The appellants offered testimony and

evidence into the record in support of their opinion of value. See H.R.; Exs. A, B, C, D. The county appellees countered with the testimony of their appraiser. H.R.; Exs. 1, 2, 3, 4.

The subject residential property is located in the Vermilion city taxing district and is identified on the auditor’s records as parcel #18-01006.000. The home, built in 1950 and remodeled in 2006, contains approximately 4,352 square feet of gross living area and is situated on a lagoon. The value of the parcel, as determined by the county auditor and by the board of revision, is as follows:

	AUDITOR	
	TRUE VALUE	TAXABLE VALUE
Land	\$441,650	\$ 154,580
Building	162,940	57,030
Total	\$604,590	\$ 211,610

	BOARD OF REVISION	
	TRUE VALUE	TAXABLE VALUE
Land	\$441,650	\$ 154,580
Building	132,390	46,340
Total	\$574,040	\$ 200,920

Mr. and Mrs. Seil allege that the correct total true value for the subject parcel is \$481,820, based primarily upon the sale of an adjacent property and the assessed values of other nearby properties.

We begin 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.

As we review the record established before the board of revision, we note that Mr. Seil indicated on the original decrease complaint filed with the BOR that the requested change in valuation of the subject was justified because "land value is assessed at \$5888.67/foot of water frontage. Properties across lagoon from us is [sic] assessed at \$2774/foot of frontage." S.T., Ex. 2. No counter-complaint was filed. At the BOR hearing, appellants appeared and testified, indicating that they used the adjacent property's sale in March 2007 for \$450,000 to develop a ratio that compared the sale price to the total appraised value, as determined by the county, to arrive at a factor of .81. The Seils applied the .81 factor to the subject's appraised value, which they contend resulted in their requested reduced value of \$488,533. S.T., Ex. 5 at 4-5. Thereafter, the board of revision decided to decrease the auditor's valuation of the subject to \$574,040. S.T., Ex. 4.

Upon the appellants' appeal from the BOR's decision to this board, a hearing was convened where Mr. and Mrs. Seil appeared and testified with regard to

the subject's valuation. The Seils indicated that a reduction in the valuation of their property is warranted when it is compared to the valuations of other properties, both across the lagoon upon which the subject is located and directly adjacent to the subject property. The Seils presented the board with a chart comparing the subject to eight other properties in the area (Ex. A), an aerial photograph depicting where the eight properties are located in relation to the subject (Ex. B), a map illustrating the location of another comparable (Ex. C), and a chart comparing the subject to what the Seils deemed were the two most relevant comparable properties (Ex. D).

First, appellants complain that with respect to properties located across the lagoon from the subject, the subject's "water frontage value per foot (appraised land divided by frontage feet)" is much higher, and the other properties were also "reappraised to *** lower values by the county auditor in December, 2006." Ex. A. Mr. Seil indicated that "[t]he property across the lagoon from us has the same water we have and yet, on the frontage basis, their property is assessed at less than half of what ours is." H.R. at 12. He went on to claim that a sale of one of the other properties in May 2007 for an amount that was within 3% of the county's reassessed value supports a conclusion that the lower reappraised values are even more reflective of the property's true values.

Appellants further question the value that the county has attributed to their land, as compared to the adjacent property and another parcel toward the end of the lagoon. H.R. at 14; Ex. D. Appellants claim that their neighbor's property was sold in March 2007 for \$450,000. They claim that after the sale, the value the auditor

attributed to the neighbor's land equated to \$4,659/foot. In support of such valuation, they point to a recent sale of a property at the end of the lagoon which sold for \$4,250/foot. Appellants are requesting that the same value be attributed to their land, with no adjustment to the value attributed to their improvements. H.R. at 14-15.

First considering appellants' arguments regarding the valuations of neighboring properties, we have previously found such comparison to the taxable values assigned to other properties unpersuasive. In *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, we held:

“The Appellant has attempted to show a lower value than that assessed by the BOR. However, appellant's presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly helpful. “Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. *Paul L. and M. Courtney Caron v. Hamilton Cty. Bd. of Revision* (August 27, 1993), BTA No. 1992-B-879, unreported.” Id. at 6.

See, also, *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31 (“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.”).

In addition, with regard to the alleged sales that occurred involving both the neighbor's property and the property toward the end of the lagoon, we find

insufficient evidence in the record regarding such sales to justify reliance upon them. No documents from the sales in question were presented to definitively establish when the transactions occurred or how much was paid. Further, no one involved in the sales testified and there was no indication that the appellants verified the terms of the sales with either the buyer or seller or established that the sales were arm's length in nature. The comparability of the sale properties was never clearly delineated; appellants compared the land solely based upon its size, and the neighbor's home was simply described as smaller than the subject's. H.R. at 14, 20-22.

We acknowledge that when determining value, it has long been held by the Supreme Court that “the best evidence of ‘true value in money’ of real property is an actual, recent sale of the property in an arm's-length transaction.” *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Absent a recent sale, as in the instant matter, 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, which compares recent sales of comparable properties, 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. While appellants have provided us with what appears to be examples of two recent sales, the lack of information about such sales and the properties involved

precludes us from determining their comparability, with or without adjustments, and therefore we cannot rely upon them in our valuation of the subject.

Accordingly, based upon the foregoing, this board finds that appellants have failed to demonstrate that the reduction in value they seek has a basis in the market, as of the tax lien date in question. See *Cleveland Bd. of Edn.*, supra, at 337; *Springfield Local Bd. of Edn.*, supra, at 495; *Mentor Exempted Village Bd. of Edn.*, supra, at 319. Having found no evidentiary support for the valuation sought by the appellants, we now consider the BOR's valuation.

As we review the instant record, we note that the BOR decreased the subject's value; however, no basis for such action is indicated. Before this board, the county offered the testimony and report of Mr. Richard Hoffman, ASA, CAE, MAI, CRE, a state-certified general appraiser, arguably in support of the BOR's valuation, although the value advocated by Mr. Hoffman was lower than the BOR's.¹

In his summary report, Mr. Hoffman completed both a cost approach and a sales comparison approach. In his highest and best use analysis, he determined that "the use [of the property] that will result in the highest possible value of the property would be a continuation of the current use." Ex. 1 at 5. Under the cost approach, Mr. Hoffman first completed a sales comparison approach analysis of land sales in order to determine the site valuation. He compared the subject property to three sales of land within ¼ mile of the subject. After making adjustments for differences between the comparables and the subject, including, but not limited to, date of sale, location, site

¹ The BOR concluded to a total true value of \$574,040 and Mr. Hoffman concluded to a total true value of \$555,000.

view and site improvements, he concluded to a value for the subject of \$360,000. Ex. 1 at 7. He went on to complete a replacement cost analysis of the subject, utilizing the Marshall Valuation Service manual to develop the costs to be utilized. Mr. Hoffman applied a 28% depreciation figure to the subject, taking into consideration that even though it had an actual age of approximately 56 years, it had been remodeled in 2006.² Ex. 1 at 6. Using the cost approach, he concluded to a value of \$609,850 (rounded), including the aforementioned site value. Ex. 1 at 8.

Using the sales comparison approach, Mr. Hoffman compared the subject to three properties that sold between September 2005 and December 2006. He indicated that “[e]ach comparable improved sale was taken from the subject market area and is on the same channel of the Vermilion Lagoon as the subject parcel of property.” Ex. 1 at 10. He adjusted the sales for differences in date of sale, condition, number of bathrooms, gross living area, number of fireplaces, and car storage. After making adjustments totaling 2.7%, 5.2%, and 8% to the three sales respectively, he arrived at a final value conclusion of \$555,000. Ex. 1 at 10.

In reconciling the foregoing approaches to valuation, Mr. Hoffman indicated that “[t]he market approach is the most reliable method of developing an appropriate estimate of value and the most weight has been placed upon it in this analysis. The cost approach supports the final indicated value. The income approach was not developed.” Ex. 1 at 3. Accordingly, he concluded to a final opinion of value for the subject of \$555,000.

² Appellants challenged the 2006 remodel data in the report. H.R. at 42.

Based upon our review of Mr. Hoffman's report, we find there is nothing in the record to dispute the conclusions set forth therein. We find that Mr. Hoffman appropriately relied primarily upon his sales comparison approach, considering that the age of the subject property, even with remodeling, makes analysis of depreciation factors quite subjective. Further, we find that his use of recent sales comparables, located within a very close proximity to the subject, with reasonable adjustments for differences, provides the most accurate reflection of the subject. As such, we find his appraisal remains the most competent, probative evidence of value in the record.

Therefore, we find, as of January 1, 2006, the value of the subject parcel shall be that which the county's appraiser determined in his report, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$360,000	\$ 126,000
Building	195,000	68,250
Total	\$555,000	\$ 194,250

The Auditor of Erie County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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