

**OHIO BOARD OF TAX APPEALS**

David L. Vorherr,	)	
	)	CASE NOS. 2007-A-255,
Appellant,	)	2007-A-256, 2007-A-257,
	)	2007-A-258 <sup>1</sup>
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER
Hamilton County Board of Revision	)	
and Hamilton County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant -David L. Vorherr, pro se  
5968 Cheviot Road  
Cincinnati, Ohio 45247

For the County Appellees -Joseph T. Deters  
Hamilton County Prosecuting Attorney  
Thomas J. Scheve  
Assistant Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202-2151

Entered January 27, 2009

Ms. Margulies and Mr. Eberhart concur. Mr. Dunlap dissents.

This cause and matter came on to be considered by the Board of Tax Appeals upon four notices of appeal filed herein by the above-named appellant from four decisions of the Hamilton County Board of Revision. In said decisions, 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 notices of appeal, the statutory transcripts certified to this board by the county board of

<sup>1</sup> Pursuant to Ohio Adm. Code 5717-1-08, the instant cases are hereby consolidated for disposition purposes.

revision, and the record of the hearing before this board at which only the appellant appeared. The county appellees waived their right to appear, opting to submit the cases on the basis of the administrative record which they believed supports the board of revision's decisions. The appellant offered testimony and evidence into the record in support of his opinion of value for each of the subject parcels. See H.R.; Exs. 1-6.

The subject vacant land is located in the 001-Cincinnati Corp taxing district and is identified on the auditor's records as parcel numbers 192-0065-0019, 192-0064-0026, 192-0064-0011, and 192-0064-0035. The value of the parcels, as determined by the county auditor and retained by the board of revision, is as follows:

PARCEL # 192-0065-0019		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 500	\$ 180
Building	-0-	-0-
Total	\$ 500	\$ 180

PARCEL # 192-0064-0026		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 600	\$ 210
Building	-0-	-0-
Total	\$ 600	\$ 210

PARCEL # 192-0064-0011		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 1,400	\$ 490
Building	-0-	-0-
Total	\$ 1,400	\$ 490

PARCEL # 192-0064-0035		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 300	\$ 110
Building	-0-	-0-
Total	\$ 300	\$ 110

We must 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.

At the outset, it is noted that this board previously considered the valuation of an adjacent parcel owned by the instant appellant, Mr. Vorherr, for tax year 2005. In that case, appellant argued that "the property [value] should be decreased due to the effect of geological factors acting upon the subject. In short, the property is located in an area where the land is slipping. Appellant testified that the land cannot be developed because of the instability caused by the geological issues." *Vorherr v. Hamilton Cty. Bd. of Revision* (July 15, 2008), BTA No. 2006-N-645, unreported, at 4. In arriving at a determination of value in said case, this board relied upon an appraisal report offered into evidence by Mr. Vorherr and the majority of the

board adopted the valuation indicated therein of \$4,000, or approximately \$1,594 per acre. H.R. at 22; Ex. 5. A review of a county map depicting the subject parcels in relation to the parcel previously under consideration indicates that the subject parcels are adjacent to the previously considered parcel to the east, and all of the parcels are located on the west side of Tappan Avenue. See Ex. 1.

Appellant has taken the aforementioned value per acre and applied it to the parcels under consideration herein, arguing that since the subject parcels suffer from the same geological concerns as the adjacent parcel, they should, therefore, be valued in the same manner. See Exs. 2-3. Specifically, with regard to parcel #192-0065-0019-00, using the appraiser's figure of \$1,594 per acre from the earlier case, it is appellant's contention that the subject .114 acres have a market value of \$182, with a corresponding taxable value of \$64. With regard to parcel#192-0064-0026-00, it is appellant's belief that the subject .126 acres have a market value of \$201, with a corresponding taxable value of \$70. With regard to parcel # 192-0064-0011-00, it is appellant's belief that the subject .294 acres have a market value of \$525,<sup>2</sup> with a corresponding taxable value of \$184. Finally, with regard to parcel #192-0064-0035-00, it is appellant's contention that the subject .062 acres have a market value of \$98, with a corresponding taxable value of \$39.

Before this board, Mr. Vorherr also reviewed the comparables utilized by the county in valuing the subject. He visited all of them and provided photos (Ex. 4) of each and concluded that the comparables his appraiser had used were more similar

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<sup>2</sup> The board is unsure how this value was derived since based upon county records, this parcel contains .294 acres, which equates to a value of \$470 (rounded) using a value of \$1,594 per acre. S.T.

to the subject “[b]ecause at least they were rolling or hillside. The areas – several of the photos I showed of the comparables Hamilton County used were level lots. They were virtually level lots. They were fenced in lots. They were lots that people were using, adjacent houses were using, or they had very nice, well maintained homes immediately adjacent to them. That, for all intents and purposes, would provide a nice, wooded buffer for their property, or parking for their cars or a playground for their children.” H.R. at 27.

In consideration of the foregoing, this board finds that appellant has not met his burden of proof herein. Appellant’s proposed values are based upon this board’s previously determined per acre value for the previous tax year for the immediately adjacent parcel. While the subject parcels are arguably very similar, suffering from the same geological concerns, we cannot rely upon a valuation derived in an appraisal for a different parcel, for a different tax year, as a basis for the instant valuation.

We first note that the appraisal of the neighboring parcel concluded to a value for the subject as of January 1, 2005, one year before the tax lien date under consideration. Based upon the “as of” date that was utilized, the accuracy of the findings within the report becomes questionable since the date upon which all conclusions are based is approximately one year prior to the actual date in question. The instant valuation determination must be premised on evidence relevant to the tax lien date in question. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75

[Ohio St.3d 552](#). In addition, the appraisal was not done for the subject parcels, and, as such, there is nothing in the report to correlate its conclusions to the subject parcels. Without same, we cannot rely upon appellant's testimony alone to provide such correlation.

Further, the appraiser did not appear before the BOR or this board to authenticate the appraisal that was submitted, testify regarding his professional credentials and the methodologies utilized in deriving his valuation conclusions, or be cross-examined/questioned by the opposing party or members of the BOR or this board's examiner. As we noted in *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, a view expressed by this board on numerous other occasions:

“Generally, documentary evidence which is received at hearing needs to be identified and authenticated by a witness who testifies under oath and is subject to examination by both the opposing party and an attorney examiner of this board. Furthermore, that witness' qualifications and credibility may be assessed during such examination. However, in this case, such safeguards are noticeably absent since the individuals who prepared the appraisals did not appear at hearing. Given our inability to assess the appraisers' qualifications and credibility and the failure to have the documents authenticated, we find that each report constitutes hearsay upon which this board may not rely in reaching a decision.” Id. at 3-4.

See, also, *Specca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported; *Bd. of Edn. of the Northridge Local Schools v. Montgomery Cty. Bd. of Revision* (Jan. 28, 2005), BTA No. 2004-B-35, unreported, settled on appeal, Sup. Ct. No. 2005-0390, *08/16/2005 Case Announcements*, 2005-Ohio-4216; *Fisher v.*

*Morrow Cty. Bd. of Revision* (Feb. 15, 2008), BTA No. 2006-V-717, unreported; *Giallombardo v. Montgomery Cty. Bd. of Revision* (May 7, 2004), BTA No. 2003-V-875, unreported; *Shanker v. Franklin Cty. Bd. of Revision* (July 19, 2002), BTA No. 2002-J-82, unreported. These cases reflect the proposition that “[a]n expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.” *Freshwater*, supra at 30.

Thus, this board concludes that appellant has not provided sufficient, probative evidence of the value of the subject parcels by relying upon the appraised per acre value of the adjacent parcel for the previous tax year. Therefore, we find, as of January 1, 2006, the value of the subject parcels shall be that which the auditor previously determined and the board of revision maintained, as follows:

PARCEL # 192-0065-0019		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 500	\$ 180
Building	-0-	-0-
Total	\$ 500	\$ 180

PARCEL # 192-0064-0026		
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PARCEL # 192-0064-0035

	TRUE VALUE	TAXABLE VALUE
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Building	-0-	-0-
Total	\$ 300	\$ 110

The Auditor of Hamilton 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.

Mr. Dunlap dissenting.

Consistent with the majority opinion in *Vorherr*, supra, I find that the appraisal report upon which the majority relied in making its valuation determination provided sufficient, probative evidence of the value of the subject parcels on tax lien date. Accordingly, I would have determined the value of the subject utilizing the per acre value adopted in *Vorherr*, supra, as it is the best evidence of the subject's value available. In addition, I believe that appellant raised some valid concerns about the comparables utilized by the county, and without more from the county to support the county's value, I believe we should have determined value herein based upon the appraised value of the adjacent parcel, as previously adopted by this board.

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