

OHIO BOARD OF TAX APPEALS

Charles R. Kashary, Jr.,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Ottawa County Board of Revision and)
 the Ottawa County Auditor,)
)
 Appellees.)

APPEARANCES:

For Appellant - Charles R. Kashary, Jr. pro se
9390 Brecksville Road
Brecksville, Ohio 44141

For the County Appellees - Rich, Crites & Dittmer
James R. Gorry
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered February 6, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals (“BTA”) upon a notice of appeal filed herein by appellant Charles R. Kashary, Jr. from a decision of the Ottawa County Board of Revision (“BOR”).

The subject property is located in Ottawa County, Ohio and is identified on the auditor’s records as parcel number 006-00273-05893-000. The subject property is improved with a single-wide mobile home thereon. S.T., Ex. 3.

The subject’s valuation, as originally determined by the Ottawa County Auditor (“auditor”) for 2006 is as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 87,600	\$30,660
BLDG	\$ 11,200	\$ 3,920
TOTAL	\$ 98,800	\$34,580

Appellant filed an original complaint¹ before the BOR, requesting that the total true value be lowered to \$57,600. S.T., Ex. 2.

After conducting a hearing, the BOR determined the true and taxable values of the subject property for tax year 2006 should be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 87,600	\$30,660
BLDG	\$ 500	\$ 180
TOTAL	\$ 88,100	\$30,840

Dissatisfied with the decision of the BOR, appellant again requests that the subject property's total true valuation be reduced to \$57,600.

We now consider this matter upon the notice of appeal, the statutory transcript certified by the auditor, and the evidence presented at this board's evidentiary hearing.

We begin our review of the evidence 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 its 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

¹ Erroneously indicated by Mr. Kashary as a counter-complaint.

decision of the board of revision to come forward and offer evidence that 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.

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. *W. 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 which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to 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 to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held 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. 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.

At the BTA hearing, the appellant presented a list of auditor's valuations of purported comparable properties and numerous sales in support of his request for a reduction in value for the subject property. Exs. 1-3. Appellant testified that he had obtained all the information off the auditor's website and determined that his property values “were over double what some of the other properties were valued at.” H.R. at 7, 13. Appellant argued that the subject's land should not have risen from a previously appraised valuation of \$44,000 to \$87,600 for tax year 2006. H.R. at 15.

Regarding the auditor's appraised values of other properties, in *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, this board concluded that taxable values reflected for other properties provide little insight into the value of the property at issue. Specifically, we stated:

“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 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. *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No. 1992-B-879, unreported.” Id. at 232.

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.”).

Thus, appellant’s list of auditor’s valuations of neighboring properties has no probative or credible weight in determining the value of the subject before us.

Mr. Kashary’s comparables range in sales dates from March 30, 1998 to November 3, 2006. Exs. 1, 3. Thus, many are too far removed from the tax lien date to be considered probative evidence of value. Also, almost all these sales are for the combined land and building. As a result, Mr. Kashary’s analysis in determining the value of the subject is again based on the auditor’s land valuations. This presents us with the same problem as discussed above and renders appellant’s analysis of little utility in determining value.² The appellant’s exhibits, based on the auditor’s valuations, are of no utility in determining the subject property’s value.

The Board of Tax Appeals is given great discretion in what weight to give the evidence presented before it. *Cardinal Fed. S. & L. Assn.*, supra. The board may accept or reject any and all evidence presented.

² A listed July 10, 2006 land-only sale would appear to lend some support for Mr. Kashary’s estimate of land value for the subject, but only the auditor’s assessed valuation is noted. No sales price is given. Ex. 1 at 2.

“Ohio law has long held that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property.” *Smith v. Pagett* (1987), 32 Ohio St.3d 244, at 347. Nevertheless, while a property owner may be competent to offer an opinion as to the value of his or her property, the testimony and corroborating evidence must also be probative and credible. See *Society Natl. Bank v. Franklin Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-1418, unreported. Upon review, we are compelled to find that the appellant has not met his burden of persuasion. *Cleveland Bd. of Edn.*, supra; *Crow*, supra.

In the instant record, there is some evidence to support the valuation adopted by the BOR. Apparently, the BOR found Mr. Kashary’s testimony that his trailer home had no value to be persuasive and lowered the value substantially. However, we find appellant’s evidence before us today, regarding the subject land value, is not credible or probative for the reasons given above. Therefore, appellant has failed to meet his burden of proof.

Therefore, we find the value of the subject as of January 1, 2006 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 87,600	\$30,660
BLDG	\$ 500	\$ 180
TOTAL	\$ 88,100	\$30,840

It is the decision and order of the Board of Tax Appeals that the Ottawa County Auditor shall list and assess the subject property in conformity with this decision.