

OHIO BOARD OF TAX APPEALS

Ruth Ellenbogen,)	CASE NO. 2007-B-641
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Montgomery County Board of Revision)	
and Montgomery County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Irvin J. Zipperstein, Co., LPA Irvin J. Zipperstein 3077 Kettering Blvd. Point West, Suite 210 Dayton, Ohio 45439
For the County Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura G. Mariani Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422

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 upon a notice of appeal filed herein by the above-named appellant, Ruth Ellenbogen, from a decision of the Montgomery County Board of Revision (“BOR”). 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 (“H.R.”). The subject real property is a one-story, 5,367-square foot, ranch-style residence built in 1992. It has four bedrooms and three full baths and is located in the Butler Twp. taxing district, Montgomery County, Ohio. It appears on the auditor’s records as parcel number A01 21303 0001. The value of the parcel, as determined by the auditor and the BOR, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 135,450	\$ 47,410
Bldg	474,970	166,240
Total	\$ 610,420	\$ 213,650

Appellant contends that the board of revision has overvalued the subject and that it should be valued at a total true value of \$464,034.25.¹

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence that rebuts appellant’s evidence of value.

¹ Per appellant’s notice of appeal.

Id.; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

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. Absent a recent sale, as in the instant case, 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 hearing before this board, the appellant testified on her own behalf and offered the testimony and appraisal report of Leland M. Coe, MAI, CCIM, CRE, in support of her valuation estimate. The county appellees were represented by counsel but did not present additional evidence at this hearing.

In his written appraisal report, Mr. Coe utilized both the sales comparison and cost approaches to value. He did not feel it was appropriate to utilize the income approach in his valuation determination as the subject property was not income-producing property. Ex. B at 2 and H.R. at 32.

Using the sales comparison approach, Mr. Coe compared the subject to three sales of properties dating from April 27, 2005 to October 24, 2005 that he

determined to be similar to the subject. S.T., Ex. B at 2. Adjusting for site size, view, quality of construction, age, room count, gross living area, basement amenities, garage and deck, he estimated a market value of \$450,000 for the subject via the sales comparison approach. Ex. B at 2.

Mr. Coe also completed a cost approach analysis of the subject property as additional support for the sales comparison approach. H.R. at 36. His indicated value by this approach was \$566,028. Ex. B at 3. He testified that the figure was substantially higher because he “could not calculate the depreciation of the external or functional obsolescence.”² H.R. at 47.

Mr. Coe apparently relied upon the sales comparison approach to conclude to a value of \$450,000 for the subject. Ex. B at 6.

The county appellees did not offer any evidence or testimony regarding the subject’s value, but chose to primarily rely upon counsel’s cross examination of the property owner’s appraiser to attempt to establish that the appraisal did not constitute competent, probative, and credible evidence of value. Although we find some of Mr. Coe’s responses to be questionable, he sufficiently responded to the questions that were propounded. Further, we find that there was no evidence or testimony elicited from the appraiser or offered by the appellant to rebut, factually, the information contained in the appraisal.

Through their cross examination of Mr. Coe, the county appellees suggested that there were problems with the sale comparison approach and data utilized by the appraiser. However, the county appellees never established through

² However, he did deduct \$69,362 for depreciation via the “age-life method.” H.R. at 47.

their own competent, probative evidence an alternative method of valuation for the subject property or how their implied problems with Mr. Coe's methodology affected the subject's valuation by the appellant's appraiser. We have reviewed the statutory transcript and find there is no information therein supporting the county appellees' valuation process for the subject property.

Therefore, upon review of the property owner's appraisal report, we find that the property owner has offered sufficient, probative evidence of the subject's value which the county appellees failed to rebut. Accordingly, based upon the preponderance of evidence currently before this board, we have determined the value of the subject property, as of January 1, 2006, shall be that which the board of revision determined, as supported through the property owner's appraisal. The values for the subject parcels shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 135,450	\$ 47,410
Bldg	314,550	110,090
Total	\$ 450,000	\$ 157,500

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

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