

OHIO BOARD OF TAX APPEALS

Hajj Gaston,)	CASE NO. 2007-H-1327
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Cuyahoga County Board of Revision and the Cuyahoga County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Hajj Gaston, pro se 3949 Silsby University Heights, Ohio 44118
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8 th Floor 1200 Ontario Street Cleveland, Ohio 44113

Entered May 19, 2009

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

This cause and matter is before the Board of Tax Appeals upon a notice of appeal filed by appellant Hajj Gaston (“property owner”). Gaston challenges a decision of the Cuyahoga County Board of Revision (“BOR”) that determined the value of certain real property for tax year 2006. We consider this matter on appellant’s notice of appeal, the statutory transcript (“S.T.”) certified by the Cuyahoga County Auditor (“auditor”), and the evidence provided at this board’s hearing (“H.R.”).¹

¹ The county appellees waived their appearance at this board’s hearing.

The subject property is located in the Cleveland Heights taxing district and is identified in the auditor's records as parcel number 683-24-021. The property is improved with a 998-square-foot, two-story house built in 1937 that includes two bedrooms and one bathroom. S.T. at Ex. D, F. At the time of the BOR hearing, the property owner rented the house to tenants for \$839 per month. S.T. at Ex. E. The value of the subject property, as originally assigned by the auditor, is \$88,000.

Through a complaint filed with the BOR, Gaston asserted that the subject's true value should be reduced to \$69,000. S.T. at Ex. A. At the BOR hearing, Gaston tendered property record card information concerning the property located directly next to his that transferred in February 2007 for \$79,000. S.T. at Ex. D.² During the same period the neighbor had his property up for sale, Gaston said he was also trying to sell the subject property, which he originally listed at \$90,000 but then later reduced to \$80,000. S.T. at audiotape recording of BOR hearing. Gaston said he was unable to find a buyer at that reduced price, so he decided to rent the property rather than sell it for less than \$80,000. Id. The neighbor's property has an additional 246 square feet than Gaston's, with an extra bedroom and half bathroom. S.T. at D. After consideration of the information presented, the BOR ultimately decided to reduce the auditor's assessment to \$81,000, which is the same amount Gaston originally paid for the property when he purchased it in February 2000. S.T. at Ex. F.

² Exhibit D within the statutory transcript also contains a document titled "comparable sales report" that lists five additional properties. We find no reference in the record to this document and, therefore, will accord it no weight.

From the BOR's decision, Gaston appealed to this board, asserting in his notice of appeal that the subject's true value should be \$64,000.

Before this board, Gaston presented exhibits on three property sales located in the same zip code as the subject property. The documents he submitted list sales data, square footage, the number of rooms and the age of the improvements for these properties. He also submitted an article that discusses general market conditions during 2008 in various cities around the country, including Cleveland. H.R. at 7-10; Appellant's Exs. 2-5. Gaston again emphasized the adjacent property, testifying that the former owner had given him a tour of the numerous updates that had been made to the interior. H.R. at 19-20; Appellant's Ex. 2. Gaston said he was not involved with the sale of the property next door, but testified the property was listed by a realtor and he believed the parties did not know each other. H.R. at 16-17. Gaston reasoned that since this neighboring property sold for \$79,000 and is 20 percent larger than his property, the value of the subject should be reduced by that percentage. S.T. at Ex. E. Gaston also presented information on another property located on the same street as the subject at 2050 Staunton, which appears to have transferred in May 2008 for \$17,000. A third property, located within walking distance on Bushnell Road, appears to have sold in May 2008 for \$65,000. Appellant's Exs. 3-4.

In considering appellant's appeal, we acknowledge at the outset the standard by which our review is to be conducted. As has been pointed out by the Supreme Court, "[w]hile a determination of the true value of real property by a board of revision is entitled to consideration by the BTA, such determination is not

presumptively valid.” *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 572, 574. See, also, *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495; *Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 337, 338. Nevertheless, an appellant challenging a decision of a county board of revision must support his valuation claim:

“When 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 [in] or decrease from the value determined by the board of revision. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 328, ***. The appellant before the BTA must present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, ***.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. (Parallel citations omitted.)

See, also, *Bd. of Edn. of the Hamilton Local Schools v. Franklin Cty. Bd. of Revision* (June 10, 1997), Franklin App. Nos. 96APH09-1228, et seq., unreported (“When an issue concerning the true value of real property for taxation purposes is presented to the BTA, the value set by the BOR is not presumptively correct. *** However, in a hearing before the BTA, the taxpayer is obliged to prove his right to a reduction in value.”).

When determining value, the Supreme Court has long held, “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 is typically calculated for appraisal purposes by applying any of three alternative methods: 1) the market data (sales) approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes net income attributable to the property, and 3) the cost approach, which depreciates improvements to the land and then adds them to the land value.

At the hearings before the BOR and this board, Gaston presented a total of three property sales located in the same neighborhood as the subject property. The documents from the auditor's website he submitted listed the number of rooms and the age of the improvements for the alleged comparables. S.T. at III, Ex. A, appellant's Exs. 2-4. As to the 2050 Staunton and Bushnell Road properties, we find these documents to be of little utility in determining the subject property's value. Appellant's Exs. 3-4. Gaston presented little to no supporting testimony as to these two exhibits. The purpose of the sales comparison approach is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the marketplace. See *The Appraisal of Real Estate* (13th Ed. 2008) at 297-314, which emphasizes the need for familiarity with the properties used in any comparative analysis. With nothing more than a very limited list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a value determination. Further, there is no evidence as to the arm's-length nature of these two purported comparable sales. Finally, these two

properties sold in May 2008, which is almost two and one-half years after the relevant January 2006 tax lien date. According to the article Gaston presented, the market had apparently changed by 2008. Appellant's Ex. 5. Therefore, even if we were to find these to be valid sales, this board can place little weight on remote sales as evidence in support of the subject's 2006 value. R.C. 5713.03; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36.

While the property owner asserts that his property should be valued at \$64,000 as of January 1, 2006, Gaston testified that he purchased his property in 2000 for \$81,000 and that he subsequently listed the property for sale in 2006 at \$90,000 and then \$79,000 or \$80,000. H.R. at 18; S.T. at audiotape recording of BOR hearing. Gaston presented no competent evidence that home values declined by 20 percent in his neighborhood between February 2000 and January 1, 2006. Even though the subject's actual sale in 2000 may be too remote as to the tax lien date in 2006, the sale is some indication of true value and should be taken into account. R.C. 5713.03; *Dublin-Sawmill Properties*, supra.

Gaston said he decided to withdraw his property from the market rather than sell it for less than the subject's neighboring property. S.T. at audiotape recording of BOR hearing. In essence, Gaston's testimony would indicate his opinion of value is at least \$79,000 or \$80,000. The neighboring property, which Gaston described as similar to his though slightly larger and in better condition, transferred in 2007 for

\$79,000. We are unable to find this evidence alone is sufficient to support appellant's alleged value of \$64,000.

Upon review, we find that the property owner has not presented sufficient competent or probative evidence to support his asserted value. *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. Thus, having no probative evidentiary support in the record for the valuation sought by the appellant, we must also consider the BOR's valuation. Our analysis of the BOR's determination routinely has begun with the Supreme Court's holding in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1988), 81 Ohio St.3d 47, 49 that "[w]here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence." However, the foregoing holding in *Simmons*, supra, appeared to have been tempered in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 567, where the court held "[w]hen the BTA reviews the evidence in a case in which the statutory transcript is the only evidence, the BTA must review the transcript and 'make its own independent judgment based on its weighing of the evidence contained in the transcript.' *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 ***. When the BTA reviewed the transcript in this case, it found that 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.' By affirming the BOR's valuation, the BTA affirmed a valuation that was not supported

by any evidence.” Under the latter pronouncement, we would find little evidentiary support for the BOR’s value herein.

Then, later, in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-5237, the Supreme Court concluded that “the BTA erred in reinstating the auditor’s determination of value when the taxpayer had presented sufficient evidence to the BOR to justify the reduction the BOR ordered.” The court relied on its holding in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, where it held “when the evidence presented to the board of revision or the BTA contradicts the auditor’s determination in whole or in part, and when no evidence has been adduced to support the auditor’s valuation, the BTA may not simply revert to the auditor’s determination.” *Id.* at ¶27. Even though this board did not find a stated explanation for the BOR’s adjustment, the court criticized the board for reinstating the auditor’s determination as the default value. *Bedford Bd. of Edn.*, *supra*.

Thus, the question for us becomes what constitutes “sufficient” evidence to justify a reduction in valuation. In the instant record, there is limited evidence to support the valuation adopted by the BOR, as it was essentially the same information that was presented to this board. We have previously rejected such evidence as not being competent and probative of value. However, the BOR saw fit to reduce the subject’s valuation, while not to the value opined by the appellant, but to a value lower than determined by the auditor. Arguably, the auditor must have conceded to the

reduced valuation for the subject, since there is no indication in the record that the auditor attempted to defend and/or maintain the auditor's original valuation.

Therefore, the subject's true and taxable values, as of January 1, 2006, shall be the values previously determined by the board of revision, as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$28,600	\$10,000
Building	\$52,400	\$18,300
Total	\$81,000	\$28,300

The Cuyahoga County Auditor is hereby ordered to list and assess the subject property in conformity with the decision as announced herein.

ohiosearchkeybta