

OHIO BOARD OF TAX APPEALS

Mark and Gayle Luker,)	CASE NO. 2007-H-386
)	
Appellants,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Lorain County Board of Revision)	
and the Lorain County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	-	Mark and Gayle Luker, pro se 33357 Augusta Way Avon, Ohio 44011
For the County Appellees	-	Dennis Will Lorain County Prosecuting Attorney John G. Morrison Assistant Prosecuting Attorney 225 Court Street, Third Floor Elyria, Ohio 44035

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 appellants Mark and Gayle Luker (“property owners”). The Lukers challenge a decision of the Lorain County Board of Revision (“BOR”) that determined the value of certain real property for tax year 2006. We consider this matter on appellants’ notice of appeal, the statutory transcript (“S.T.”) certified by the Lorain

County Auditor (“auditor”), and the evidence provided at this board’s hearing (“H.R.”).¹

The subject property is located in the Avon local schools taxing district and is identified in the auditor’s records as parcel number 04-00-025-000-291. The property is improved with a 3,518-square-foot, two-story house that includes five bedrooms and two and one-half bathrooms. S.T. at Ex. C. The value of the subject property, as originally assigned by the auditor, is \$438,400.

Through a complaint filed with the BOR, the Lukers asserted that the subject’s true value should be reduced to \$324,978. S.T. at Ex. A. At the BOR hearing, Gayle Luker tendered property record card information and real estate listings concerning various properties to compare with the subject. S.T. at Ex. D. After consideration of the information presented, the BOR ultimately decided to reduce the auditor’s assessment to \$425,000 “based on the recent sale price.”² S.T. at Ex. E. From the BOR’s decision, the property owners appealed to this board, asserting in their notice of appeal that the subject’s true value should be \$334,000.

Gayle Luker testified at the hearing before this board and presented additional exhibits, including a copy of a homebuilder’s April 2005 proposal and estimate of \$384,000 as the cost to purchase land and construct a new house on the subject. Ex. 3; H.R. at 10. The record indicates the parcel transferred in July 2005 for

¹ Although notified of this board’s hearing, the county appellees were not present.

\$85,000 or \$94,000 and a building permit was issued on August 1, 2005. S.T. at Ex. C; H.R. at 11-12.³ Luker testified that they financed the purchase and construction with a \$325,000 bank loan. H.R. at 14. She said that with \$3,200 in additional lighting and flooring allowances, the final cost to build the new house was \$387,200. H.R. at 11-12. She said construction of her house was completed at the end of 2005 and they moved in on January 10, 2006. Id. To further support her value, Luker provided the property record card for a neighbor's property, which she said had a house comparable in size but with "considerable upgrades such as a pool, full brick on the house, masonry work with patio that we do not have." Id.; Ex. 4. The record indicates this property was constructed in 2004 and transferred for \$350,000 in October 2004.

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*

Footnote contd. _____

² From a review of the record, we are unable to find any evidence to support the sale amount referenced by the BOR. Although the property owners originally indicated on their complaint that the subject transferred for \$425,000, Gayle Luker testified the number was listed in error. S.T.; H.R. at 12-15.

³ The auditor's property record card lists a sale price of \$85,000 and references the auditor's value at \$94,000, while Gayle Luker testified before this board that the purchase price of the land was \$94,000. Based on the record, we find the land value to be \$94,000.

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 hearing before this board, Gayle Luker presented uncontroverted testimony and corroborating documentary evidence of the \$387,200 actual costs to purchase land and construct a new house, which was completed within days of the January 1, 2006 tax lien date at issue. The property owners also provided evidence of another newly constructed house on the same street as the subject property that allegedly sold for \$350,000 14 months before the relevant tax lien date. We find this evidence lends credence to Luker's testimony in that the alleged comparable sale price is consistent with the property owners' total costs. We further find Luker's testimony and her exhibits to be credible evidence in support of the subject property's value. *Higbee Co. v. Cuyahoga Cty. Bd. of Revision* (2006), 107 Ohio St.3d 325, 2006-Ohio-2, ¶47 (ruling that "application of a cost-based valuation by the BTA was reasonable" when the subject building had only been open two months prior to the tax lien date); *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (Feb. 8, 1995), BTA Nos. 1993-M-731, et seq., unreported, affirmed (1996), 75 Ohio St.3d 181 (holding that the cost approach is particularly applicable to new improvements that represent the highest and best use of the land).

Upon review, we find that the property owners have presented no competent or probative evidence to support the asserted value of \$334,000. *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. We do

find, however, that appellants have presented sufficient evidence to support a value different from that of the BOR. Based on the record, we specifically find Luker's testimony, cost documents, and the sale of the neighboring property probative and credible evidence of value. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948. Consequently, the subject property should be valued in accordance with this evidence, and we therefore find that the true and taxable values, as of January 1, 2006, are as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 94,000	\$ 32,900
Building	<u>\$293,200</u>	<u>\$102,620</u>
Total	\$387,200	\$135,520

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

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