

## OHIO BOARD OF TAX APPEALS

Joseph R. Hanna,	)	CASE NO. 2007-M-1203
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Cuyahoga County Board of Revision,	)	
the Cuyahoga County Auditor, and	)	
the Board of Education for the Cleveland	)	
Municipal School District,	)	
	)	
Appellees.	)	

### APPEARANCES:

For the Appellant -	Joseph R. Hanna, pro se 12710 Larchmere Blvd. Cleveland, Ohio 44120
For the County - Appellees	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee - Bd. of Edn.	Brindza, McIntyre & Seed LLP David Rose 111 Superior Avenue, Suite 1025 Cleveland, Ohio 44114

Entered May 19, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on October 20, 2007. Appellant challenges a decision, mailed September 20, 2007, of the Cuyahoga County Board of Revision (“BOR”), appellee.

The property which is the subject of this appeal is located in the Cleveland taxing district of Cuyahoga County, and is identified on the auditor's records as parcel number 129-13-022.

The value of the property determined by the Cuyahoga County Auditor as of January 1, 2006 was as follows:

Parcel No. 129-13-022	True Value	Taxable Value
Land	\$ 11,000	\$ 3,900
Building	\$ 46,500	\$ 16,300
Total	\$ 57,500	\$ 20,200

Upon consideration of a complaint filed by the Board of Education for the Cleveland Municipal District ("BOE"), the BOR determined that the correct values as of January 1, 2006 were as follows:

Parcel No. 129-13-022	True Value	Taxable Value
Land	\$ 11,000	\$ 3,900
Building	\$ 218,300	\$ 76,300
Total	\$ 229,300	\$ 80,200

The property owner challenges the BOR's findings for tax year 2006, claiming that the values, which were increased to reflect a sale of the property taking place on or about July 24, 2006, should be increased, but not to the levels found by the BOR. The values claimed by the appellant for tax year 2006 are as follows:

Parcel No. 129-13-022	True Value	Taxable Value
Land	\$ 11,000	\$ 3,900
Building	\$ 143,000	\$ 50,000
Total	\$ 154,000	\$ 53,900

The matter was submitted to the Board of Tax Appeals, pursuant to R.C. 5717.01, upon the notice of appeal and the statutory transcript certified by the Cuyahoga County Auditor as secretary of the BOR. The board scheduled a hearing; the appellant attended and provided evidence and testimony. The BOE waived appearance.

The BOR increased value to reflect the appellant's purchase of the subject property for \$229,000. At the hearing before this board, Mr. Hanna described his property as a "mixed use" building, part commercial and part residential. Mr. Hanna lives in the building.

Mr. Hanna explained that he purchased his property at the peak of the market in 2006. Mr. Hanna knew the owner of the property. The owner had listed the property for \$250,000, and had a contract for sale, but the sale did not close. The owner told Mr. Hanna that he was willing to sell for \$229,000, and Mr. Hanna agreed to purchase for that price. H.R., Digital Recording.

Mr. Hanna introduced two exhibits during the board's hearing. The first exhibit contained listings of three properties that had recently sold. One property sold for \$32,900, one for \$96,000, and the third, the property described by Mr. Hanna as the most comparable to his property, with an asking price of \$225,000, sold for \$154,000<sup>1</sup> in July 2006, at the same time Mr. Hanna purchased his property. Mr.

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<sup>1</sup> The exhibit introduced by Mr. Hanna, which appears to be a computerized listing of the property, does not reflect a sales price of \$154,000. However, the board will accept Mr. Hanna's testimony regarding the sales price.

Hanna also introduced a second exhibit containing a number of properties that were on the market in 2006 and 2007, but had not sold. The exhibit includes a range of properties, including an apartment building containing four one-bedroom units, listed for \$575,000, a building with four storefronts, listed for \$535,000, a ten-unit motel listed at \$279,000, and a commercial building with two store fronts and three apartments, listed for \$179,000. All, according to Mr. Hanna, are within the subject property's neighborhood. None, according to Mr. Hanna, had been sold. H.R., Digital Recording.

Mr. Hanna reflected on the current market conditions, noting that as of the date of his hearing in late 2008, no properties in his neighborhood were selling. Because of the current state of the market, and because another property similar to his sold for \$154,000 at approximately the same time he purchased his property, Mr. Hanna seeks that value for his property.

We begin our review of this matter 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 City 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 competent and probative evidence of true value has been presented by an appellant, 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.

We also note that while an owner is entitled to provide an opinion of his property's worth, to be considered probative such an opinion must be supported with tangible evidence of a property's value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. The weight to be accorded an owner's evidence is left to the sound discretion of this board. *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs two and three of the syllabus.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin*

*Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Accordingly, where there exists an actual sale of real property which is both recent and arm's length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property's true value. *Berea*, supra; *Conalco*, supra; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28.

Mr. Hanna admits that he purchased the subject property for \$229,000 in July 2006. The property was available for sale on the open market, and Mr. Hanna accepted the seller's sale price. The evidence presented by Mr. Hanna does not lead this board to reject the sale.

Mr. Hanna presented sales of properties he believed to be comparable to his property. However, the sale of his property is a better indicator of value than the sale of a comparable. Mr. Hanna also presented properties within the marketplace that have not sold. We recognize that real estate market conditions rapidly changed in this state within the last few years. However, Mr. Hanna's purchase was recent relative to the tax lien date of January 1, 2006. The price paid remains the best indicator of value for the subject property.

Considering the record before us and based upon a preponderance of competent evidence, this board finds that the correct values of the subject property for tax year 2006 are as follows:

Parcel No. 129-13-022

	True Value	Taxable Value
Land	\$ 11,000	\$ 3,900
Building	\$ 218,300	\$ 76,300
Total	\$ 229,300	\$ 80,200

It is the order of the Board of Tax Appeals that the Auditor of Cuyahoga County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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