

OHIO BOARD OF TAX APPEALS

Mark Bratslavsky,)
)
 Appellant,) (CASE NO. 2007-T-1415
) (REAL PROPERTY TAX)
 vs.) DECISION AND ORDER
)
 Warren County Board of Revision and) **Appeal Filed March 4, 2009**
 Warren County Auditor,) **Warren County Court of Appeals**
)
 Appellees.)

APPEARANCES:

For the Appellant - Mark Bratslavsky, pro se
4355 South Mallard Cove
Mason, Ohio 45040

For the County Appellees - Rachel A. Hutzel
Warren County Prosecuting Attorney
Christopher A. Watkins
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Lebanon, Ohio 45036

Entered February 3, 2009

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

Mark Bratslavsky appeals from a decision of the Warren County Board of Revision, in which the BOR determined the true value of permanent parcel number 16-28-470-012 to be \$230,960 for tax year 2006. Mr. Bratslavsky asserts that the correct true value should be \$198,450.

The subject property is comprised of approximately 0.4967 acres of land. The land is improved with a two-story brick and frame structure. The 2,258-square foot residence was erected in 1998. The home has four bedrooms and two and one-half

baths. There is an attached two-car garage, and the subject is improved with a patio on the rear of the house.

In support of his contention of value, Mr. Bratslavsky relies upon the sale of a neighboring property, which he believes is comparable to the subject. The sale is located across from the subject property. It sold in December 2005 for a purchase price of \$234,500. Appellant's Ex. 1 at 109. The sale property has a similar floor plan to the subject's but is slightly larger at 3,100 square feet. Mr. Bratslavsky uses the sale price as a starting point in his analysis. He noted that there were various differences in the two properties, which needed to be taken into account. To make these adjustments, Mr. Bratslavsky looked to the county's residential cost schedules, which are used by the auditor when valuing improvements under the cost approach. See Appellant's Ex. 1 at 82-89. Mr. Bratslavsky deducted \$20,350 for the cost of the sale property's finished basement. Mr. Bratslavsky testified that his property did not have as large a finished basement area. He also deducted \$1,700 for an additional patio that the sale had and \$1,840 for a finished attic. Next, Mr. Bratslavsky testified that, although both the subject and the sale property have a fireplace, the subject's fireplace was not in working order. Although repairable, Mr. Bratslavsky testified that he had no desire to restore the fireplace to working condition because he did not use one. H.R. at 39. He thus deducted \$1,540 for the non-functional fireplace. This adjustment again was based on the county's residential cost schedule. Appellant's Ex. 1 at 88.

In addition, Mr. Bratslavsky made an adjustment of \$250 to account for what he asserts is a miscalculation of his home's living space. He noted that the

county had an area of the home drawn as a rectangle and showing it at 18 square feet in size. Mr. Bratslavsky testified that the sides of the area are actually at a 45-degree angle, making the actual size of the area 16 square feet. Again using cost and adjusting the cost by a grade factor and depreciation, Mr. Bratslavsky concludes that this change of space should decrease the value of his home by \$250.

Finally, Mr. Bratslavsky argues that the county has failed to take into consideration that the subject is located on a corner lot. Mr. Bratslavsky testified that his home has streets on three sides. The property backs to a busy street, one that has a great deal of traffic and noise. H.R. at 16. Mr. Bratslavsky testified that a real estate agent advised him that the placement of his property would result in the subject having a likely selling price that is \$15,000 to \$20,000 less than other properties. H.R. at 15. See, also, Appellant's Ex. 1 at 57. As further support, Mr. Bratslavsky noted that he purchased the subject in 2003 for \$194,700. H.R. at 17. He then looked at the sale prices of other homes in the subdivision during 2003. After adjustments for size and amenities, using the county's residential cost schedule, he concluded that the average price of the other homes was \$251,370, a difference of \$56,670 from his purchase price. H.R. at 17. Mr. Bratslavsky testified, "I solely attribute [the price difference] to the location of the home being on the corner lot and backing into the major street with traffic." H.R. at 17. Next, Mr. Bratslavsky returned to the sale comparable he previously used, the house across the street, and noted that \$10,370 should be deducted from the value of his house to adjust the sale price of the other home to account for the subject being on a corner lot.

The county appellees also appeared before this board, offering the testimony of Mr. Steve Ward, a real estate appraiser. Mr. Ward testified that he and his company perform appraisals for Warren County on a contract basis. H.R. at 46. Mr. Ward offered an opinion of value for the subject property using the sales comparison approach. The sales comparison approach, often referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties, identifying appropriate units of comparison and making adjustments to the sale prices (or unit prices) based upon relevant, market-derived elements. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate (13th Ed. 2008), at 297; Ohio Adm. Code 5703-25-05(G). Mr. Ward analyzed sales of five residential properties that he found to be similar to the subject. All of the sales were located within the subject's subdivision. The sales occurred between April 2005 and September 2005 and ranged in price from a low of \$242,000 to a high of \$267,600. Mr. Ward noted that sale number 2 backed onto the same busy street as the subject property. Its selling price was \$245,000, which suggested to him that the subject's location would not negatively impact value. H.R. at 61. Mr. Ward then reviewed the sale properties for differences in location, design, quality of construction, age, condition, size and amenities. Based upon this review, he adjusted the sale prices to arrive at a value for the subject of \$242,910. Appellee's Ex. A.

During his testimony, Mr. Ward opined that having a corner lot in a residential subdivision does not necessarily mean that the property would sell for less.

He testified that developers do not recognize this distinction when pricing lots. H.R. at 58. Moreover, he noted that the sale price of the comparable sale used by Mr. Bratslavsky was also a corner lot. This sale, in Mr. Ward's opinion, supported the county's valuation. H.R. at 58. Finally, Mr. Ward testified that he disagreed with Mr. Bratslavsky using the county's residential cost schedule to make deductions from sale prices. H.R. at 90. Referring to the concept of "components in place," Mr. Ward testified that one would not make the same kind of adjustment under the sales comparison approach as one would make under the cost approach. H.R. at 58. He further stated that many of the small items that Mr. Bratslavsky deducted from his comparable sales would not result in a reduction in the purchase price of a property. H.R. at 59.

We begin our review of this matter by noting that "[w]hen 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 or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In determining value, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

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 offered to challenge the claim. *W. Industries, Inc. v. Hamilton*

Cty. Bd. of Revision (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

“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 *Soc. Natl. Bank v. Franklin Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-1418, unreported. Although Mr. Bratslavsky provided a great deal of evidence to this board, we are unable to find that he provided evidence that is probative and persuasive to establish a decrease in the subject property’s value.

Initially, we cannot rely upon Mr. Bratslavsky’s method of deducting from the sale prices of other homes the cost associated with every possible difference between the subject and those sales. These costs are based on those used by the county when employing the cost approach to value. In making his adjustments to sale prices, Mr. Bratslavsky mixes two approaches to value - the cost approach and the sales comparison approach. However, the methods employed in the two approaches are not interchangeable. Simply stated, “cost and value are not necessarily synonymous.” *The Appraisal of Real Estate*, at 319. While adjustments made in the cost approach are based on cost indicators, including depreciation, adjustments made when relying upon sale prices of comparable properties should take into account the contributory value of

each property's components. "The principle of contribution states that the value of a particular component is measured in terms of its contribution to the value of the whole property or as the amount that its absence would detract from the value of the whole. The cost of an item does not necessarily equal its value." The Appraisal of Real Estate, at 40. The contribution to value may be higher or lower than the original cost:

"Buyers are clearly conscious of the cost of repairs, additions, or conversions as seen in the application of the cost approach ***, but the cost of an improvement does not always result in a one-to-one increase in value for the property as a whole. For example, adding a swimming pool to a residential property at a cost of \$50,000 may only add \$25,000 to the sale price of the property if swimming pools are not a desirable amenity in that market." Id. at 319.

Ultimately, a property's value must be measured in terms of its overall benefit or utility in the market. Id. at 41. Having based an opinion of value upon the sale price of a neighboring home, it was therefore improper methodology for Mr. Bratslavsky to reduce from the sale price the estimated cost of each item of difference. See *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, at 302 (finding appraiser's attempt to adjust the value calculated by the income approach in the manner used to adjust values in a sales comparison approach to be in error). Mr. Bratslavsky has not presented any evidence that enables us to quantify the contributory value associated with the additional improvements made to the comparable sale.

Likewise, we must reject the adjustment made to account for the two square foot difference in the one area of the home. While it may be true that the

difference may impact the construction costs of the home, there is no evidence before us that this difference would be recognized in a subsequent sale of the home. We also conclude that the deduction for the fireplace would be in error, not only because Mr. Bratslavsky attempted to deduct the cost of the fireplace while relying upon comparable sales, but also because the fireplace does exist. The fact that Mr. Bratslavsky has decided to not repair the defective fireplace does not mean it has no contributory value to the property or to a potential buyer.

Finally, we are unable to find Mr. Bratslavsky's adjustment for the corner lot to be persuasive. First, we reiterate that he made adjustments to sale prices using the county's residential cost schedule. As these costs do not necessarily reflect what would be a proper adjustment to value, we are unable to agree with Mr. Bratslavsky's conclusion that any differences between the subject's 2003 sale price and the other sale prices reflect a difference in value for the corner lot. *Hotel Statler*, supra. We do agree that it is possible to use a paired data analysis technique to show that, when two properties are equivalent in all respects but one, the value of the single difference can be measured to indicate the difference in price between two properties. *The Appraisal of Real Estate*, at 316. Nevertheless, "Special care must be taken when relying on pairs of adjusted values because the difference measured may not represent the actual difference in value attributable to the characteristic being studied. The difference may include other aspects of the property, not just the one characteristic being studied." *The Appraisal of Real Estate*, at 317. Given our concerns with the

methodology applied, we are unable to conclude that Mr. Bratslavsky has adequately corroborated his assertion that he has been able to isolate the corner location of the subject property as the sole difference in its 2003 purchase price.

Mr. Bratslavsky refers to a written opinion received from a local real estate agent, which indicates that a corner lot would sell for less than one not on a corner, as support for his requested decrease in value. We note, however, that the agent's comments appear to be a general statement and not a specific reflection of any impact the subject's location may have on value. Appellant's Ex. 1 at 57. Even if we were to consider the agent's comments as expressing an opinion as to the impact of the subject's location on value, the agent did not testify before either this board or the BOR. There is no specific prohibition to a real estate agent offering an opinion of value, provided the agent demonstrates sufficient knowledge and experience to qualify as an expert in the valuation of real property. See, e.g., *In re Smith* (Bankr. S.D. Ohio 2001), 267 B.R. 568, at 574. However, whether such a person may give an opinion of value is a preliminary question to be decided by the BOR, which must consider all the facts and circumstances relating to the individual. See *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621, 628. On appeal, we must also determine the weight and credibility to be accorded to the testimony and evidence presented. *Cardinal Fed. S. & L. Assn.*, supra. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572 (holding that the BTA has a duty to "evaluate and criticize" the testimony before it).

In determining the weight and credibility to be given to a person who offers an opinion of value, we may consider several factors, including: (1) whether the person is an appraiser by trade, (2) the amount of formal training, if any, the witness may have had, (3) whether the person holds a professional designation or is affiliated with any accredited appraisal organization, (4) whether the person demonstrates a familiarity with appraisal practice and terminology, and (5) whether the person demonstrates a sufficient knowledge of the property being appraised and the marketplace. See *Soc. Natl. Bank*, supra, and *Bowman v. Hamilton Cty. Bd. of Revision* (May 20, 1994), BTA No. 1992-T-1366, unreported.

Here, we are unable to find that the agent qualifies as an expert appraiser. The agent did not testify before this board; he did not testify before the BOR. By not developing a sufficient foundation to establish the agent's expertise in appraisal methods and the derivation of his opinion that the corner location would impact the value of this particular parcel, we are unable to find the non-expert opinion to be probative. *Soc. Natl. Bank*, supra, at 7. *Bowman*, supra (where a real estate broker did not qualify as an expert in appraising property, the BTA gave no weight to the broker's testimony or report concerning the value of real property). See, also, *Fisher Big Wheel, Inc. v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 1995), BTA No. 1993-T-1007, unreported (holding that where the testimony of an owner's representative has not been forthcoming, the BTA is unable to determine the competency of the evidence presented).

Finally, we note that Mr. Ward has provided a sale of a property that backs onto the same street onto which the subject backs. The sale price of this parcel

was \$245,000. While a parcel away from the corner, the fact that the sale and the subject abut the same street is evidence that refutes Mr. Bratslavsky's conclusion that the location of the subject has a significant impact on value.

Accordingly, in the absence of competent and probative evidence that conclusively establishes the value of the subject parcel, we are compelled to find that Mr. Bratslavsky has not met his burden of supporting a decrease in the subject property's value. *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.

Turning to the remaining evidence, the county has submitted an appraisal that opines a value for the subject at \$242,910, an increase of \$11,950 over the BOR's determination of value. The county states that it does not necessarily offer the appraisal to seek an increase in value, but it does argue that it supports the BOR's valuation. We concur. We do have some concerns with the appraisal itself. For example, when making adjustments for the size of improvements, Mr. Ward often listed a square footage for the sale that does not comport with the information supplied for that property. We are especially concerned with his adjustment to sale number one. Although the record shows the sale to be 2,731 square feet in size, Mr. Ward's adjustment page shows a positive adjustment to the sale price based on a living area of 2,231. If sale number one is indeed 2,731 square feet in size, a negative adjustment to the sale price should have been made to account for the subject being only 2,258 square feet in size.

Despite these concerns, we do find the sales relied upon in the appraisal to be comparable to the subject property. *Colonial Village Ltd. v. Washington Cty. Bd.*

of Revision, 114 Ohio St.3d 493, 2007-Ohio-4641, at ¶24. When taking differences in size and location into account, we find that the data supports the \$230,960 value determined by the county auditor and affirmed by the BOR. *Columbus*, supra.

Therefore, upon consideration of the existing record and the applicable law, the Board of Tax Appeals determines that the true and taxable values of the subject property are as follows for tax year 2006:

Parcel 16-28-470-012	TRUE VALUE	TAXABLE VALUE
LAND	\$ 50,000	\$17,500
BUILDINGS	<u>\$180,960</u>	<u>\$63,340</u>
TOTAL	\$230,960	\$80,840

We order the Auditor of Warren County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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