

**OHIO BOARD OF TAX APPEALS**

David P. Marshall, )  
 )  
 Appellant, ) (REAL PROPERTY TAX)  
 )  
 vs. ) DECISION AND ORDER  
 )  
 Ottawa County Board of Revision and )  
 Ottawa County Auditor, )  
 )  
 Appellees. )

**APPEARANCES:**

For the Appellant - David P. Marshall, pro se  
397 West Shore Boulevard  
Put-in-Bay, Ohio 43456

For the County Appellees - Rich & Gillis Law Group, L.L.C.  
Mark H. Gillis  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215-3704

Entered April 14, 2009

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

David P. Marshall appeals from a decision of the Ottawa County Board of Revision, in which the BOR determined the true value of permanent parcel number 024-18474-31404-000 to be \$327,350 for tax year 2006. Mr. Marshall asserts that the correct true value should be \$252,000.

The subject property consists of approximately 0.132 acres of land located on the shore of Lake Erie. The subject is improved with a one-story structure

that is approximately 1,030 square feet in size. The structure is used by Mr. Marshall as a seasonal home. For tax year 2006, the county auditor valued the subject property at \$424,480. Mr. Marshall filed a complaint with the BOR, seeking a reduction in value to \$252,000. The Board of Education for the Put-in-Bay Local School District filed a counter-complaint, seeking retention of the auditor's value.<sup>1</sup>

In his hearing before the BOR, Mr. Marshall asserted that there appeared to be a disparity in the values assigned to his and neighboring homes, when compared to other homes elsewhere along the shore. He testified that his valuation should be lowered to reflect the values placed on those other homes. S.T. at BOR Hearing Record. In addition, Mr. Marshall presented the BOR with an appraisal of the subject property. The appraisal, which valued the subject as of August 23, 2004, opined a value of \$294,000. Mr. Marshall indicated that this was an appraisal done by a bank as part of his application for a mortgage. S.T. at BOR Hearing Record. The board of education, while in appearance, presented no evidence for the BOR's consideration.

The BOR indicated during its hearing that the difference in values between Mr. Marshall's neighborhood and other shoreline properties was the result of differences in properties and differences in neighborhoods. The BOR also noted that it had two sales from Mr. Marshall's neighborhood that supported a valuation higher than that asserted by Mr. Marshall.<sup>2</sup> S.T. at BOR Hearing Record. The BOR,

---

<sup>1</sup> Although it participated in the hearing before the BOR, the board of education has not entered an appearance in these proceedings.

<sup>2</sup> The BOR hearing record indicates that the sale price for one of these properties was \$385,000 and the sale price for the other was \$378,000. We note, however, that a portion of the BOR hearing tape cuts out, apparently due to a recorder malfunction. Accordingly we lack information regarding some of the details of the two sales.

however, agreed to review the property and the evidence presented, including the 2004 appraisal. Subsequently, the BOR voted to value the subject property at \$327,350, a reduction of \$97,130 from the auditor's original valuation.

On appeal, Mr. Marshall again argues that the BOR's valuation fails to address what he considers to be an unfair disparity in the valuation of shoreline property. He also asserts that the increase in neighborhood values from the previous year, in some cases as much as 400% to 500%, is unreasonable and unsupported. He argues that this amount of increase applied only to his neighborhood. H.R. at 18.

In support of his contentions, Mr. Marshall notes that the property next door to his received a greater reduction in value before the BOR than his property. He argues, however, the subject property has a smaller home and suffers from erosion. Mr. Marshall provided this board with photographs of both properties. He noted in his testimony that the subject has experienced a great deal of erosion from lake waves. The erosion has undercut the subject property by nearly three feet. H.R. at 16. This has resulted in a stability problem, and Mr. Marshall indicated that the land will often shake and "ripple" during storms. H.R. at 16. Repairs are estimated at a cost of between \$50,000 and \$80,000. H.R. at 17.

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. Upon review, we are unable to find that Mr. Marshall provided evidence that is probative and persuasive to establish a decrease in the subject property’s value.

Mr. Marshall first argues that the subject parcel should have a value that is consistent with the lower appraised value found on the property next door. However, Ohio courts have held that a showing that two parcels of property have different values, without more, does not demonstrate that the subject property is not being

properly valued, nor does the reliance upon the values assigned to other properties present competent evidence of the subject property's value. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29; *Sherman v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 2000), Cuyahoga App. No. 75971, unreported. Similarly, in *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, we concluded that taxable values reflected on other properties provide little insight into the value of the property at issue:

“The appellant has attempted to show a lower value than that assessed by the BOR. However, appellant's presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly helpful. ‘Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), B.T.A. Case No. 92-H-576, unreported.” Id. at 6.

Here, the valuation of the subject parcel may include factors that are not present, and thus not included, in the valuation of the neighboring parcel. One such difference may be that the subject may have more usable land than the property next door. H.R. at 23. Moreover, each complaint before a BOR, just as in an appeal before this board, must be decided upon the evidence of value presented for the property at issue. We do not know what evidence the owners of the neighboring property presented to the BOR. We reiterate that, while Mr. Marshall questions the basis for the

BOR's determination of value, the burden rests with him to provide evidence that supports his requested reduction in value. *Columbus*, supra. Mr. Marshall has not provided sufficient information about the subject property upon which we may determine value.

Mr. Marshall next argues that it is unfair to increase the value of his property, and other properties in his neighborhood, disproportionately to the increase placed upon other shoreline properties. In essence, Mr. Marshall claims that all shoreline properties should have similar values, which, he asserts, is not the case. In *Meyer v. Cuyahoga Cty. Bd. of Revision* (1979), 58 Ohio St.2d 328, the court stated:

“The system of taxation unfortunately will always have some inequality and nonconformity attendant with such governmental function. It seems that perfect equality in taxation would be utopian, but yet, as a practicality, unattainable. We must satisfy ourselves with a principle of reason that practical equality is the standard to be applied in these matters, and this standard is satisfied when the tax system is free of systematic and intentional departures from this principle.” *Id.* at 334-335.

Mr. Marshall has come forward with no evidence that demonstrates that he has been discriminated against by a systematic and intentional overvaluation of the subject property or by a systematic, intentional undervaluation of other comparable properties. While the subject property may have a value that is higher than other properties, “[a] particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration \*\*\*.” *Benedict v. Hamilton Cty. Bd. of Revision* (1959), 170

Ohio St. 62, 63. Cf. *Am. Steel & Wire Co. v. Bd. of Revision* (1942), 139 Ohio St. 388, at 391 (holding, “\*\*\* it should be remembered that the fixing of true value of each lot or tract \*\*\* is a separate proceeding and does not involve the consideration of all parcels of land within a given area at the same time.”).

In addition, the BOR noted during its hearing that not all shoreline properties in Ottawa County have similar values because some areas have smaller lots, have improvements with different characteristics, or are less desirable. S.T. at BOR Hearing Record. Thus, it is possible that the properties in the subject’s neighborhood may have higher values than properties that are nearby. Location is an important factor to consider in the market data approach. *Little Brook Estates, Ltd. v. Fairfield Cty. Bd. of Revision* (June 30, 1998), BTA No. 1996-T-856, et seq., unreported. Differing markets will support different values for properties that may be otherwise similar:

“An adjustment for location within a market area may be required when the location characteristics of a comparable property are different from those of the subject property. Excessive locational differences may disqualify a property from use as a comparable.

“Most comparable properties in the same market area have similar locational characteristics, but variations may exist within the area of analysis. Consider, for example, the difference between a property with a pleasant view of a park and one located two blocks away with a less attractive view. \*\*\*

“A property’s location is analyzed in relation to the location of other properties. Although no location is inherently desirable or undesirable, an appraiser can conclude that the market recognizes that one location is

better than, similar to, or worse than another. \*\*\*” The Appraisal of Real Estate (13<sup>th</sup> Ed. 2008), at 337.

In short, it is possible for other nearby properties to be subject to different neighborhood characteristics, which can result in dissimilar values. The differences cited by Mr. Marshall are not evidence that the subject has been overvalued.

With regard to Mr. Marshall’s concern that the subject’s value has increased dramatically for the year in issue, we note that the BOR stated during his hearing that the values of the properties in Mr. Marshall’s neighborhood had remained essentially flat for a period of time because there had been no sales. Once the county became aware of two sales, it utilized those sales to adjust the area property values. S.T. at BOR Hearing Record. What appears to Mr. Marshall as a one-year increase in value is, in fact, a function of Ohio’s appraisal cycle. See R.C. 5715.33. Given the length of the appraisal cycle, “\*\*\* ‘changes in market conditions in the interim can affect value, either positively or negatively, without being reflected in the assessed value of the individual property’ \*\*\*” until the next reappraisal year. *Alexander v. Summit Cty. Bd. of Revision* (July 23, 2004), BTA No. 2003-T-854, unreported, at 4, quoting The Appraisal of Real Estate (12<sup>th</sup> Ed. 2001), at 647. Thus, where sale prices of competing properties and other market indicators suggest that values are rising, it is not unusual for a county auditor to defer making an adjustment until the next appraisal of all property located within the county. See *Bosse v. Hamilton Cty. Bd of Revision* (Nov. 9, 1995), BTA No. 1995-K-235, unreported, at 8. This appears to be the

situation now before us. Once a previously stagnant neighborhood began to show increasing sale prices, the auditor acted during the next update to bring the subject and surrounding properties up to market value. We acknowledge that, to the property owner, the adjustment may appear to be a sudden and drastic increase in value; however, such is not the case.

Much of Mr. Marshall's testimony before this board concerned the erosion of the subject property. Both the Supreme Court of Ohio and this board have previously considered the impact of adverse conditions upon the true value of real property. In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, we held the existence of a condition does not itself mandate a reduction in value of the real property. "A recitation of defects in a taxpayer's property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the [diminution] in value caused by the defects, or some evidence of the value of the property as so diminished." *Id.* at 7. It may be true that the property owner cannot avoid the cost of the needed repair; however, cost is not invariably equated with value. *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339 at 349, citing *Inmar Assoc., Inc. v. Borough of Carlstadt* (1988), 112 N.J. 593. Cf. *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, at 228 (holding that "[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA."). In the instant situation, Mr. Marshall has testified

concerning the condition of the subject property. Nevertheless, he has not presented sufficiently probative evidence to support a decrease in true value due to the deficiencies. *Columbus*, supra.

Finally, although not specifically relied upon by Mr. Marshall during his hearing before this board, we note that Mr. Marshall did present to the BOR an appraisal, which valued the subject at \$294,000 as of August 23, 2004. While this could offer some evidence of value, we do not find it sufficiently probative of the subject's 2006 value. The valuation date of the report is over seventeen months prior to the 2006 tax lien date. There is no evidence before us upon which we may conclude that the value opined would be valid for tax lien date. *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, at 30 (BTA may reject an appraisal opining value on a date other than tax lien date where there is no proof that the valuation between the two dates is constant and uniform); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, at 555 (“the BTA must base its decision on an opinion of true value that expresses a value for the property as of tax lien date of the year in question”). See, also, *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, at ¶11. Ultimately, we are unable to accept an ambiguity, such as that created by the effective date of the report, that leaves it to this board to speculate as to the precise nature of the economic conditions impacting the subject property as of tax lien date.

Additionally, the author of the report did not appear either before the BOR or this board. The assumptions made by an appraiser and the method the

appraiser uses in arriving at an opinion of value are factors that we must weigh in determining the credibility of the opinion. *Freshwater*, supra, at 30 (“An expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.”). Where, as here, the author of the opinion is absent, we are unable to conclude that the opinion is reliable. *Specca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported; *Bd. of Edn. of the Northridge Local Schools v. Montgomery Cty. Bd. of Revision* (Jan. 28, 2005), BTA No. 2004-B-35, unreported, settled on appeal, 106 Ohio St.3d 1492, 2005-Ohio-4216; *Fisher v. Morrow Cty. Bd. of Revision* (Feb. 15, 2008), BTA No. 2006-V-717, unreported; *Tieche v. Erie Cty. Bd. of Revision* (Mar. 31, 2006), BTA No. 2005-T-717, unreported; *Giallombardo v. Montgomery Cty. Bd. of Revision* (May 7, 2004), BTA No. 2003-V-875, unreported.<sup>3</sup>

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. Marshall 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.

---

<sup>3</sup> See, also, *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, at 3: “Generally, documentary evidence which is received at hearing needs to be identified and authenticated by a witness who testifies under oath and is subject to examination by both the opposing party and an attorney examiner of this board. Furthermore, that witness’ qualifications and credibility may be assessed during such examination. However, in this case, such safeguards are noticeably absent since the individuals who prepared the appraisals did not appear at hearing. Given our inability to assess the appraisers’ qualifications and credibility and the failure to have the documents authenticated, we find that each report constitutes hearsay upon which this board may not rely in reaching a decision.”

The remaining evidence of value before us is that contained in the statutory transcript, including the property record card and the BOR's hearing record. We note that the BOR spoke at length about two comparable sales. One of these sales was for \$378,000 and the other for \$385,000. During its hearing, the BOR also suggested that some adjustment was warranted in the value of the subject property to take into account difference between it and the comparable sales. S.T. at BOR Hearing Record. We find that the statutory transcript provides sufficient information to explain the action taken by the BOR. Therefore, upon review of the evidence as a whole, we conclude that the value of the subject property is \$327,350. *Columbus*, supra. The Board of Tax Appeals further finds the true and taxable values of the subject property are as follows for tax year 2006:

Parcel 024-18474-31404-000	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$288,750	\$101,060
BUILDINGS	\$ <u>38,600</u>	\$ <u>13,510</u>
TOTAL	\$327,350	\$114,570

We order the Auditor of Ottawa 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.

ohiosearchkeybta