

OHIO BOARD OF TAX APPEALS

Mary L. Clark,) CASE NO. 2008-T-1019
)
Appellant,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Champaign County Board of Revision) (Vacating May 26, 2009 Decision and
and Champaign County Auditor,) Finding Value Upon Reconsideration)
) **Appeal Filed July 15, 2009**
Appellees.) **Ohio Supreme Court**

APPEARANCES:

For the Appellant - Mary L. Clark, pro se
995 Old Farm Road
Urbana, Ohio 43078

For the County Appellees - Nick Selvaggio
Champaign County Prosecuting Attorney
Scott D. Schockling
Assistant Prosecuting Attorney
200 North Main Street
Urbana, Ohio 43078

Entered June 18, 2009

Ms. Margulies and Mr. Johrendt concur. Mr. Dunlap not participating.

On May 26, 2009, this board issued a decision and order finding value for certain real property. For good cause shown, the board grants the appellant’s motion for reconsideration and hereby vacates the May 26, 2009 decision and order.

The board now proceeds to consider the appeal as follows:

This matter is before the Board of Tax Appeals as a result of a notice of appeal filed on July 14, 2008 by appellant, Mary L. Clark. Appellant challenges a decision of the Champaign County Board of Revision (“BOR”). In its decision, the

BOR determined the value of permanent parcel number K48-25-00-03-40-015-00 for tax year 2007.

Counsel for the county appellees, appellant, and appellant's husband, George W. Clark, appeared at a hearing before this board. Accordingly, we proceed to consider this appeal based upon appellant's notice of appeal, the statutory transcript ("S.T."), and the testimony and evidence adduced at the hearing before this board ("H.R.").

The subject property consists of approximately 0.273 acres of land, and is improved with a residential home that is approximately 1,778 square feet in size. The home, built in 1998, consists of a total of two bedrooms and two full bathrooms. The subject is also improved with an open-frame porch, wood deck, and attached two-car garage. The true and taxable values, as determined by the auditor, were as follows:

Parcel No. K48-25-00-03-40-015-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 24,660	\$ 8,630
BUILDINGS	<u>\$149,360</u>	<u>\$52,280</u>
TOTAL	\$174,020	\$60,910

Appellant's BOR complaint and notice of appeal assert a value of \$145,000 for the subject property. Appellant appeared and testified at a hearing before the BOR, and presented handwritten documents showing addresses of nearby properties and their assessed values, in addition to the subject's real estate tax bill for the first half of 2007. S.T., Ex. D. During her testimony, appellant argued that the subject should be valued at her asserted amount based upon the assessed values of neighboring properties. Appellant also testified regarding apparent sales of nearby

properties. Upon review of the evidence before it, the BOR voted to reduce the value of the subject property to the following:

Parcel No. K48-25-00-03-40-015-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 24,660	\$ 8,630
BUILDINGS	<u>\$147,360</u>	<u>\$51,660</u>
TOTAL	\$172,020	\$60,290

While not showing a change in the subject’s taxable value, the BOR’s decision letter noted that its decision to reduce the value of the subject was based upon an adjustment of the square footage of the home.¹

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*

¹ A review of the property record cards in the statutory transcript indicates that the BOR adjusted the square footage of the home from 1,810 to 1,778 square feet.

(1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

We recognize that an owner of property is permitted to express an opinion regarding the value of his or her property even though not formally qualified as an expert. See, e.g., *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 29, 32. Indeed, this board is accorded considerable discretion in weighing the evidence presented. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405; *Zukowski v. Franklin Cty. Bd. of Revision* (1994), 70 Ohio St.3d 503, 504; *Cardinal Federal S. & L. Assn.*, paragraph two of the syllabus.

In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the true value of real property. *First Union Real Estate Equity & Mtg. Investments v. Morrow Cty. Bd. of Revision* (1990), 53 Ohio St.3d 236; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. Under such circumstances, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, where the value of property is estimated through a comparison of the subject to recent sales of comparable properties in the market area, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

At the hearing before this board, appellant again presented handwritten documents related to the assessed values of neighboring properties, and testified to her comparison of these properties to the subject. H.R., Exs. 1-4. Appellant also presented photographs of nearby properties and printouts from the auditor's website showing general real estate information. No evidence was presented with regard to comparable sales, nor was any appraisal evidence submitted.

We first address the aforementioned information related to auditor's assessed values. It is well settled that this board does not consider tax valuations to be competent and probative evidence tending to prove value for a comparable property. 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), BTA Case No. 92-H-576, unreported.” Id. at 6.

See, also, *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported; *Marois v. Adams Cty. Bd. of Revision* (June 1, 2007), BTA No. 2006-R-688, unreported; *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No.

1992-B-879, unreported; *Davis v. Butler Cty. Bd. of Revision* (Apr. 29, 1994), BTA No. 1992-T-923, unreported. In *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31, the Supreme Court stated that “[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.” Therefore, we do not consider the assessed values relied upon by appellant to be competent, probative and reliable evidence of the value of the subject property.

With regard to appellant’s testimony before the BOR related to sales of certain properties in the neighborhood, we note that we have nothing in the record which indicates that appellant had knowledge of the circumstances surrounding the sales, aside from appellant’s general knowledge of the neighborhood. While appellant has some knowledge of the attributes of the properties testified to, she had no knowledge of the actual circumstances surrounding the sales of these properties, and no conveyance fee statements or deeds were submitted to the record. In short, nothing in the record provides us with reliable information upon which to determine whether or not these sales were made at arm’s length. We therefore find appellant’s testimony regarding any sales in the area surrounding the subject property to be unpersuasive. Furthermore, the submission of photographs of nearby property and website information taken from the auditor’s site, without more, does not assist this board in determining a value for the subject.

Appellant also advanced arguments related to her economic condition, and possible unfair or discriminatory treatment by the auditor. This board, as an

administrative body, has no express or implied equity jurisdiction; therefore, we must apply the pertinent law to the facts before us. *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259; *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564. While we recognize that appellant may find herself in difficult circumstances, we do not have the equity power to remedy such circumstances.

As previously noted, the BOR granted a reduction in the subject's value based upon an adjustment to the size of the home. Without any competent and probative evidence upon which we can rely to support appellant's asserted value, we conclude that the value determined by the BOR, based upon the adjustment to the size of the subject, is appropriately retained. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Nov. 16, 2007), BTA No. 2005-K-1543, unreported; *Hrouda v. Cuyahoga Cty. Bd. of Revision* (June 17, 2008), BTA No. 2007-R-1052, unreported. Compare *Columbus City School Dist. Bd. of Edn.*, supra.

Accordingly, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property, as of January 1, 2007, are as follows:

Parcel No. K48-25-00-03-40-015-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 24,660	\$ 8,630
BUILDINGS	<u>\$147,360</u>	<u>\$51,660</u>
TOTAL	\$172,020	\$60,290

We order the Auditor of Champaign 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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