

Milton L. Simmons,)	
)	
Appellant,)	CASE NO. 95-B-951
)	
vs.)	
)	(REAL PROPERTY TAX)
Cuyahoga County Board of)	Affirmed on Appeal-Feb. 11, 1998
Revision and J. Timothy)	
McCormack, Auditor,)	81 Ohio St.3d 47, 1998-Ohio-443
)	DECISION AND ORDER
Appellees.)	

APPEARANCES:

For the Appellant - Milton L. Simmons, Pro Se
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Independence, Ohio 44131

For the County Appellees - Stephanie Tubbs-Jones
Cuyahoga County Prosecuting
Attorney
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Cleveland, Ohio 44113

Entered March 31, 1997

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This matter came to be considered by the Board of Tax Appeals upon a notice of appeal filed September 5, 1995, by Milton L. Simmons. Mr. Simmons appeals a decision of the Cuyahoga County Board of Revision ("BOR"), dated August 10, 1995. In its decision, the BOR determined the taxable value of the subject real property for tax year 1994.

The subject property is a single family home, built in 1989. The home has approximately 4,000 square feet of living space, 3 full baths, 2 half baths, four bedrooms, three fireplaces and an attached 4 car garage. The subject property is located in

the Brecksville taxing district and appears on the property record card as having permanent parcel number 601-22-046.

The Cuyahoga County Auditor determined the true value and taxable value of the subject property for the tax year 1994 to be as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 68,800	Land	\$ 24,080
Building	<u>251,200</u>	Building	<u>87,920</u>
Total	<u>\$320,000</u>	Total	<u>\$112,000</u>

The BOR determined that the true and taxable values for this parcel should not be changed.

Appellant disagrees with the BOR's determination and claims in his notice of appeal that the correct true and taxable values of the subject property should be as follows for tax year 1994:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 68,800	Land	\$ 24,080
Building	<u>225,700</u>	Building	<u>78,995</u>
Total	<u>\$294,500</u>	Total	<u>\$103,075</u>

We begin our review of this matter by observing that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its 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 Cty. 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 value is presented by an appellant, other parties asserting a different value then have the corresponding burden of providing evidence which rebuts appellant's evidence of value. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn., supra.

Furthermore, we note that the issue in an appeal from a board of revision is the true value of the subject property. Accordingly, this Board will proceed to examine the available record and to determine value based upon the evidence before it. Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St. 3d 120; Clark v. Glander (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St. 2d 13.

This matter is now submitted upon the notice of appeal, the statutory transcript certified to the Board of Tax Appeals by the BOR ("S.T."), and the record of the evidentiary hearing ("R."), including exhibits. The appellant testified on his own behalf at the Board hearing, whereas the county appellees waived hearing.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. Specifically, R.C. 5713.03 provides, in part:

"The county auditor, from the best sources of information available, shall determine as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon *** ."

Prior to the enactment of the current version of R.C. 5713.03, the Ohio Supreme Court discussed what constitutes the best evidence of true value for real estate purposes in State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410, 412:

"The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In Re Estate of Sears (1961), 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market."

Since Park Investment, the Supreme Court has continued to examine the meaning of "true value." The Court, following its prior decision, held in Conalco v. Bd. of Revision (1977), 50 Ohio St. 2d 129, paragraph one of the syllabus, that the best evidence of the true value of real property, although not necessarily the only evidence, is that amount for which a subject property would sell on the open market in a recent, actual, arm's-length

transaction. See, also, Ratner v. Stark Cty. Bd. of Revision (1986), 23 Ohio St. 3d 59 (" Ratner, I "), citing Consolidated Aluminum Corp. v. Bd. of Revision (1981), 66 Ohio St. 2d 410; Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd. (1984), 9 Ohio St. 3d 218; and Ratner v. Stark Cty. Bd. of Revision (1988), 35 Ohio St. 3d 26 (" Ratner, II ").

The Ohio Supreme Court reconfirmed the foregoing "rule" in Hilliard City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision (1990), 53 Ohio St. 3d 57, citing Fountain Square, supra, and Ratner, II, supra. In Hilliard, the Court recognized, however, that the rule is not absolute and does not apply when the record establishes that the sale price does not reflect a property's actual value.

Other factors can affect the use of the property's sale price as evidence of its true value. Zazworsky v. Licking Cty. Bd. of Revision (1991), 61 Ohio St. 3d 604. While a strong presumption exists that the sale price equates to the true value of property, the presumption can be rebutted when the evidence presented indicates otherwise. Ratner, I; Ratner, II; Albrecht, Inc. v. Summit Cty. Bd. of Revision (1987), 39 Ohio App. 3d 115. Where no reliable, competent evidence is presented to contradict the recorded purchase price, then an arm's-length sale price is the best evidence of fair market value. Columbus Bd. of Edn. v. Bd. of Revision (May 15, 1986), B.T.A. Case No. 83-C-774, unreported.

Absent a recent sale, true value in money can be determined by appraisal, applying the three methods provided for in Ohio Adm. Code 5705-3-03: 1) the market data approach, which

compares recent sales of comparable properties; 2) the income approach, which capitalizes the net income from the property; and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

In the present case, there is no recent sale of the subject property. However, appellant bases his case on the sale of the residence next to the subject property which occurred on or about June 24, 1993.

In comparing the June, 1993 sale with the subject property, appellant states as follows:

"7. Complainant has, at times, been licensed as a builder by the City of Brecksville, and functioned as general contractor in the construction of his residence on Perm. Par. No. 601-22-046 (hereinafter ''046''), completed and occupied during the last quarter of 1989.

"8. During construction of the residence on adjoining Perm. Par. No. 601-22-047 (hereinafter ''047''), complainant frequently entered, and personally inspected said residence and the construction thereof, until its completion and transfer to its present owner on or about June 24, 1993. Therefore, the following statements regarding complainant's property ('046) and the adjoining property ('047) are based on complainant's personal observation, and are readily verifiable.

"9. The arm's-length selling price for the residence on '047, in June of 1993, was \$349,800, apparently, and properly, used as the basis for the Auditor's listed market value of the property, 35% thereof being \$122,430, its listed tax value. It is well settled that a recent sale price is the best evidence of the true value of a piece of realty.

" ***

"10. Based on the following comparative data, it will be readily observed that complainant's '046 residence, due to its considerably less liveable, finished floor space, or area, vis-a-vis '047, must have its taxable value reduced by the (sic) the amount claimed.

"11. The residence on '047 has an 1800 ft. basement and first floor, and a 1500 ft. second floor. Though it is not shown, and was omitted from, the plans originally submitted by the builder to the Brecksville Building Dept., to support an application for a building permit, the basement of the '047 residence is completely partitioned and finished, walls and ceiling, including a full bath. The basement wall toward the rear is totally above grade, with walk-outs onto the lower story of a two story deck. There is also a full bath on the first floor, and two full baths on the second floor, serving four bedrooms, for a total of four full baths. There is a fireplace in the family room on the first floor. The total living, and liveable, area is therefore $1800' + 1800' + 1500' = 5100$ ft. There is a 3-car garage. Thus, '047 is essentially a 3-story building.

"12. The plans, as filed originally by the respective builders, are still on file at the Brecksville Building Dept., for '046 and '047 (6572 and 6576 Thorntree Dr. respectively) and it will be noted that the receipted plans for '047 show a completely bare basement having only a furnace and hot water tank.

"13. It is customary to compare residences on a square foot basis, particularly when they are of the same type of construction, and based on the square footage of '067, it cost the buyer \$349,800 divided by its 5100 ft. or \$68.60 per square foot.

"14. Since the residences on '046 and '047 are built of essentially identical construction materials and are of similar design under the Brecksville Building Code and applicable deed restrictions, there is no reason to conclude that the going rate/ft. would be any different for complainant's home on '046, than for the home recently purchased on '047.

"15. On a direct square footage comparison then, complainant's finished first and second floors, having 2000 ft. ² each would establish a fair market value or selling price, at the time '047 sold, of $(2000+2000)\times\$68.60=\274400 , for complainant's residence on '046, compared to the \$349800 price for '047.

"16. However, to be fair, complainant has a 4-car garage (40'x22'=880 ft. ²) vis-a-vis the 3-car garage on '047, and the square footage of the extra garage space must be added to complainant's projected selling price based on that of '047. But, since complainant's garage is neither heated nor insulated, is not partitioned and is deficient in electrical facilities from the standpoint of habitability, its fair price per ft. ² is reduced from \$68.60/ft. ² to \$55.00/ft. ². The fair price of the extra garage space then (220 ft. ²) becomes $220\times55=\$12,100$. Adding this figure to the \$274,400 figure arrived at under 15. above, $(274400+12100=286500)$, the market value or fair selling price of '046, to this point, becomes \$286,500.

"17. Furthermore, complainant has three fireplaces, or two more than '047. Allowing a liberal \$4000 each for complainant's two extra fireplaces, they total \$8000, to be added to complainant's total fair value arrived at under 16, above, or $\$286,500+8000=\$294,500$, the true value, for tax purposes, for parcel '046, based on the actual sale of '047 in mid-1993, or six months prior to commencement of the 1994 tax year.

"18. As for bath facilities, complainant has three full baths on his second floor, serving four bedrooms, with a half bath on the first floor, and a half bath in his unfinished basement. The bath situation in '046 and '047 is pretty much the same, with four full baths in '047, '046 having three full and two half baths, hence no adjustment either way would be indicated. Other than as noted above, the two homes in question have many features in common, i.e., a family room with fireplace, study, laundry room, kitchen, dining and living rooms and entry foyer on first, with four bedrooms on second floor.

" * * *

"20. In conclusion, based on its recent, arm's-length sale, the true or fair market value of the '047 residence was properly established by the Auditor as identical to the selling price, or \$349,800. The total taxable value of '047 was then arrived at by applying a factor of 35% to the selling price of \$349,800 resulting in a taxable value of \$122,430 for '047. As set forth in detail above, the recent sale of '047 dictates a fair market, or true, value for complainant's residence ('046) of \$294,500. Applying the 35% factor to complainant's true value of \$294,500 results in a total taxable value for complainant's '046 residence of \$103,075. Therefore, the current taxable value, \$112,000 as established by the Auditor, must be reduced by \$8,925 to a taxable value of \$103,075 to be assigned to '046 for 1994 and subsequent tax years."

(Appellant's Exhibit 1, R. 38.)

At the Board's evidentiary hearing, appellant testified that the true value of the subject property should be set at \$290,500, rather than \$294,500, to reflect a change of number of fireplaces in the comparable property from one to two. (R. 17, 34.) He also confirmed that his valuation estimate for the subject property is based solely on the sale of the house "next door". (R. 19, 20.)

The Ohio Supreme Court has specifically recognized that an owner of real property, by virtue of his interest in the property, is competent to testify regarding its market value. Amsdell v. Cuyahoga Cty. Bd. of Revision (1994), 69 Ohio St. 3d 572; Smith v. Padgett (1987), 32 Ohio St. 3d 344, 347. However, while a property owner may be competent to offer an opinion as to the value of his own property, his testimony must also be probative

and credible. Further, the weight to be accorded such 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 the case before us, appellant attempts to formulate a valuation of the subject property based on the sale of a single alleged comparable in the area. However, for the reasons that follow, we find that the appellant did not establish a sufficient foundation, nor did he adequately compare and contrast the subject property to the comparable so as to enable the Board to rely on this sale as the basis of market value for the subject property.

Appellant first states that the comparable is larger than his house because the comparable has an "essentially" finished basement. (R. 13.) He testified that the subject property has more living space on the first and second floor (2,000+2,000 square feet) as opposed to the comparable's living space (1,800+1,500 square feet) but that the finished basement of the comparable adds another 1,800 square feet. (R. 13.) He contends that the construction materials are identical. (Appellant's Exhibit 1, written statement.) Therefore, he argues, since the comparable sold for \$349,800 in June of 1993 and consisted of 5,100 square feet of living area, his 4,000 square foot residence should be reduced proportionately, with minor adjustments. (R. 17-19, Appellant's Exhibit 1.)

However, appellant did not submit to this Board written plans or layout, or property record card, of the comparable. Nor did he submit pictures of the comparable and subject property for

this Board to make an independent judgment. We cannot ascertain the difference in grade of the interiors or exteriors, nor are we privy to other relevant information such as the difference in size and quality of the house's decks. We cannot determine if there were other factors which may have influenced the sale price of the comparable. The only information we have before us is the testimony of appellant at the Board hearing and his written statement which was submitted as an exhibit. (Appellant's Exhibit 1.) This testimony is somewhat tentative and confusing; at times leaving this Board questioning points of fact contended by appellant, such as: what exactly is an "essentially" finished basement? (R. 13.)

In this case, it is especially important for the Board to be able to make its own comparison because we are presented with only one allegedly comparable real estate sale and appellant, by his own admission, is testifying as an "amateur expert." (R. 17.) We would also note that other details of the comparable are not entirely clear. When asked about the number of bathrooms in the comparable, appellant responded, "I think they have a total of four full baths." (R. 27.) When questioned about the number of bedrooms, appellant stated, "I think it has four." (R. 26.) When asked to describe the style of the comparable, appellant could only say "It's hard to say. It's not modern. It's -- I might say it's a conventional style compared to mine. I would say from the standpoint of the style on the outside, it's-- It's in the ball park. They're both traditional styles..." (R. 26.) And finally,

when asked about the arms-length nature of the transaction, appellant's testimony was, as follows:

"THE EXAMINER: Can you tell me, for the record, how you came about learning of the sale price and the details of this sale?

"MR. SIMMONS: I think I relied -- I relied on the tax records for the sales price, I'm pretty sure, unless it appeared in the paper. Maybe it appeared in the Plain Dealer. I think that may have been it, and I called the taxing authority in Cleveland with that subplot number and asked them what the sales price was.

"THE EXAMINER: Okay. How do you know that it was an arm's-length transaction?

"MR. SIMMONS: Oh, because I -- I owned the lot. I bought two sublots. The one that 047 was built on is known as, I believe, subplot -- It was known as subplot 47 during construction, and I sold that lot after I built my house. And I sold it to a local builder by the name of Terry Wilson, whose company is Crestmont.

"And then once he had the lot tied up, so to speak, with a down payment to me, I believe he then negotiated the contract with the man who now lives in the house, but -- Did I say that house transferred in 1993?"

(R. 23.)

The vagueness and uncertainty of appellant's responses further weakens the value of appellant's analysis which appears to be highly subjective in nature.

Of major concern to this Board is appellant's comparison methods in determining a value for the subject property. In counting the comparable as having 5,100 square feet of standard living area (by adding in the "essentially" finished basement), he changes the comparable from a residence with two floors of standard

living area and a finished basement to a home with three floors of standard living area and no basement. We first point out that a finished basement, much less an "essentially" finished basement, is not always of the same value as standard living area, such as the first and second floors. Such is the case here. Thus, the addition of the comparable's finished basement's area results in an unduly diluted value for comparison purposes.

Further, even if we were to accept appellant's claimed value per square foot of living area for the subject property, some value for the subject property's unfinished full basement should be added to allow a fair comparison since the comparable is counted by appellant as consisting of total living area with no basement. Such is not the case in appellant's calculations. Appellant's method of determining value is rejected by this Board as inappropriate and inconsistent.

Finally, it appears that value of the subject property, the value the property would have sold for in an arms-length transaction on tax lien date, is not clear even to the appellant. Under examination from the Board's attorney-examiner, appellant testified, as follows:

"THE EXAMINER: Okay. Mr. Simmons, if that house were put up for sale as of January 1, 1994, what would it have -- would it have sold for -- what could it have sold for?"

"MR. SIMMONS: My house?"

"THE EXAMINER: Yes, sir."

"MR. SIMMONS: I would be afraid to offer an opinion because of its design. It's sort of an old-fashioned design inside, and there's no -- There are no vaulted ceilings going up from

the living room, using floor space that you could put a bedroom in.

"I took a practical approach. And I've had at least one developer come in and tell me, you know, 'This thing is from out of the dark ages; people don't go for that anymore.'

"I would have to be honest with you and honestly answer, 'I don't know'. If you would like me to have it appraised, of course, that would be a real estate appraisal, inflated to a certain extent, but I have had no reason to have it appraised.

"THE EXAMINER: So if you would tell me, for the record: What do you believe the true value of your property is for the tax year 1994?

"MR. SIMMONS: I think whatever I have in my -
- Well, first, I don't think it would bring the same price as the house next door, the 047 price. I would drool at the prospect of getting that same amount of money, and it's the -- it's the figure if just -

"THE EXAMINER: Your Notice of Appeal says '294,500'. I believe you may have stated for the record, because of the change in some of the information, '\$290,500.'

"MR. SIMMONS: Yeah. That's it exactly; right, right.

"THE EXAMINER: Okay. Do you believe that -- and please tell me. I just want to make sure I have made my question clear. Do you believe that this would actually indicate a sales price as of January 1, 1994 or, in general, do you have that same response?

"MR. SIMMONS: Of January 1, 1994?

"THE EXAMINER: Well, tax year 1994; what it would actually sell for in that tax year.

"MR. SIMMONS: Well, other than saying -- I certainly wouldn't expect to get what 047 got for their house.

"THE EXAMINER: Which is approximately \$350,000?

"MR. SIMMONS: Yeah. I don't think I could come even close to that, and I would have to say in the neighborhood of \$300,000; I would be happy with that."

(R. 33-35.)

For the reasons herein stated, we reject appellant's purported comparable as having any significant weight in determining the true value of the subject property because the only specific information regarding its comparability comes from the previously discussed testimony of appellant. There is no documentation on the sale or the comparable property itself. We are unable to make a true comparison between the subject property and sale property without more detailed specifics. And as discussed above, we also reject appellant's method of calculating value for the subject property.

Thus, we must conclude that appellant has failed to sustain his requisite burden of proof that the subject property's true value is other than that determined by the BOR. Appellant has not presented this Board with probative competent evidence which would demonstrate his right to the value claimed. The Board further determines that following our review of the record in this matter, the BOR's determination of value is reasonable and best reflects true value as of the tax lien date.

Based upon the foregoing, it is the decision of the Board of Tax Appeals that the subject property had the following true and taxable values as of January 1, 1994:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 68,800	Land	\$ 24,080
Building	<u>251,200</u>	Building	<u>87,920</u>
Total	<u>\$320,000</u>	Total	<u>\$112,000</u>

It is therefore the order of this Board that the Cuyahoga County Auditor list and assess the subject property in conformity with our decision as announced herein. ohiosearchkeybta