

James E. Coe,)	
)	
Appellant,)	
)	CASE NO. 97-P-650
vs.)	
)	(REAL PROPERTY TAX)
Fulton County Board of)	
Revision and the Fulton)	DECISION AND ORDER
County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Property Owner	- James E. Coe, <u>Pro Se</u> 7071 County Road 2 Swanton, Ohio 43558
For the County Appellees	- James R. Gorry Teaford, Rich and Wheeler 20 East Broad Street Columbus, Ohio 43215

Entered: October 2, 1998

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

Mr. Coe appeals the real property valuation placed upon his residence. But, we are not offered any appraisal evidence to demonstrate error on the part of county officials. Further, it appears that much of Mr. Coe's evidence actually supports the value found by the Fulton County Auditor and the Fulton County Board of Revision after proper adjustments are made. Mr. Coe also raises discriminatory valuation and common level of assessment issues. But, we do not find sufficient evidence in the record to support a claim of "systematic or intentional" discriminatory valuation practices on the part of Fulton County authorities. Nor do we find merit in Mr. Coe's claim of alleged county wide under valuation. Accordingly, we affirm the board of revision.

Mr. Coe's original complaint and notice of appeal assert a fair market value of \$195,500 for this 3,274 square foot home that sits upon 12 $\frac{1}{2}$ acres. The property includes an in-ground swimming pool. There is also an 1800 square foot pole barn and an 832 square foot barn that are used by Mr. Coe for a wood shop and extra garage space. A portion of the site is wooded and separates itself from the rest of the property by a ditch. Mr. Coe's original complaint is for the 1996 tax year - - - a year in which Fulton County underwent a sexennial reappraisal. Upon completing the reappraisal, the Fulton County Auditor determined the true value of Mr. Coe's property to be \$249,100. The board of revision also determined a true value of \$249,100 after conducting a hearing upon the matter. Dissatisfied, Mr. Coe appeals to us. The matter is now before us for our determination based upon the notice of appeal, the statutory transcript, the testimony and evidence adduced at our merit hearing and the briefs submitted by the parties.

Before we begin we address a threshold matter. Mr. Coe filed a written motion to "ask for a favorable ruling" on February 18, 1998, citing that the county's brief was late. We do not condone tardiness. On the other hand no harm has come to Mr. Coe as a result of the late filing. He was given an opportunity to respond to all issues raised. It is our desire to decide issues upon their merits whenever they are properly before us. Legal memoranda also assist us in making a correct determination. Accordingly, the motion is overruled.

Mr. Coe has the burden of proving his right to the value he asserts. Cleveland Board of Education v. Cuyahoga County Board of Revision (1994), 68 Ohio St. 3d 336, Crow v. Cuyahoga County Board of Revision (1990), 50 Ohio St. 3d 55, Mentor Exempted Village Board of Education v. Lake County Board of Revision (1988), 37 Ohio St. 3d 318. It is incumbent upon him to come forward with credible, competent, probative evidence to demonstrate his right to the value he seeks:

"The appellant seeking an increase or decrease in value before the BTA bears the burden of persuasion. * * * The BTA need not adopt any expert's valuation, and has wide discretion in granting weight to evidence and credibility to witnesses, it may find all or part or none of the testimony and evidence presented by either party to be credible and probative." Westhaven, Inc. v. Wood Cty. Bd. of Revision (1998), 81 Ohio St. 3d 67. (Emphasis added.)

R.C. 5713.03 requires all real property to be valued according to "true value:"

"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 * * * ." (Emphasis added.)

The best evidence of true value is an actual, recent sale of the property itself in an arm's length transaction negotiated in the open market between a willing seller and a willing buyer. Zazworsky v. Licking County Board of Revision (1991), 61 Ohio St. 3d 604, Hilliard City School Board of Education

v. Franklin County Board of Revision (1990), 53 Ohio St. 3d 57, Conalco v. Board of Revision (1977), 50 Ohio St. 2d 129, State ex. rel. Park Investment Co. v. Board of Tax Appeals (1964), 175 Ohio St. 410. But we have no evidence of a recent sale of Mr. Coe's property.

In such circumstances we may accept appraisal evidence:

"A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value." Ratner v. Stark County Board of Revision (1986), 23 Ohio St. 3d 59.

But, we have no appraisal evidence here either. Mr. Coe acknowledges his Exhibit 1 does not rise to the level of an appraisal:

"MR. COE: * * * I don't believe that what I've prepared here is a formal appraisal. I don't feel that I'm qualified to do that because I'm not a certified appraiser." (R - 9.)

Nevertheless, an owner of property may render an opinion of value under the so-called "owner-opinion" exception to the general rule of evidence that one must first qualify as an expert to give opinion testimony. Smith v. Padgett (1987), 32 Ohio St. 3d 344, 347, 348. The Supreme Court did state, however, that: "[t]he weight accorded to such testimony is * * * to be determined by the trier of fact." Smith v. Padgett, supra, 348.

We asked Mr. Coe at our merit hearing if he desired to offer an opinion of value. He stated he feels his property should

be valued at "\$230,000 or less" (R - 34) based upon the sale price of another property he deems to be the most comparable to his property:

"I think the closest example is in an example right here, 4480 County Road 2, which is about three miles south of my property, and it sold at \$230,000." (R- 33.)

But, Mr. Coe does not properly adjust for differences in "elements of comparison:"

"Elements of comparison are the characteristics of properties and transactions that cause the prices paid for real estate to vary. [Italics omitted.] The appraiser considers and compares all discernible differences between the comparable properties and the subject property that could affect their values.

"Adjustments for differences are made to the price of each comparable property to make the comparable equal to the subject on the effective date of the value estimate." The Appraisal of Real Estate, 1996, Eleventh Edition, page 403.

By way of example, Mr. Coe's home contains 3,274 square feet of finished living area, while the home he deems most comparable has only 2,871 square feet of finished living area. See Appellant's Exhibit 1, Section 3, last page and the last page of Section 4. A straight pro rata adjustment for this element of comparison alone yields an adjusted value that

exceeds the \$249,100 value determined by the Fulton County Auditor and the Fulton County Board of Revision.¹ Hypothetically, other elements of comparison could result in a downward influence. But, Mr. Coe fails to offer credible, competent, probative evidence to establish that other elements of comparison would result in a significant decrease in his valuation. He testified his swimming pool is smaller. But, he also acknowledges a smaller swimming pool would have only a limited impact upon market value:

"A. I hate to say it, but the values that our appraisers use for pools is about[\$]2,500 for market value because - - - I don't know if you've read any articles or read any information, but a pool is probably, dollar for dollar, one of the worst investments you can make. You can spend 12- to \$15,000 for a pool, and actual market value it adds maybe \$2,500 or can actually be a deterrent to value.

"Q. Would that not indicate that when you go to compare pools that there would be a fairly small impact on the total value?

"A. Yes * * * ." (R- 49.)

Mr. Coe also asserts that his barns are in poor condition in contrast to those of the property he deems most comparable to his. He requests a downward adjustment of \$20,000.

¹3,274 sq. ft. - 2,871 sq. ft. = 403 sq. ft. = additional finished living area in Coe home;
\$230,000 divided by 2,871 sq. ft. = \$80.11 = price per sq. ft. of comparable property;
\$80.11 x 403 sq. ft. = \$32,284 = pro rata price adjustment for Coe additional finished living area;
\$230,000 + \$32,284 = \$262,284 = value of comparable property after adjustment for additional finished living area.

But, we are offered no evidence from the marketplace to support this conclusion. No credible, competent, probative evidence is presented to demonstrate what effect, if any, these barn defects have upon Mr. Coe's market value. We have previously held that mere recitation of defects, without more, is insufficient to support a decrease in valuation:

"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 property as so diminished. Appellant has established to our satisfaction that there are detrimental aspects to the subject property * * * but he has utilized none of the approaches to value that would allow us to determine a value for the property as affected by the defects. Haydu v. Portage Cty. Bd. of Revision (Jun. 18, 1993), B.T.A. No. 92-H-576, unreported.

The evidence in the record before us fails to establish that the marketplace would, in fact, react to the defects in Mr. Coe's barn with a \$20,000 diminution in value. And, we are presented no other evidence to establish that any other element(s) of comparison would lead to a significant downward adjustment. Accordingly, it appears that the sale price from the property deemed most comparable by Mr. Coe when properly adjusted for his additional finished living area actually indicates a value higher than the \$249,100 determined by the Fulton County Auditor and the Fulton County Board of Revision.

Mr. Coe also claims support from the Marshall Swift cost based system of valuation:

"MR. COE: * * * I'm trying to point out that the value that they have me at as found in Graph No. 4 at \$57.91 is clearly over what the cost valuation would be.

"THE EXAMINER: So I keep the record clear here, then, your use of these figures which your testimony is you extracted from the Marshall & Swift method shows \$44.04 a square foot for your property, and it's your testimony or your view that the - - - that that should be compared to the \$57 a square foot that it's currently taxed at; is that correct?

"MR. COE: That's correct."

(R - 20, 21.) (Emphasis added.)

Upon a close examination, however, it is apparent Mr. Coe has not properly used the Marshall Swift tables. The \$57 per square cost is derived from the auditor's property record card.² But this figure includes a \$9,200 cost for Mr. Coe's garage. The \$44.04 per square foot cost obtained by Mr. Coe from the Marshall Swift tables does not include his garage. See Exhibit 1, Section 5. The table labelled "Garages" indicates that \$15.46³ per square foot must be added to the base cost of a split level home to arrive at a value that includes the garage. The county points out in its brief that other adjustments also appear to be missing. But, when proper adjustment is made for the garage alone,

²\$188,300 total cost divided by 3,274 sq. ft. = \$57.51 per sq. ft.

³The auditor's property record card indicates on the reverse side that Mr. Coe's garage contains 600 square feet. The cost per square foot for a 600 square foot garage on the "Garage" cost table is unreadable. Accordingly, we will utilize the \$15.46 per square foot cost listed for an 800 square foot garage for illustrative purposes. This figure is lower and thus more favorable to Mr. Coe.

the total cost obtained compares favorably with the auditor's and board of revision's value (i.e., \$59± per square foot versus \$57± per square foot)⁴ Accordingly, we find the Marshall Swift method actually supports the Fulton County Auditor's and Fulton County Board of Revision's value once proper adjustments are made for Mr. Coe's garage.

We now turn to Mr. Coe's discriminatory valuation complaint. Mr. Coe presents a graph of sales prices and tax valuations for seven other properties. See Exhibit 1, Section 3. But, we are given no specifics concerning these transactions or whether they even qualify as arm's length sales. He also presents a graph of per square foot tax values for eight properties including his own, as well as a computer printout of homes that sold for more than \$100,000 between 1995 and 1997. Exhibit 1, Sections 4 and 6. Mr. Coe claims this proves his property is overvalued in relation to these other properties and that he is a victim of discriminatory valuation practices. We disagree. The fact that an error occurs in the valuation of some parcels does not justify lowering the valuation of other parcels. And, even if other properties are undervalued, that alone does not establish a case of actionable discriminatory valuation. There must also be evidence of **"systematic and intentional"** discrimination on the part of taxing authorities -- not mere perceived inconsistencies:

"The system of taxation unfortunately will always have some inequality and nonuniformity attendant with such governmental

⁴\$44.04 per sq. ft. base cost plus \$15.46 per sq. ft. cost for garage = \$59.50.

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." Meyer v. Cuyahoga Cty. of Bd. of Revision (1979), 58 Ohio St. 2d 328. (Emphasis added.)

We have no evidence of "**systematic and intentional**" discriminatory practices on the part of Fulton County authorities.

Finally, we address the common level of assessment issue. (See R - 53.) The Supreme Court held in Columbus Bd. of Edn. v. J.C. Penney Properties, Inc. (1984), 11 Ohio St. 3d 203, 204:

"The Board of Tax Appeals has no authority to determine common level of assessment on appeal."

While the opinion does support our authority to "increase or decrease the value of property by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule," for the reasons we expressed above we do not find sufficient evidence before us to establish either that an improper valuation exists or that the property in question was not taxed by an equal and uniform rule within the contemplation of Meyer v. Cuyahoga Cty. Bd. of Revision, supra, in the first instance. Consequently, this assignment of error must also fail.

C O N C L U S I O N:

Mr. Coe fails to come forward with credible, competent, probative evidence to demonstrate the value he seeks. Westhaven, Inc. v. Wood Cty. Bd. of Revision, supra. He also fails to present sufficient evidence to establish "systematic and intentional" discriminatory valuation practices on the part of Fulton County authorities. Meyer v. Cuyahoga Cty. of Bd. of Revision, supra. We do not have jurisdiction over the common level of assessment issue. And, we find insufficient evidence in the record before us to establish an improper valuation or that the property was not taxed by an equal and uniform rule in the first place. Columbus Bd. of Edn. v. J.C. Penney Properties, Inc., supra, Meyer v. Cuyahoga Cty. of Bd. of Revision, supra.

In Simmons v. Cuyahoga Cty. Bd. of Revision (1998), 81 Ohio St. 3d 47, the Supreme Court held:

"Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."

We find this the appropriate course to follow in this matter as Mr. Coe has failed to establish his right to the value he seeks and as we find his discriminatory valuation and common level of assessment arguments to be without merit.

Accordingly, we find the true and taxable values as originally determined by the Fulton County Auditor and the Fulton

County Board of Revision to be the correct true and taxable values for the subject tax parcel. Those values are:

Parcel No. 26-050060-00.000

	<u>TAXABLE VALUE</u>	<u>TRUE VALUE</u>
Land	\$14,490	\$41,400
Building	<u>\$72,700</u>	<u>\$207,700</u>
Total	\$87,190	\$249,100

The Fulton County Auditor is ordered to reflect the values herein set forth upon his records and to cause the same to be carried forward in accordance with applicable law. ohiosearchkeybta