

Celia Field,)	
)	CASE NO. 97-T-1269
Appellant,)	
)	
vs.)	
)	(REAL PROPERTY TAX)
Montgomery County Board)	
of Revision and the)	
Auditor of Montgomery)	
County,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Celia Field, <u>pro se</u> 510 East Wenger Road Englewood, Ohio 45322
For the County Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney By: Brian R. McHenry Assistant Prosecuting Attorney Courts Building 301 West Third Street 5th Floor Dayton, Ohio 45422

ENTERED: June 26, 1998

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

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed under date of October 14, 1997, by appellant Celia Field. Mrs. Field appeals from a determination of the Montgomery County Board of Revision, which was certified on September 22, 1997. Therein, the Board of Revision determined the

true value of the subject property to be \$43,980 for tax year 1996.

The true and taxable values were allocated as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$17,640	\$ 6,170
BUILDINGS	\$26,340	\$ 9,220
TOTAL	\$43,980	\$15,390

The Board of Revision's determination represents a decrease in true value of \$12,180 from the Auditor's original valuation for tax year 1996.

Appellant disagrees with the Board of Revision's determination, and claims in her notice of appeal that the subject property has no value, i.e., it is worth Zero dollars, for tax year 1996. The Board of Tax Appeals now considers this matter upon the notice of appeal, the statutory transcript certified to the Board by the Montgomery County Auditor, and the record of the evidentiary hearing. Mrs. Field represented herself at the hearing and offered her testimony, numerous documents, photographs, and a videotape in support of her contention of value. The County Appellees were represented by counsel, who offered one document and the testimony of Ben Cook, an employee for the Montgomery County Auditor.

The subject property is identified in the Montgomery County Auditor's records as Permanent Parcel Number M57-5-2-27 and is located in the Randolph Township-Englewood City Taxing District of Montgomery County. The subject is comprised of approximately 4.201 acres of land. It is improved with a building used as a single family residence. The residence was erected in 1947 and is

approximately 1,075 square feet in size. The one-story dwelling is of wood construction and has a stucco exterior. According to the property record card, the building has a total of five rooms.

Running through the subject property is a natural stream, which connects to the Stillwater River. It is this stream which has become the center of conflict between Mrs. Field and the City of Englewood and is the basis for Mrs. Field's request for a reduction in the value of the subject property. In the late 1980s, commercial development began in the area of the subject property. Mrs. Field testified that as commercial buildings were added the volume of rain water running through the stream increased to the point that her and her neighbor's properties began to flood anytime it rained. The amount of flooding has become severe, and according to Mrs. Field it continues to worsen as further development occurs. Mrs. Field testified that the stream regularly overruns its original banks by fifteen to twenty feet. The water can reach depths of more than three feet, enough to cover a bridge that connects her property to the road. The bridge is part of the driveway leading up to Mrs. Field's house. The bridge has needed to be replaced due to flood damage. Additionally, Mrs. Field testified that flood damage has caused her to replace her driveway on three separate occasions. A videotape shown to this Board by Mrs. Field demonstrates that the water problems are not limited to high water. The water moving through the area after a shower appears to have a substantial current. Severe erosion to the land is evident everywhere along the stream's path. According to the

testimony before this Board, flooding impacts approximately two of the subject's four acres. The house itself is not subject to flooding.

The problem has evidently been costly to Mrs. Field. She testified that in 1990 her insurance rates increased from \$600 to \$1,600 per year due to the situation. According to Mrs. Field, the policy will no longer cover flood damage. In 1993, Mrs. Field erected a retaining wall, which was designed to prevent erosion of the stream's banks and to keep the driveway intact. According to Mrs. Field, the strength of the current during a flood is such that the wall has been of limited effect. Also in 1993, Mrs. Field dug several retaining ponds in the stream. These ponds, each five to eight feet deep, were designed to slow the current and prevent erosion. Mrs. Field testified however, that the amount of silt being carried during the flooding quickly fills these ponds. They must be dredged three to five times per year. Total cost of these 1993 improvements was estimated at \$11,000.

In support of her contention of value, Mrs. Field has further offered this Board two letters from real estate agents. The first agent opined that it would be difficult to sell the subject property with its current problems. As a result, the agent determined that a "purchaser's opinion of value would, therefore, be greatly reduced." (Appellant's Exhibit 5.) The second letter opines that "the field of buyers would be very limited." The agent specifies that any potential purchaser would discount the price to account for remedying the flooding problem. The agent states only

that the cost could run "into thousands, if not tens of thousands of dollars," and urges Mrs. Field to get an estimate for repairs before placing the property on the market. (Appellant's Exhibit 6.)

We begin our review of this matter by noting 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.

When dealing with claimed defects in real property, the burden to come forward with evidence of value is extremely important. In Throckmorton v. Hamilton Cty. Bd. of Revision (1996), 75 Ohio St.3d 227, the Supreme Court held:

"Evidence 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." Id. at 228.

See, also, Vogelgesang v. CECOS International, Inc. (1993), 85 Ohio App.3d 339, (the cost of rectifying a defect is not invariably equated with value and such cost will not automatically require a reduction in the value of the property); Chem-Masters Corp. v. Geauga Cty. Bd. of Revision (Dec. 21, 1990), BTA No. 88-J-994, unreported (demonstration of a condition which may influence the value of a property is not sufficient to grant reduction); and, Company at 34, Inc. v. Lake Cty. Bd. of Revision (Mar. 25, 1994), BTA No. 92-T-763, unreported (cost to remedy ground contamination not deducted where taxpayer failed to show that there was any diminutive effect on value).

As Throckmorton illustrates, it is not sufficient in property valuation cases to merely show the existence of a defect in the property. The party seeking the decrease also has the burden of demonstrating the negative impact such defects have had on the property's value. Moreover, it is not enough to generally suggest that a defect has caused a decrease in value. Sufficient evidence must be presented which would support the taxpayer's contention or which would otherwise allow us to quantify the diminution in value. Company at 34, supra.

In the instant matter, Mrs. Field has presented a substantial amount of evidence concerning the existence of the flooding and the damage it has caused. However, she has not presented evidence which demonstrates what impact, if any, this situation has had upon the subject's value. No estimate for the cost to rectify the situation has been presented. Thus, the extent

of the damage caused by the water cannot be ascertained by this Board. Even if we were able to determine the cost of the damage, Mrs. Field has presented no probative evidence as to how this cost impacts the value of the subject property. Absent an appraisal or other evidence which indicates the diminutive effect of the flooding, we are unable to find that Mrs. Field has proven her contention of value. Throckmorton, supra.

Mrs. Field has offered two letters from realtor's concerning the value of the subject property. However, we must find that this evidence, too, does not sufficiently demonstrate that the property had no value as of tax lien date. Although one of the letters states that it would be difficult to sell the property, the letter does not hold that it is impossible to market. (Appellant's Exhibit 5). Moreover, this letter admits that the property has some value, but that it would be "greatly reduced." While this shows that the subject has a value other than zero, it offers no guidance as to what the value should be. The second letter states only that a potential purchaser would wish to deduct the cost to remedy from the purchase price. As previously stated, however, we have no estimate before us as to what that cost would be. In addition, we reiterate that the cost to remedy the situation is not necessarily equated with the subject's true value for taxation purposes. Vogelgesang, supra. While we do not deny that the presence of the flooding could influence the amount a potential purchaser would pay for the property, no evidence is

before us indicating that the value would be zero. Neither can we determine any other amount which would be proper to deduct.

We note, also, that the subject property was purchased in 1984 for \$75,000. Since that time, the value of the subject has decreased substantially. For the tax year in question, the Auditor originally placed a value of \$56,160 on the subject. This is a decrease of \$18,840 from the purchase price. The Board of Revision then granted another reduction of \$12,180. This was an additional reduction of 21.7% from the subject's 1996 value. In all, the subject property has seen a 41% decrease in its true value since the onset of the flooding. It appears from the record that both the Auditor and the Board of Revision have recognized the impact of the flooding on the subject property and have reduced the value of the property to account for any diminutive effect. Half of the land and the house are not subject to flooding. We are unable to say from the record now before us that the County has failed to be responsive to Mrs. Field's concerns about the impact the flooding has upon the value of the subject property, nor can we find the Board of Revision's determination of value to be unreflective of the subject's true value.¹ As there is no probative evidence in the

¹ We do note that Mrs. Field suggests in her testimony that the City of Englewood has refused to either acknowledge the severity of flooding problem or to help in its correction. We are also aware of other litigation pending over the issue. However, such issues are beyond the scope of this Board's jurisdiction. Our sole duty is to the value of the subject property. From the record, we cannot say that the County Appellees have failed to listen or to respond to Mrs. Field's contentions.

record in support of a further decrease in value, we approve the Board of Revision's determination as the true value for the subject property. Simmons v. Cuyahoga Cty. Bd. of Revision (1998), 81 Ohio St.3d 47, at the syllabus.

In concluding this matter, we acknowledge the existence of a substantial defect on the subject property. We also recognize from the evidence that the flooding can be quite torrential in nature, and the damage caused thereby is obvious. We are also sympathetic to Mrs. Field's attempts to rectify a situation which has undoubtedly been the source of much concern and frustration. We certainly admire her tenacity and are not unmoved by her sincerity. Nevertheless, we do not have the authority to intervene in her conflict with the City of Englewood. Our jurisdiction extends only to the value of the subject property, and we must find that Mrs. Field has not presented this Board with probative evidence of a value less than that determined by the Board of Revision.

Based upon a consideration of the record, the Board of Tax Appeals finds the true value of the subject property to be \$43,980 for tax year 1996. The Board of Tax Appeals further finds the true and taxable values to be as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$17,640	\$ 6,170
BUILDINGS	\$26,340	\$ 9,220
TOTAL	\$43,980	\$15,390

The Auditor of Montgomery County is hereby ordered 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.