

OHIO BOARD OF TAX APPEALS

Donald B. Doyle,)
)
 Appellant,) CASE NO. 2003-R-1580
)
 vs.) (REAL PROPERTY TAX)
)
 Hamilton County Board of Revision, and) DECISION AND ORDER
 Hamilton County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellants - Donald B. Doyle, pro se
6740 Rosecrest Avenue
Cincinnati, OH 45243

For the County Appellees - Joseph Deters
Hamilton County Prosecuting Attorney
Thomas J. Scheve
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202-2174

Entered February 25, 2005

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Donald B. Doyle. Mr. Doyle appeals from a decision of the Hamilton County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 2002.

The Hamilton County Auditor and the BOR determined that the true and taxable values for the subject property for 2002 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
525-0014-0027		
Land	\$ 12,600	\$ 36,000
Building	\$ 37,310	\$106,600
Total	\$ 49,910	\$142,600
525-0014-0028		
Land	\$ 9,450	\$ 27,000
Building	\$ -0-	\$ -0-
Total	\$ 9,450	\$ 27,000

According to his notice of appeal, Mr. Doyle contends that the true value of the subject property should be reduced to \$125,700 for 2002.

The subject property consists of two lots, one of which is improved with a single-family house of wood construction. The structure, built in 1929, has six rooms, one bath, and a single car detached garage. The house consists of approximately 1,072 square feet of gross living space, according to the property record card. See S.T. It has no fireplace, but it does have new electric service and new plumbing. The furnace and air conditioning system is approximately fifteen years old. The property is located at 6740 Rosecrest Avenue, Cincinnati, Hamilton County, Ohio, in the 092 – Madeira taxing district.

Mr. Doyle purchased the subject property, along with an additional lot, in June 2000 for \$147,000. Mr. Doyle and his partner built a house on the additional lot, and it was subsequently sold. Mr. Doyle and the city of Madeira have agreed to restrict the use of the parcel at issue comprising the vacant land, so that the lot is not buildable. This restriction is reflected in the deed to the property.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, and the record of the evidentiary hearing (“H.R.”) before this board, including exhibits. At the hearing, Mr. Doyle testified on his own behalf. The county appellees, however, waived appearance.

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* (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 that 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.

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 adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 65 Ohio St.3d 572, 573.

Accordingly, this board must 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.

R.C. 5713.03 directs that:

“The auditor shall assess all the real estate situated in the county *** at its true value in money ***.”

Further, R.C. 5713.03 provides:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.”

Case law indicates that an arm’s-length sale generally represents the best evidence of true value. See *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1977), 172 Ohio St. 443; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; and *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 543. However, where there is no recent arm’s-length sale, then a review of other evidence, such as an independent appraisal or appraisal-type evidence, is appropriate. See *Ratner v. Stark Cty. Bd. of Revision*

(1986), 23 Ohio St.3d 59; and *Cincinnati v. Hamilton Cty. Bd. of Revision* (Nov. 13, 1992), BTA No. 1990-R-1264, unreported.

In the matter before us, Mr. Doyle presented fourteen sales of comparable properties for this board's consideration. However, sales 4 and 5 were remote in time as to the tax lien date, and therefore not recent enough to provide a meaningful indication of value for the subject property. See *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 23, 2000), BTA No. 1997-G-1216, unreported. Furthermore, sales 4, 5, and 12 were not, in this board's opinion, comparable to the subject because of extreme size differences for which no adjustments had been made. These properties had square footage in the 1600 to 1750 square foot range.

Of the eleven remaining comparables, sale dates ranged from December 8, 2000 to July 1, 2003. The square footage of these comparables ranged from 1,066 to 1,530 square feet. The sale prices for these eleven properties ranged from \$115,000 to \$139,800, with a price per square foot range of \$74.91 to \$129.21. These comparable properties had from five to eight rooms, one to two baths, and all had three bedrooms.

In reviewing Mr. Doyle's entire list of comparables in comparison to the subject property, the board found three properties to be statistically very close to the subject, particularly with regard to square footage. Comparable sale number 3

occurred in April of 2001, which was very close to the tax lien date, for \$139,900, or \$127.88 per square foot. The house had 1,094 square feet of living space, as compared to the subject property's 1,072 square feet. Although the structure in comparable number 3 was built in 1951, and that of the subject was built in 1929, the comparable had six rooms, one and one-half baths, and three bedrooms, very similar to the configuration of the subject property.

The board also found Mr. Doyle's sale number 7 to be very comparable to the subject property. Comparable number 7 was sold in May of 2003 for \$128,000, at \$120.08 a square foot. The comparable had 1,066 square feet of living space and was built in 1926. Comparable number 7 had five rooms, one bath, and three bedrooms.

Finally, the board determined that Mr. Doyle's sale number 9 was comparable to the subject property. Comparable number 9 was sold in June of 2001 for \$138,000, or \$129.21 per square foot. The comparable property had 1,075 square feet of living space. It was built in 1952 and had seven rooms, including one bathroom and three bedrooms.

The remaining eight comparable properties not already eliminated ranged in size from 1,258 to 1,530 square feet, which the board determines are not the best comparables when compared to the subject in size.

Averaging the sales prices of the three properties the board finds to be most comparable to the subject property results in an average sales price per square foot of \$125.72. Applying the average price per square foot to the square footage of

the subject property results in a value for the subject property of \$134,722. This is consistent with Mr. Doyle's testimony that in his opinion, his property is worth between \$130,000 and \$135,000. H.R. 23.

The record before us is not perfect, in that none of these sales appear to have been verified other than through the county's records and adjusted for the various differences. However, this board must make a determination of true value for the subject property, based upon the existing record. Therefore, based upon the existing record, this board finds that the subject property has a true value of \$135,000.

Applying the approximate percentages to land and building as the auditor and the BOR, the Board of Tax Appeals finds the true and taxable values of the subject property as of January 1, 2002 to be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
525-0014-0027		
Land	\$ 9,920	\$ 28,350
Building	<u>\$ 28,350</u>	<u>\$ 85,050</u>
Total	\$ 39,690	\$113,400
525-0014-0028		
Land	\$ 7,560	\$ 21,600
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 7,560	\$ 21,600

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Hamilton County list and assess the subject property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.