

OHIO BOARD OF TAX APPEALS

Laila Abadir,)	
)	CASE NO. 2003-V-1812
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and the)	DECISION AND ORDER
Mayfield City School District)	
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

- | | |
|--------------------------|---|
| For the Appellant | - Laila Abadir, pro se
1800 Chartley Road
Gates Mills, OH 44040 |
| For the County Appellees | - William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy Kollin
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| For the Appellant BOE | - Taft, Stettinius & Hollister, LLP
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Entered June 17, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed on behalf of appellant Laila Abadir from a decision of the Cuyahoga County Board of Revision (“BOR”).

The subject real property consists of a residential lot, improved with a residential structure. The subject property is located in the Mayfield Heights taxing

district, Cuyahoga County, Ohio, and appears on the auditor's records as permanent parcel number 862-24-002.

The 2002 values originally assigned by the Cuyahoga County Auditor ("auditor") for the subject are as follows:

862-24-002	TRUE VALUE	TAXABLE VALUE
LAND	\$ 35,400	\$12,400
BUILDING	<u>\$106,700</u>	<u>\$37,300</u>
TOTAL	\$142,100	\$49,700

Ms. Abadir filed a timely complaint against the valuation of the subject property, requesting that the valuation be lowered to \$90,000. Upon consideration of the complaint and the materials attached thereto, the BOR determined that the auditor's original values should remain unchanged.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal,¹ the statutory transcript ("S.T.") certified to this board by the BOR, and the hearing ("H.R.") conducted before this board. Neither the county appellees, the Mayfield City School District Board of Education ("BOE"), nor appellant appeared at hearing before this board.²

¹ Attached to the notice of appeal is a "statement of facts," photographs, and a receipt from a home-improvement contractor for repairs. As this board has held on many prior occasions, unsworn statements made through a notice of appeal, or materials submitted outside hearing, do not rise to the level of evidence upon which this board can rely in making a determination. See, e.g., *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Lynde v. Tracy* (Dec. 19, 1994), BTA No. 1994-M-111, unreported; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported (holding that documents submitted outside of hearing would not be considered evidence); and *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13.

² Ms. Abadir telephoned this board's attorney examiner, indicating her desire to waive her appearance at hearing. H.R. at 2-3. On July 7, 2004, Ms. Abadir filed a brief with this board, urging that the value of the subject property be reduced.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

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*, 78 Ohio St.3d 325, 1997-Ohio-212. 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 the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In light of the fact that no party appeared at hearing before this board, it is particularly important for this board to review the existing record consistent with the

Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio

St.3d 11:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision]* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its formal determination is more than a mere rubber stamping of the board of revision's determination. ***.” Id. at 13-14.

See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 1996-Ohio-432 (“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”).

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule *according to value* ***.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “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.)

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175

Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“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.” *Id.* at 412.

See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

Ms. Abadir did not appear at hearing before the BOR. Within her notice of appeal, Ms. Abadir indicates that the BOR failed to send notice of the hearing to the correct address. Ms. Abadir indicates that her correct mailing address is “1800 Chartley Road 44040” and that the BOR erroneously mailed the notice of the hearing to the subject’s address, 6500 Peeper Hollow. However, a review of Ms. Abadir’s complaint filed with the BOR clearly lists her address as “6500 Peeper Hollow, Mayfield Heights, Ohio 44124.” S.T. at A.

Attached to the complaint were various documents describing the problems with frequent flooding at the subject property.³ Nevertheless, Ms. Abadir was unable to justify what, if any, reduction in value should be accorded for the needed repairs through the documentary evidence she attached to her complaint.⁴

Counsel for the BOE provided the BOR with sale information from six comparable properties, which indicated a range of value between \$144,400 to \$177,000. S.T. at Ex. D.

The burden is upon the appellant to submit sufficient probative, competent evidence to support her claim for a reduction in value. *Zindle v. Summit Cty. Bd. of Revision* (1989), 44 Ohio St.3d 202; *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198. A party who asserts a right to a decrease in the value of real property has the burden of proving his right to the value asserted. *Cleveland Bd. of Edn.*, supra. Based upon our review of the information Ms. Abadir

³ Ms. Abadir included: (1) a letter explaining her inability to rent or sell the property because of frequent flooding; (2) a copy of a letter dated September 27, 1978 to the mayor of Mayfield Heights from an engineer explaining suggestions of how to prevent the adjacent creek from flooding onto the subject property; (3) a cancelled check from hiring a moving company to move a gazebo away from a flooded portion of the property; and (4) invoices from home-improvement contractors for various repairs made after flooding. S.T. at Ex. A.

⁴ Within the statutory transcript is a document constituting the property record card for the subject property. S.T. at E. The owner is listed as Laila Abadir, Trustee. This board has previously held that a complaint filed by a trustee on behalf of a trust must be dismissed when the trustee is not a licensed attorney. See, e.g., *The Dorcas W. Burns Trust v. Ashtabula Cty. Bd. of Revision* (Sept. 12, 1997), BTA No. 1997-K-710, unreported (based upon the decisions in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479 “The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law,” and *Mahoning Cty. Bar Assn. v. Alexander* (1997), 79 Ohio St.3d 1220.) Beyond the listing on the property record card, there is no other evidence in the record to allow this board to conclude that the property is in fact held in trust. No party has raised or addressed this issue before this board. Although the underlying complaint may be defective, it is not necessary to reach the issue of the board of revision’s jurisdiction, given our decision today. See *Gammarino v. Hamilton Cty. Bd. of Revision* (1998), 84 Ohio St.3d 155 (citing R.C. 5701.03, the court held that before a complaint can be dismissed as having been filed by a nonattorney on behalf of a trust, the existence of the trust must be established).

supplied to the BOR, she has failed to provide any evidence as to why the subject property should be valued at \$90,000.

Within her complaint, Ms. Abadir argues that the value of the property is negatively affected by its frequent flooding. However, absent some corroborating evidence of value, this board is unable to place a dollar value on the effect of the occasional flooding. *Amsdell v. Bd. of Revision* (1994), 69 Ohio St.3d 572.

Both the Supreme Court and this board have applied this rule on several occasions. See *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227 (“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 repairs that is the important factor to be determined by the BTA.”); *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397 (applying *Throckmorton*, supra, where defects were no storm sewer line above the frost line and various building code violations); *Donta v. Jackson Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1996-M-1068, unreported (claimed defects included poor upkeep and damage from neighboring strip mining); *Luken v. Miami Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1996-G-976, unreported (claimed defects included alleged potential for soil or ground water contamination from the operation of a sewage sludge pit or dump on an adjacent property); *Franklin v. Hamilton Cty. Bd. of Revision* (June 14, 1996), BTA No. 1995-T-792, unreported (claimed defects included windows in need of replacement, leaking roof, wet basement and mortar in need of repair); *DiFranco v. Lake Cty. Bd. of Revision* (Apr. 19, 1996), BTA No. 1995-J-560, unreported (defect cited was the adverse effect of neighboring vacant property which

has attracted vermin, ground hogs, snakes and rats); *Gammarino v. Hamilton Cty. Bd. of Revision* (Mar. 15, 1996), BTA No. 1995-S-161, unreported (defects included problems with existing electrical system, gutters, roof and windows); *Janson v. Lake Cty. Bd. of Revision* (July 7, 1995), BTA No. 1994-S-711, unreported (claimed defect was flooding); *Stojanovski v. Cuyahoga Cty. Bd. of Revision* (Jan. 13, 1995), BTA No. 1994-T-604, unreported (defects claimed included poor roof and high noise level); *Quinn v. Columbiana Cty. Bd. of Revision* (Nov. 14, 1994), BTA No. 1993-T-823, unreported (defect claimed was property littered with rocks); *Davis v. Butler Cty. Bd. of Revision* (Apr. 29, 1994), BTA No. 1992-T-923, unreported (defects claimed include no natural gas supply, requiring homeowner to rely on propane fuel stored in a tank, sewer easement, overhead electrical lines and towers); *Even, Inc. v. Hamilton Cty. Bd. of Revision* (July 30, 1993), BTA No. 1991-H-632, unreported (claimed defects were leaking roof and no access to sewer or water). In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, we stated:

“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 [sic] in value caused by the defects, or some evidence of the value of the property as so diminished. Appellant has established to our satisfaction that there are detrimental aspects to the subject property (which, however, are shared by his neighbors to a large degree, and to certain of the comparables) 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.” *Id.* at 435.

It is this board’s statutory duty to find taxable value herein. R.C. 5717.03. As such, we must determine the market value of the subject property. Based

upon the foregoing, we find that appellant has failed to demonstrate any right to a reduction.

Accordingly, we find and determine that the true and taxable values of the subject real property for tax year 2002 are:

862-24-002	TRUE VALUE	TAXABLE VALUE
LAND	\$ 35,400	\$12,400
BUILDING	<u>\$106,700</u>	<u>\$37,300</u>
TOTAL	\$142,100	\$49,700

It is the decision and order of the Board of Tax Appeals that the Cuyahoga County Auditor shall list and assess the subject property in conformity with this decision and carry the same values forward in accordance with applicable law.

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