

## OHIO BOARD OF TAX APPEALS

George H. Stamaty,	)	
	)	CASE NO. 2003-V-2138
Appellant,	)	
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Montgomery County Board of Revision and the Montgomery County Auditor,	)	
	)	DECISION AND ORDER
Appellees.	)	

APPEARANCES:

For the Appellant	- George H. Stamaty, pro se 841 Belmonte Pk. N Dayton, OH 45405
For the County Appellees	- Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura G. Mariani Assistant Prosecuting Attorney 301 West Third Street Dayton, OH 45402

Entered March 11, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant George H. Stamaty from two decisions of the Montgomery County Board of Revision (“BOR”). Upon consideration of two complaints filed before the BOR by Mr. Stamaty, the BOR left the values originally assigned by the Montgomery County Auditor (“auditor”) unchanged for 2002.

The values for the subject properties are as follows:

R72-67-12-31	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$6,110	\$2,140
BUILDING	\$ <u>0</u>	\$ <u>0</u>
TOTAL	\$6,110	\$2,140

R72-67-12-32	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 19,150	\$ 6,700
BUILDING	\$ <u>88,320</u>	\$ <u>30,910</u>
TOTAL	\$107,470	\$37,610

R72-67-12-9	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 15,370	\$ 5,380
BUILDING	\$ <u>110,880</u>	\$ <u>38,810</u>
TOTAL	\$126,250	\$44,190

Parcels R72-67-12-31 and -32 consist of a residential lot improved with a two-story stucco home and an adjoining vacant lot located on Squirrel Road in the city of Dayton. The home was constructed in 1919. Statutory Transcript (“S.T.”), property record card.

As was the case before the BOR, Mr. Stamaty seeks to have the true value of the Squirrel Road parcels reduced to a total of \$90,100.<sup>1</sup>

Parcel R72-67-12-9 consists of a residential lot improved with a one and one-half-story home constructed in 1949 located on Belmont Pk. North in the city of Dayton. S.T., property record card.

As was the case before the BOR, Mr. Stamaty seeks to have the true value of the Belmont Pk. North property reduced to \$100,000.

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<sup>1</sup> In his notice of appeal, Mr. Stamaty does not request that the value of the vacant lot be adjusted at all (\$6,110). Nevertheless, Mr Stamaty seeks to have the parcel improved with the home reduced to \$84,000. See Notice of Appeal.

Mr. Stamaty testified before this board that the Squirrel Road parcels and the Belmont Pk. North parcel are only a block away from each other. H.R. at 8. In the interest of economy, this board will consider the common arguments advanced collectively by appellant.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcripts certified to this board by the BOR, and the evidence provided at this board's hearing ("H.R.").

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.

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. Where parties rely upon appraisers’ opinions of value, this board may accept all, part, or none of those appraisers’ opinions. *American Steel & Wire Co. v. Bd. of Revision* (1942), 139 Ohio St. 388; *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 62 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 85 Ohio St.3d 609, 1999-Ohio-323.

Before both the BOR and this board, Mr. Stamaty focused his attention on the condition of the subjects’ neighborhood. Mr. Stamaty presented several photos of the subject properties and neighboring properties. Mr. Stamaty argues that the neighborhood is blighted with crime and prostitution, and is unsafe for its inhabitants. H.R. at 9-10, Ex. H. Furthermore, Mr. Stamaty provided letters he received concerning the state of the real estate market in the area, Exs. A, B; a neighborhood newsletter, Ex. C; and listings of other homes for sale in the area, obtained from local realtors and the Internet, Ex. I.

Mr. Stamaty testified that the subjects’ value should be reduced because the neighborhood is in decline.

Mr. Stamaty, as the owner of the properties, is competent to present testimony, including his opinion of the value of the property. *Smith v. Padgett* (1991),

32 Ohio St.3d 344. That testimony is subject to this board's determination of the appropriate weight to be accorded it. *Id.* at 348. Assuming that there is an inherent bias in any owner's opinion of the value of a personal residence, we must determine whether the value claimed is supported by competent, reliable and probative evidence. Mr. Stamaty has testified that the value of the properties is negatively affected by the surrounding neighborhood. However, absent some corroborating evidence of value, this board is unable to place a dollar value on the effect of the neighborhood property. *Amsdell v. Bd. of Revision* (1994), 69 Ohio St.3d 572.

Both the Supreme Court and this board have applied this rule on numerous 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 diminuation [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.

The burden is upon the appellant to submit sufficient probative, competent evidence to support his 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. Mr. Stamaty has listed conditions that may have negatively affected the subject properties’ value. However, he has failed to submit sufficient probative, competent evidence which would quantify the effect the conditions have had on the properties’ value.

Although we are sympathetic to his situation regarding the negative impact of the neighborhood, Mr. Stamaty has not offered any competent or probative evidence as to what extent, if any, this would affect the subject parcels’ valuation on January 1, 2002.

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 properties. 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:

R72-67-12-31	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$6,110	\$2,140
BUILDING	\$ <u>0</u>	\$ <u>0</u>
TOTAL	\$6,110	\$2,140

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TOTAL	\$126,250	\$44,190

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

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