

OHIO BOARD OF TAX APPEALS

Thomas J. Hard,)	CASE NO. 2004-B-831
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Erie County Board of Revision and the)	
Erie County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Thomas J. Hard, pro se 15875 Needles Road Johnstown, Ohio 43031
For the County Appellees	-	James A. Gorry Attorney at Law 300 East Broad Street Suite 300 Columbus, Ohio 43215-3704

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 by appellant, Thomas J. Hard, from the final determination of the Erie County Board of Revision (“BOR”). The BOR determined the taxable value of the subject property for tax year 2003.

The subject real property consists of .29 acres, improved with a single family modular home constructed in 2000. The subject property is located in the Kelleys Island Village taxing district, Erie County, Ohio, and appears on the Erie County Auditor’s (“auditor”) records as permanent parcel number 54-00729.000.

The values of the subject, as determined by the auditor for tax year 2003, are as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 21,650	\$ 7,580
Building	\$ <u>198,700</u>	\$ <u>69,550</u>
Total	\$ 220,350	\$ 77,130

Lisa M. Lawler filed a complaint against the valuation of the subject parcel for tax year 2003 with the BOR, requesting the subject's true value be decreased to \$118,900. S.T., at 2. The subject property was titled as follows: "Lisa Lawler, Edward J. Hard, Jamie A. Scheiderer, and James D. Hard and life estate to Thomas J. and June M. Hard." After conducting a hearing, the BOR determined the true and taxable values for the subject to be:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 21,650	\$ 7,580
Building	\$ <u>145,710</u>	\$ <u>51,000</u>
Total	\$ 167,360	\$ 58,580

In his notice of appeal, Mr. Hard¹ maintains that the BOR has overvalued the property and contends that the subject property values should be further reduced as follows:

¹ An owner who has not filed a complaint can nevertheless file an appeal with this board pursuant to *Columbus Apartments Assoc. v. Bd. of Revision* (1981), 67 Ohio St.2d 85. A life estate interest is indeed sufficient to qualify as "owner" as that term is used for purposes of being able to file a complaint. In this regard, R.C. 5713.30 expressly provides:

"As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

"(D) 'Owner' includes, but is not limited to, any person owning a fee simple, fee tail, or *life estate* or a buyer on a land installment contract." (Emphasis added.)

See *Bd. of Edn. v. Bd. of Revision* (1979), 57 Ohio St.2d 62.

	TRUE VALUE	TAXABLE VALUE
Land	\$ 21,650	\$ 7,580
Building	\$ <u>97,250</u>	\$ <u>34,040</u>
Total	\$ 118,900	\$ 41,620

The Board of Tax Appeals now considers this matter upon the notice of appeal, the statutory transcript certified to the board by the Erie County Auditor, and the record of the evidentiary hearing. Mr. Hard represented himself at the hearing, offering his testimony and certain documents in support of his contentions of value. The county appellees were represented by counsel, who offered the testimony and appraisal reports of Richard Hoffman, a real estate appraiser.

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 rights 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. Once competent and probative evidence of value is presented by an appellant, other parties asserting a different value then have the corresponding burden of providing evidence which rebuts appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Furthermore, we note that the issue in an appeal from a board of revision is the true value of the subject property. Accordingly, this board will 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. While we may ultimately conclude that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, de novo determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

At this board's evidentiary hearing, the appellant gave a short history of his purchase of the property and testified that he felt the house was overvalued by 30%. He stated that he thought the county's indicated value by cost approach in its appraisal totaling \$155,472 was fair and close to his estimate of value when the resort value multiplier of 1.3 was utilized.

The only other evidence of value presented by appellant were the documents he submitted to the BOR for its evidentiary hearing. These documents appear to show that the appellant contracted to buy the subject modular house from a

dealer for approximately \$87,702 in April of 2000 and that appellant had a written proposal dated September 16, 2003 for a similar modular home for \$90,325.

An appraisal was prepared for the Erie County Auditor, and the appraiser, Mr. Hoffman, testified. His appraisal report includes the market approach and the cost approach. He did not prepare an income approach because the subject property was not utilized as rental property. Mr. Hoffman described the subject property as a single-family residential, modular-type home located on Kelley's Island. Exh. A at 3. The cost approach is presented at page 4 of the report. The land value is set at \$27,870, as calculated at page 6 of the report. Five lots were chosen for analysis, two on the same street as the subject, and the other four in the same development. Adjustments for date of sale, location, size, view and other items were considered. The dwelling is costed at \$95,597 as if new. A value of \$9,106 is added for a wood deck and \$17,947 is added for a garage/carport. Depreciation of \$2,048 is deducted, for a "depreciated value of improvements" of \$120,602. "As-is value of site improvements" of \$7,000 is added, equating to a total value of \$155,472.

The sales comparison approach is summarized at pages 4 and 5 of Exhibit A. Four comparables were chosen, 3 on Melody Lane, as is the subject. After adjustments, a value for the subject was determined to be \$168,100. Mr. Hoffman found the sales comparison approach to be a better indicator of value in this instance, and stated that his estimated market value of the subject property at tax lien date is \$168,100.

Based upon the foregoing, we find there is no evidence before us which would allow this board to find a reduction below that already determined by the BOR. Appellant's testimony at this board's hearing was far too general to be of any use in determining value for the subject property, and appellant's evidence at the BOR hearing was without the necessary detail and support to determine the cost of reproduction of the subject property. For example, we do not have evidence that the "cost proposal" provided covered all the expenses one could expect in putting up such a facility. Was a concrete slab to be established first? What is the cost of the deck and garage and what were the other "site improvements?" Although perhaps we could inject the county appraiser's cost information to answer some of these questions, we still do not know the basic circumstances of this proposal. The record is devoid of this foundation. Why was another "similar" model used here and how does it differ from the subject property? S.T. at 9. The information supplied by appellant is simply insufficient to be considered probative evidence this board can rely upon. Therefore, we find that appellant has failed to carry his burden of proof in this matter.

Upon review, we find that Mr. Hoffman's appraisal evidence is reliable and supportive of the BOR's determination of value. The sales utilized in his market data approach are comparable to the subject. The sales are recent, and the adjustments are reasonable. Therefore, we find that the county's contention of value, as represented by Mr. Hoffman's opinion of value, is supported by a preponderance of the evidence.

Accordingly, the Board of Tax Appeals finds that the true and taxable values of Parcel 54-00729.000 should be as follows for tax year 2003:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 21,650	\$ 7,580
Building	\$ <u>145,710</u>	\$ <u>51,000</u>
Total	\$ 167,360	\$ 58,580

It is the decision and order of the Board of Tax Appeals that the Erie 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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