

OHIO BOARD OF TAX APPEALS

Doraine Toms,)
)
 Appellant,) (CASE NO. 2004-M-587
) (REAL PROPERTY TAX)
 vs.)
) DECISION AND ORDER
)
 Ottawa County Board of Revision,)
 the Ottawa County Auditor, and)
 Put-In-Bay Local School District)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Doraine Toms, pro se
10625 Indian Hollow
Elyria, Ohio 44035

For the County Appellees - Mark E. Mulligan
Ottawa County Prosecuting Attorney
James R. Gorry, Special Prosecutor
Rich, Crites & Dittmer
300 East Broad Street, Suite 300
Columbus, Ohio 43215

For the - Britton, Smith, Peters & Kalail
Board of Education David Rose
Summit One, Suite 540
4700 Rockside Road
Cleveland, Ohio 44131

Entered April 8, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on July 13, 2004 from a decision,

dated June 14, 2004, of the Ottawa County Board of Revision ("BOR"), appellee.

The subject property is located in the 024, Put-In-Bay Local School taxing district of Ottawa County, Ohio, and further identified as parcel no. 024-08425-11258-000. The Ottawa County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. 043-00000698-00

	True Value	Taxable Value
Land	\$ 80,480	\$ 28,170
Building	\$ 215,950	\$ 75,580
Total	\$ 296,430	\$103,750

Upon consideration of the complaint filed by appellant, the BOR determined that the correct value for the subject property as of tax lien date 2003 was as follows:

Parcel No. 043-00000698-00

	True Value	Taxable Value
Land	\$ 80,480	\$ 28,170
Building	\$ 182,910	\$ 64,020
Total	\$ 263,390	\$ 92,190

Through her notice of appeal, appellant claims that the correct values for her parcels for tax year 2003 are as follows:

Parcel No. 043-00000698-00

	True Value	Taxable Value
Land	\$ 40,635	\$ 14,223
Building	\$ 82,000	\$ 28,700
Total	\$ 122,635	\$ 42,923

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Ottawa County Auditor as secretary of the BOR, and the testimony and other evidence presented at the hearing before this board. At that hearing, Ms. Doraine Toms, the property owner and appellant herein, appeared and provided testimony and other evidence regarding the value of the subject property. The county appellees appeared through their representative, but the representative for the Put-In-Bay Local School District Board of Education ("BOE") waived hearing.

The subject property consists of a 135-foot by 150-foot lot with some view of Lake Erie. The property is improved with a prefabricated home of approximately 1,200 square feet. The present owner purchased the property, furnished, in 1996 for \$98,500. At that time, the property contained only one bedroom, one bathroom and had no garage. In 2002, the property owner added a prefabricated bedroom, bathroom, and garage to the original home. At the time of the renovation, the property was appraised at \$120,000.¹

The fair market value of the subject property has increased two times since the current owner purchased the property in 1996. With the last increase, the home's fair market value was originally found to be \$355,000 by the auditor. When

¹ The record is not clear whether the \$120,000 value was prior to the addition or after. The appraisal was not submitted to the board for review.

the owner questioned the increase, she was informed that two homes on her street had recently sold in the \$300,000 range.

Believing the homes not to be comparable to hers, the owner researched these and other properties in her neighborhood. At hearing, the owner presented the auditor's records concerning her own and neighboring properties, including the properties which the BOR believed to be comparable to hers. The pictures presented do support the owner's claim that her home is not of the same quality and caliber as the recently purchased homes. For instance, the picture of the Clandemen house reflects a three story chalet on the waterfront, with loft bedrooms.

The owner also presented pictures of homes she believed to be comparable to her own. Of the comparable homes, the property owner suggested that the Arcoria property, sold in August 2003 for \$179,000, was most comparable to her home. The Arcoria property is smaller than the subject property. However, the property owner, who was familiar with the sale, testified that the former owner was a contractor who renovated the property with quality materials and workmanship.

The property owner also presented information about homes she believed were nicer than her home, but valued for tax purposes at lower values. However, tax valuations of neighboring properties are not entitled to any weight when they are presented to support a change in the value of a contested property. *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. Therefore, in the present case, we are unable to rely upon the auditor's records

reflecting auditor's values for neighboring properties in considering a reduction for the subject property.

The owner testified that if her property were sold on the open market, she "would be lucky" to sell for \$180,000. H.R., p. 14. She compared her home to two properties on her street, both with more land than her home, offered for sale in the \$200,000s. Neither home had sold in over a year.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the 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. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra. Moreover, an owner is permitted to testify concerning the value of his property without being qualified as an expert, because he is presumed to be familiar with it from having purchased or dealt with it.

Bishop v. East Ohio Gas Co. (1944), 143 Ohio St. 541; *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

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

In determining what constitutes "true value in money," the Supreme Court has held that the best evidence of a property's fair market value or "true value in money" for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443.

In other words, for real estate tax purposes, property must be valued at what that property would sell for in an arm's-length transaction. *Walters v. Knox County Board of Revision* (1989), 47 Ohio St.3d 23. However, not all property transfers within a period relevant to tax lien date. Thus, the county auditor, as real property assessor, contracts with a mass appraisal firm, which has the obligation to provide an opinion as to the value of each and every property within the county. Ohio Adm. Code 5703-25-08.

In order to successfully challenge the BOR's value, the appellant in this matter must provide evidence that her property would sell on the open market for a

value other than that found by the BOR. The property owner has provided such evidence in her testimony and documentary evidence relating to the Arcoria property, which appellant testified was purchased in 2003 for a sales price of \$179,000. From the pictures presented, the Arcoria property does appear to be more similar to the subject property than the properties on the owner's street upon which the BOR justified the auditor's original values. The property owner successfully explained the differences between her property and the Arcoria property. The property owner also explained why her property should not be subject to the same increases in value reflected in the sale of other homes in her area. When questioned by counsel for the BOR regarding the substantial increase in some market sales, the owner testified that large homes are selling for greater values, but small homes are not selling at the same inflated prices as the larger homes. The property owner's market evidence supported her claim.

Given the record in this matter, the board finds that the appellant has provided competent and probative evidence of the subject property's value. She has provided market evidence of a sale in her area that is comparable to her home. Based upon the competent and probative evidence found in the record, the board finds that the correct values of the subject property as of tax year 2003 are as follows:

Parcel No. 043-00000698-00

	True Value	Taxable Value
Land	\$ 80,480	\$ 28,170
Building	\$ 99,520	\$ 34,830

