

OHIO BOARD OF TAX APPEALS

Eugene and Kathryn Matuszewski,)
)
 Appellants,)
) CASE NO. 2004-T-1140
 vs.)
) (REAL PROPERTY TAX)
 Erie County Board of Revision and)
 the Erie County Auditor,) DECISION AND ORDER
)
 Appellees.)

APPEARANCES:

For the Appellants - Eugene Matuszewski, pro se
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For the County Appellees - Rich, Crites & Dittmer, L.L.C.
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Entered June 17, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Eugene and Kathryn Matuszewski. The Matuszewskis appeal from a determination of the Erie County Board of Revision, in which the BOR determined the true value of certain real property to be \$426,530 for tax year 2003. The Matuszewskis claim in their notice of appeal that the correct true value should be \$347,210.

The subject property is identified in the Erie County Auditor's records as permanent parcel number 01-00481.000 and is comprised of approximately 1.51 acres of land. The land is improved with one residential structure, erected in 1901. The land is also improved with two cottages, which are for lease.

Eugene Matuszewski appeared at this board's hearing to offer evidence in support of the Matuszewskis' contention of value. In support, Mr. Matuszewski noted differences in value between the subject and neighboring properties. He offered several examples of this, relying upon information gathered from the Erie County Auditor's office.¹ Appellant's Exhibits 6 and 7. In addition, Mr. Matuszewski offered into evidence an appraisal prepared for mortgage purposes. This appraisal values the subject at \$325,000 as of July 22, 2002. The remainder of Mr. Matuszewski's presentation focused on offering evidence to show that the sales relied upon by the county to express value were not comparable to the subject.

The county appellees also appeared at this board's hearing, offering the testimony and appraisal report of Richard H. Hoffman, MAI, a state-certified appraiser. Mr. Hoffman offered an opinion of value using both the cost and sales comparison approaches to value. Under the cost approach, value is derived by estimating the current cost of replacing or reproducing the improvements, deducting from that cost the estimated physical depreciation and all forms of obsolescence, if

¹ Mr. Matuszewski also noted that one of his examples sold for \$300,000 in 1997. We find this sale to be remote to tax lien date and therefore will not treat it as evidence of value.

any, and then adding the market value for land. Ohio Adm. Code 5703-25-05(D); The Appraisal of Real Estate (12th Ed. 2001), at 50.

Mr. Hoffman's cost approach began with an estimation of land value. Mr. Hoffman reviewed the sales of two parcels of unimproved land. The first sale took place on July 29, 2004 and sold for a price-per-acre of \$374,586, after adjustments were made for time. The second sale occurred on June 8, 2001 and had a per acre price of \$111,860, also after an adjustment for time. Mr. Hoffman calculated an average value of \$243,223 per acre from the two sales. Applying this to the subject's 1.51 acres, Mr. Hoffman determined a land value of \$367,267 for the subject.

Mr. Hoffman next determined a replacement cost of \$205,646 for the subject's improvements by utilizing construction costs from the Marshall & Swift Valuation Manual. Mr. Hoffman then subtracted \$137,104 in physical depreciation from the total replacement cost, resulting in a depreciated value for the improvements of approximately \$68,542. To this, he added the land value of \$367,267 and \$5,000 in site improvements to derive an opinion of value under the cost approach of \$470,809.

The sales comparison approach, often referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered to be most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate, at 417. Mr. Hoffman analyzed sales of five properties located in the general area of the subject property. The sales occurred between September 2002 and September 2004 and ranged in price from a low of \$295,000 to a

high of \$550,000. Taking into account the dates of the sales, age, size, condition and differences in the improvements, Mr. Hoffman found a value range for the subject of between \$329,650 and \$518,300. From this, he determined a total value under the sales comparison approach of \$420,900.

In reconciling his two approaches to value, Mr. Hoffman placed greatest weight upon the sales comparison approach. While he did find the cost approach to “support the indicated value,” Mr. Hoffman believed the sales comparison approach to be a better indicator of value. Appellees’ Exhibit 1 at 4. Thus, Mr. Hoffman opined a final true value for the subject property of \$420,900 for tax year 2003.

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 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 which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. 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.

The Matuszewskis argue that the subject parcel has been overvalued because the values placed on neighboring properties are lower than the values placed on the subject. Ohio courts have held that demonstrating that two parcels of property have different values, without more, does not demonstrate that the subject property is not being properly valued, nor does the reliance upon the values assigned to other properties present competent evidence of the subject property's value. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29; *Sherman v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 2000), Cuyahoga App. No. 75971, unreported. Similarly, in *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, we concluded that taxable values reflected on other properties provide little insight into the value of the property at issue:

“The appellant has attempted to show a lower value than that assessed by the BOR. However, appellant's presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often

stated that such information is not particularly helpful. ‘Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), B.T.A. Case No. 92-H-576, unreported.” Id. at 6.

Here, the valuation of the subject may include factors that are not present, and thus not included, in the valuation of the other parcels referred to by the Matuszewskis. The Matuszewskis have not provided sufficient information upon which we may determine what factors the auditor used to arrive at the assigned values. We thus cannot effectively compare the positive and negative features that impact upon those properties and those that affect the subject.

In addition, although the Matuszewskis have suggested that their property has been overvalued because it is above the values placed upon other properties, there is nothing in the record to indicate that the value assigned the subject is incorrect. In *Meyer v. Cuyahoga Cty. Bd. of Revision* (1979), 58 Ohio St.2d 328, the court stated:

“The system of taxation unfortunately will always have some inequality and nonconformity attendant with such governmental function. It seems that perfect equality in taxation would be utopian, but yet, as a practicality, unattainable. We must satisfy ourselves with a principle of reason that practical equality is the standard to be applied in these matters, and this standard is satisfied when the tax system is free of systematic and intentional departures from this principle.” Id. at 334-335.

The Matuszewskis have come forward with no evidence that demonstrates that they have been discriminated against by a systematic and intentional

overvaluation of the subject property or by a systematic, intentional undervaluation of other comparable properties. While the subject property may have a value that is higher than other properties, “[a] particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration ***.” *Benedict v. Hamilton Cty. Bd. of Revision* (1959), 170 Ohio St. 62, 63.

We turn next to the appraisal report offered into evidence by the Matuszewskis. That appraisal values the property as of July 22, 2002 and was prepared for purposes of refinancing the subject. Appellant’s Exhibit 8. Upon review, we are unable to place weight upon the opinion offered by it. We have generally rejected appraisals created for financing purposes, as they are not necessarily a complete and thorough evaluation of the property. *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 23, 2004), BTA No. 2002-R-2212, unreported; *Laughlin v. Erie Cty. Bd. of Revision* (Aug. 23, 1996), BTA No. 1995-S-1005, unreported; *Pahanish v. Columbiana Cty. Bd. of Revision* (Feb. 18, 1994), BTA No. 1993-B-1103, unreported; *Austen v. Lake Cty. Bd. of Revision* (Nov. 5, 1993), BTA No. 1992-R-852, unreported.

Additionally, the author of the appraisal did not appear before either this board or the BOR. The assumptions made by an appraiser and the method the appraiser uses in arriving at an opinion of value are factors that we must weigh in determining the credibility of the opinion. *Freshwater v. Belmont Cty. Bd. of Revision*

(1997), 80 Ohio St.3d 26, at 30 (“An expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.”). Where, as here, the appraiser is absent, we are unable to conclude that the opinion is reliable.

Finally, the report offers an opinion of value for July 2002, raising questions about its applicability to tax lien date. *Freshwater*, supra, at 30 (BTA may reject appraisal opinion value on a date other than tax lien date); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555 (“the BTA must base its decision on an opinion of true value that expresses a value for the property as of tax lien date of the year in question”).

Upon review, we find that the Matuszewskis have not presented sufficient competent or probative evidence of value. As that burden has not been satisfied, we are unable to find that the Matuszewskis have proven their right to their asserted value. *Cincinnati School Bd. of Edn.*, supra; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, at 454. As this board’s duty is to determine value for the subject property, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (1996), 76 Ohio St.3d 13, at 15, we turn next to the appraisal evidence offered by the county appellees.

Upon review, we do not find the appraiser’s cost approach to be reliable. First, we note that the improvements to the subject are over a century old. It is difficult to apply the cost approach to older properties unless adequate data is presented to measure depreciation. *The Appraisal of Real Estate*, at 354. Here, the

record does not contain sufficient data regarding the current condition of the subject. Although physical depreciation was measured based upon an effective age for the improvements, without more, we are unable to rely upon the depreciation factor found for improvements of such an advanced age.

Second, we have concerns with the land value opined by the county's appraiser. He relied upon only two sales, one of which sold for an adjusted price of \$374,586 per acre and the other at \$111,860 per acre. Then, the appraiser applies the average of the two prices. We do not find this to be persuasive. The price between the two parcels varies significantly. This difference raises questions regarding the comparability of both sales to the subject property, and, without more support, we are reluctant to rely upon them. We also find the simple averaging of the two sales to be suspect. An appraiser is to make adjustments to his sale comparables to account for differences in size, location, and other factors to bring the sales in line with what would be expected for the subject. Other than an adjustment for time, no such analysis appears to have taken place.

Upon review of the sales comparison approach, we do find that it supports a value for the subject property; however, this value is not the \$420,900 advanced by the appraiser. We find comparables 3, 4, and 5 to be similar to the subject property. They are all located close to the subject. We further find the appraiser's adjustments to be reasonable and supported by the record.

We do not, however, find comparables 1 and 2 to be similar to the subject. Each has improvements that are at least fifty years newer than the subject's. In

addition, these two sales occurred in another town and are located over five miles from the subject. The Matuszewskis argue that comparable sales 1 and 2 are unreliable for valuing the subject in that they are from a neighborhood dissimilar to the subject's. In support, the Matuszewskis have submitted aerial photographs showing both the area surrounding the subject and the area surrounding the two comparable sales. The latter suggests an area with housing developments that are denser than seen around the subject. In addition, Mr. Matuszewski testified that the two sales are in a more affluent area. For instance, he specified that one of the two sales is located across from a private country club. The subject is located in a more rural setting.

Location is an important factor to consider in the sales comparison approach. *Little Brook Estates, Ltd. v. Fairfield Cty. Bd. of Revision* (June 30, 1998), BTA No. 1996-T-856, et seq., unreported. Differing markets will support different values for properties that may be otherwise similar:

“An adjustment for location within a market area may be required when the location characteristics of a comparable property are different from those of the subject property. Excessive locational differences may disqualify a property from use as a comparable. Location differences are usually handled with quantitative adjustments.

“Most comparable properties in the same market area have similar locational characteristics, but variations may exist within the area of analysis. Consider, for example, the difference between a property with a pleasant view of a park and one located two blocks away with a less attractive view. ***

“A property's location is analyzed in relation to the location of other properties. Although no location is inherently desirable or undesirable, an appraiser can conclude that the market recognizes that one location is

better than, similar to, or worse than another. ***” The Appraisal of Real Estate, 435-436.

Upon review of the evidence, we agree with the Matuszewskis that there are locational differences that, at the very least, necessitate an adjustment to the market data utilized by Mr. Hoffman. We are unable, without credible corroborating evidence to the contrary, to find that his use of comparables 1 and 2 is appropriate.²

After removing comparables 1 and 2 from the analysis, we are left with three sales that suggest a value range for the subject of between \$329,650 and 381,300. We find that all three sales are entitled to significant weight. We place most weight upon comparables 3 and 4, which are most like the subject property. We agree with the appraisal report in that the subject should be valued toward the high end of the range but not at the highest value suggested by that range. Taking the \$358,750 adjusted value for comparable 3 and the \$381,300 adjusted value for comparable 4 into account, we find that the appraisal evidence offered by the county supports a value for the subject of \$370,000. In reaching this determination, we note that it is within our discretion to accept all, part, or none of an expert’s testimony. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155.

Based upon all of the foregoing, we find that a preponderance of the evidence before us supports a value for the subject property of \$370,000. The Board of

² While Mr. Hoffman admits in his report that he placed less weight upon comparables 1 and 2, we note that their inclusion increased the valuation of the subject significantly. The adjusted sale price for comparable 1 was \$518,310 and the adjusted sale price for comparable 2 was \$491,100. However, the adjusted sale prices of the remaining sales ranged from \$329,650 to \$381,300.

Tax Appeals therefore finds the true and taxable values of the subject property to be as follows for tax year 2003:

Parcel 01-00481.000	TRUE VALUE	TAXABLE VALUE
LAND	\$262,750	\$ 91,960
BUILDINGS	<u>\$107,250</u>	\$ <u>37,540</u>
TOTAL	\$370,000	\$129,500

The Auditor of Erie County is hereby ordered to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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