

OHIO BOARD OF TAX APPEALS

Northfield Center Development,)	
)	
Appellant,)	CASE NO. 2004-T-1424
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of)	
Revision, and the Cuyahoga County)	DECISION AND ORDER
Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Joseph Salemi, President Northfield Center Development 10121 Northfield Road Northfield, Ohio 44067
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113

Entered September 30, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Northfield Center Development. Northfield appeals from a decision of the Cuyahoga County Board of Revision, in which the BOR determined the true value of certain real property to be \$200,000 for tax year 2003. Northfield asserts that the correct value should be \$83,000.

The subject real property is listed in the Cuyahoga County Auditor's records as permanent parcel number 604-02-001 and is located in the Brecksville taxing district. The subject is comprised of approximately seventeen acres of vacant land. Approximately 10.68 acres of the subject are designated as a wetland area. Another 0.355 acre is designated as a stream/ditch area.

Northfield appeared at this board's hearing through its president, Joseph Salemi. Mr. Salemi testified that only about six of the subject's seventeen acres are developable because of the wetland designation. In addition, the main developable area is located at the back of the property, and the wetlands limit access to this area. Mr. Salemi further notes that the subject has no utilities.

Mr. Salemi testified that he believes the subject to have a value of \$83,000, which was the price at which Northfield purchased the property in 1995. Mr. Salemi testified that the wetlands have restricted any appreciation in the value of the property. To support his opinion of value, Mr. Salemi offered into evidence a sale of a 3.59-acre parcel adjacent to the subject. That property sold September 20, 2000 for a price of \$80,000. Appellant's Ex. A. Mr. Salemi testified that the sale is comparable to the developable portion of the subject.

We begin our review of this matter by noting that "[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In

determining value, 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.

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 offered to challenge the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

“Ohio law has long held that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property.” *Smith v. Pagett* (1987), 32 Ohio St.3d 244, at 347. Here, Mr. Salemi is a property developer with approximately thirty years of experience. He has developed over 1,000 properties, including residential lots and a golf course. He is experienced in buying and selling real estate. Nevertheless, while a property owner may be competent to offer an opinion as to the value of his or her property, the testimony and corroborating evidence must also be probative and credible. See *Society Natl. Bank v. Franklin Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-1418, unreported. In the instant matter, we find Northfield’s evidence to be both probative and persuasive in establishing a decrease in the subject property’s value.

Northfield compares the developable portion of the subject to the sale of the adjacent parcel to derive a value of \$83,000. We understand Northfield’s position.

As a developer, Northfield sees no inherent value in land that it cannot use. We find the sale utilized by Northfield to be comparable to the subject property for purposes of this appeal. Mr. Salemi's testimony as to the similarities and differences between the subject and the comparable is equally persuasive, as he has demonstrated a knowledge of the properties involved.

Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield and Mentor Exempted*, supra. Failure of an appellee to present rebuttal evidence may, upon our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra. See, also, *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value.").

Here, the county appellees have not presented any evidence of value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other evidence upon which we may base an opinion of value. We therefore conclude that Northfield has demonstrated through competent and probative evidence that the true value of the subject property is \$83,000 as of tax lien date.

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

Parcel 604-02-001	TRUE VALUE	TAXABLE VALUE
LAND	\$83,000	\$29,050
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$83,000	\$29,050

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

Ms. Margulies dissents.

Because I find that Northfield has not met its burden of proof, I respectfully dissent from the majority's finding of value.

While the property owner in this case has presented some evidence of value, the fact that the evidence it presents is unrefuted does not entitle it to the requested decrease in value. *Western Industries* and *Hibschman*, supra. Any appellant before this board must present competent and probative evidence of value to make its case. *Columbus Bd. of Edn.*, supra. I do not believe the evidence before this board meets that standard.

Initially, there is nothing in the record to support a finding that the sale used by Northfield is comparable to the subject property. Although adjacent to the subject, the sale property is considerably smaller, encompassing only 3.59 acres to the subject's seventeen acres. The sale is for a parcel of land with no wetland areas, while the subject has wetlands. There are additional dissimilarities, including the subject's

stream/ditch area. These differences in physical attributes must, at the very least, be measured and reconciled. However, Northfield has provided no evidence upon which this board may rely as support for any needed adjustments to value. It is also likely that the subject, containing wetland areas, exists in a market that is different from that of the sale Northfield relies upon.

Next, Northfield has advanced a theory of value that essentially provides that the wetland area of the property has no value because it cannot be developed with residential homes. That Northfield is a developer of residential sites and sees limited potential for the property is not in question. Nevertheless, this does not mean that the property is not marketable in its present condition.

I agree that the wetlands may limit the types of development available to the subject property, and the corresponding conditions may affect its value for real property tax purposes. See, e.g., *Bergen Cty Assoc. v. East Rutherford BOR* (1992), 12 N.J. Tax 399. I also recognize that the wetland acreage may have a different value than the developable portion of the parcel. *The Appraisal of Real Estate* (12th Ed., 2001), at 198. Nevertheless, a value for the entire parcel must be determined. *Bergen*, supra; see, also, R.C. 5713.03, which requires the county auditor to value all real property according to its true value.

“To value wetlands, appraisers must understand the unique features of the land, the evolving laws protecting these areas, the niche market for such properties, and the proper application of the approaches to value.” *The Appraisal of Real Estate*, at 204. The quoted passage assumes that wetlands can have calculable value. Here, it

does not appear that Northfield has taken the subject's features into consideration, nor has it presented any evidence as to the subject's place in the market as a wetland.

I find that Northfield has not presented sufficient competent or probative evidence of value for the subject property. The remaining evidence of value before this board is that contained in the statutory transcript, including the property record card, evidence presented by Northfield, and the BOR's meeting minutes. The BOR's minutes note the physical characteristics described by Northfield's president, Mr. Salemi. Based upon the evidence before it, the BOR voted to decrease the subject's value by \$14,000, adopting a value of \$200,000. S.T. Ex. F. Upon review of the evidence as a whole, I would respectfully conclude that the value of the subject property is \$200,000.

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