

OHIO BOARD OF TAX APPEALS

Joseph J. Waltos,)
)
 Appellant,) CASE NO. 2004-T-537
)
 vs.) (REAL PROPERTY TAX)
)
 Ottawa County Board of Revision) DECISION AND ORDER
 and the Ottawa County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Joseph J. Waltos, pro se
12306 Sunset Drive
Garfield Heights, Ohio 44125

For the County Appellees - Rich, Crites & Dittmer, L.L.C.
James R. Gorry
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Columbus, Ohio 43215-3704

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 Joseph J. Waltos. Mr. Waltos appeals from a decision of the Ottawa County Board of Revision, in which the BOR determined the true value of certain real property to be \$71,330 for tax year 2003. Mr. Waltos claims in his notice of appeal that the correct true value should be \$40,000.

The subject property is identified in the Ottawa County Auditor's records as permanent parcel number 020-07923-10504-000 and consists of approximately 7,350

square feet of land. The land is improved with a dwelling that is approximately 925 square feet in size. The dwelling was erected in 1969. The land is also improved with a garage, also erected in 1969. The subject is located on Sandusky Bay in the city of Port Clinton.

As he did before the BOR, Mr. Waltos argues that the subject property suffers from substantial physical damage and deterioration that has caused a diminution in value. In support, Mr. Waltos testified that the dwelling is suffering from a crumbling and sinking foundation slab, which has caused the building to distort. Both the dwelling and the garage suffer from rotting siding, missing eaves, and damaged roofs. The interior of the house also suffers from deteriorating ceilings and bad wiring. Mr. Waltos testified that the property's breakwall into Sandusky Bay has deteriorated, causing erosion of the land. Repairs to the structure and the breakwall, stated Mr. Waltos, would far exceed the value of the property. Finally, Mr. Waltos testified that the subject's neighborhood contains properties that are often unkempt and left in disrepair. In support of his testimony, Mr. Waltos presented photographs of the subject and the surrounding neighborhood. Appellant's Exhibit B.

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.

Both the Supreme Court of Ohio and this board have previously considered the impact of adverse conditions upon the true value of real property. In *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, the court held that “[e]vidence 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 the repairs that is the important factor to be determined by the BTA.” *Id.* at 228.

In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, we held the existence of a condition does not itself mandate a reduction in value of the real property. “A mere 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 diminution in value caused by the defects, or some evidence of the value of the property as so diminished.” *Id.* at 7. It may be true that the property owner cannot avoid the cost of the needed repair; however, cost is not invariably equated with value. *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339 at 349, citing *Inmar Assoc., Inc. v. Borough of Carlstadt* (1988), 112 N.J. 593.

Here, Mr. Waltos has provided only evidence of the existence of certain conditions and deferred repairs. Mr. Waltos did not provide any type of documentation that would indicate the cost to repair the deficiencies. More importantly, Mr. Waltos has not presented an appraisal or other probative evidence to support the decrease in true value sought due to the deficiencies identified. In the absence of other competent and probative evidence that indicates the diminutive effect the deficiencies have upon the value of the subject property, we are compelled to find that Mr. Waltos has not met his burden of persuasion. *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.

The remaining evidence of value before us is that contained in the statutory transcript, including the property record card and the BOR's meeting minutes.¹ The record indicates that the issues identified by Mr. Waltos were taken into consideration by the BOR when valuing the property. The BOR's minutes note the physical deficiencies described by Mr. Waltos. The BOR then voted to decrease the subject's improvement value by \$11,570. S.T. Exhibit 5, at 1. We find that the statutory transcript provides sufficient information to explain the action taken by the BOR. Upon review of the evidence as a whole, we conclude that the value of the subject property is \$71,330. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564.

In conclusion, we find that Mr. Waltos has not presented sufficient competent or probative evidence of value for the subject property. 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 020-07923-10504-000	TRUE VALUE	TAXABLE VALUE
LAND	\$48,400	\$16,940
BUILDINGS	<u>\$22,930</u>	\$ <u>8,030</u>
TOTAL	\$71,330	\$24,970

The Auditor of Ottawa County is hereby 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.

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¹ We note that the BOR was unable to certify a complete transcript of its hearing in this matter, as required by R.C. 5717.01. The BOR represents that its tape recorder malfunctioned. S.T. Exhibit 5, at 2.