

OHIO BOARD OF TAX APPEALS

Harry E. Gibson and)	CASE NO. 2004-V-862
Judith A. Gibson,)	
)	(REAL PROPERTY TAX)
Appellants,)	
)	DECISION AND ORDER
vs.)	
)	
Harrison County Board of Revision, and)	
the Harrison County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Property Owners	-	Harry E. Gibson, pro se Judith A. Gibson, pro se P.O. Box 14 Deersville, OH 44693-0014
For the County Appellees	-	T. Shawn Hervey Harrison County Prosecutor 111 West Warren Street P.O. Box 248 Cadiz, OH 43907

Entered September 16, 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 appellants Harry E. Gibson and Judith A. Gibson from a decision of the Harrison County Board of Revision (“BOR”).

The subject real property consists of roughly five acres of land improved with a residential structure constructed in 1990.¹ Statutory Transcript (“S.T.”), Ex. 2. The subject property is located in the Franklin Township taxing district, Harrison

¹ Mr. Gibson testified that he began constructing the home in 1991. H.R. (Hearing Record), audio-tape.

County, Ohio, and appears on the auditor's records as permanent parcel number 07-00016-001.

The 2003 values assigned² by the Harrison County Auditor ("auditor") for the subject are as follows:

07-00016-001	TRUE VALUE	TAXABLE VALUE
LAND	\$9,200	\$3,220
BUILDING	<u>\$50,740</u>	<u>\$17,760</u>
TOTAL	\$59,940	\$20,980

Mr. Gibson filed a timely complaint against the valuation of the subject property, requesting that the true value be lowered to \$18,000. Upon consideration of the complaint, the BOR declined to grant any reduction in value.

Dissatisfied with said decision of the BOR, Mr. Gibson seeks to have the value of the subject property reduced to \$46,000.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and evidence received at this board's hearing. Mr. and Mrs. Gibson appeared at hearing to provide testimony and evidence concerning the valuation of the subject parcel. The county appellees did not appear.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio held that an appealing party has the burden of

² See S.T., DTE Form 3.

coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

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 that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 1997-Ohio-212. 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 the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule according to value ***.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “true value”:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, *the true value* of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***.” (Emphasis added.)

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175

Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in *In Re Estate of Sears* [(1961)], 172 Ohio St. 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” *Id.* at 412.

See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

Before this board Mr. and Mrs. Gibson testified that the subject residential home is incomplete and that a variety of errors appear on the auditor’s property record card. H.R., audio tape. Mr. Gibson explained that he acquired the property in 1991 and he commenced to build a residential structure. At some point after getting the building under roof, Mr. Gibson fell ill. No further work has been performed since 1991 to complete the construction of the home. *Id.* Both Mr. and

Mrs. Gibson testified in detail that the home has only one functioning toilet and a shower in the unfinished basement. The first level living space is not finished. Most areas have drywall; however, none of the drywall is taped, jointed, or painted. Some of the framing in the living space is not even covered with drywall. The Gibsons additionally testified that most of the exterior of the home does not have siding, porches, or finished doorways. Mrs. Gibson testified that the only access into the home is via the basement. *Id.* The home is heated with electric baseboard units and does not have any forced-air furnace system. Mr. Gibson constructed a stone chimney on the exterior of the home, which contains a flue that extends to the basement for future use in conjunction with a furnace. However, Mr. Gibson did not incorporate a fireplace into the chimney-stack.³

The Gibsons argue that the auditor's valuation is incorrect because of the erroneous assumptions that the home has a forced-air furnace, fireplace, and two bathrooms. The Gibsons allege that the auditor is valuing the home as if it were 100% complete. Our review of the property record card (S.T. at 2) shows that although there is a notation "House Unfinished," we fail to see how the computations of the home's value reflect that the house is not completed. We further agree that the notation concerning the existence of a "forced air" furnace on the record card is in error.⁴ As to

³ At hearing before this board, appellants produced several photographs depicting the incomplete nature of the home. When asked to introduce said photographs for this board's consideration, Mr. Gibson indicated his desire not to part with the photographs, and ultimately refused to leave them with the board. Nevertheless, the testimony of the Gibsons provided substantial and probative evidence that the home is incomplete, lacking a finished interior or exterior. The structure has only the minimal plumbing and electrical fixtures to make it arguably habitable.

⁴ There additionally appears to be a notation that indicates the home has baseboard heating in only three rooms. *Id.*

the existence of a fireplace, we find that there is nevertheless a chimney with a functional flue, which adds value to the structure. Although the improvement was built to not function as a fireplace, per se, the appraiser has appropriately characterized it as such.

The Gibsons provided testimony concerning the history of valuation and taxation disputes with the county officials over the past several years. *Id.* Specifically, Mr. Gibson entered into an agreement with the Harrison County Treasurer (“treasurer”) to dispose of delinquent taxes on the property. The agreement included the treasurer’s representation that the subject’s valuation would be lowered to \$46,000 in conjunction with Mr. Gibson’s payment of a large portion of the delinquency. The Gibsons testified that they paid the portion of the delinquency as required in the agreement, based on the treasurer’s assurances that the auditor had agreed to the reduction and that the valuation would be adjusted. After making said payment, the Gibsons allege the auditor changed his mind and refused to make the reduction. *Id.*

In support of their testimony, the Gibsons produced and identified a letter dated December 4, 2002 from the treasurer to the Gibsons, stating in pertinent part:

“Yesterday after I went to the Auditor’s office to check and make sure they reduced your values on your taxes as we had discussed. (sic) They were not showing any reduction as of this time. The paper that I had given them to use for this reduction has apparently been lost. *** [P]lease send me a copy of the paper I gave you, I can then resolve this matter immediately.” H.R., Ex. 1.

The Gibsons additionally produced a letter from deputy auditor Judy E. Campbell, copied to the treasurer, auditor, and the appellants, dated February 10, 2003, which states:

“The real estate owned by Harry E. & Judith A. Gibson, parcel 07-00016.001, was to have been reduced to \$40,000 (Land \$8000 [sic] & Buildings \$32,000) for tax year 2002. This is due to an agreement made by the Gibson’s [sic] and George Campbell, Harrison County Treasurer, on June 26, 2002.

“Since this agreement was made during an update year and all residential property was increased 15% the value will be \$46,000 (\$9200 [sic] Land & \$36,800 Buildings)

“Taxable values will be \$3220 [sic] Land & \$12880 [sic] Buildings totaling \$16,100.

“At that time the Gibson’s [sic] paid \$5413.14 [sic] of \$8413.14 [sic] that was due. The remaining \$3000 [sic] owed was written off by the Treasurer’s Office.” H.R., Ex 2.

Although this board’s jurisdiction is limited to the valuation of the subject parcel on January 1, 2003, we openly question under what authority a county treasurer may compromise tax delinquencies and how the auditor would make changes to the valuation of a parcel based upon what was negotiated by another public official.

Nevertheless, the Gibsons produced a third document to this board, a copy of the subject’s property record card. H.R., Ex 3. On the face of the card are true and taxable values assigned for tax years 1999, 2000, 2001, and 2002.⁵ Under the column marked 2002, the true and taxable land values are consistent with the agreed

⁵ Each year is pre-printed “19__,” the two columns after 1999 each appear as “19__,” whereas the fourth column has the 19 crossed out and the handwritten notation “02.” Therefore, we presume that the two columns between 1999 and 2002 necessarily represent 2000 and 2001.

valuation memorialized in deputy auditor Campbell's letter of February 10, 2003, valuing the subject at \$46,000. A copy of the property record card certified to this board by the auditor appears to be identical, except that there is now a handwritten "X" crossing out the 2002 values for the subject, and the third column *now contains* the heading "2003". S.T. at 2, (emphasis added.)

The burden is upon the appellants to submit sufficient probative, competent evidence to support their claim for a reduction in value. *Zindle v. Summit Cty. Bd. of Revision* (1989), 44 Ohio St.3d 202; *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198. A party who asserts a right to a decrease in the value of real property has the burden of proving its right to the value asserted. *Cleveland Bd. of Edn.*, *supra*.

In the presentation before this board, appellants have failed to demonstrate any right to a reduction in value based upon the condition of the uncompleted home. Absent some corroborating evidence of value, this board is unable to place a dollar value on the effect of the incomplete nature of the home. *Amsdell v. Bd. of Revision* (1994), 69 Ohio St.3d 572.

Both the Supreme Court and this board have applied this rule on several occasions. See *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227; ("Evidence 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 repairs that is the important factor to be determined by the BTA."); *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397;

(applying *Throckmorton*, supra, where defects were no storm sewer line above the frost line and various building code violations); *Donta v. Jackson Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1996-M-1068, unreported (claimed defects included poor upkeep and damage from neighboring strip mining); *Luken v. Miami Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1996-G-976, unreported (claimed defects included alleged potential for soil or ground water contamination from the operation of a sewage sludge pit or dump on an adjacent property); *Franklin v. Hamilton Cty. Bd. of Revision* (June 14, 1996), BTA No. 1995-T-792, unreported (claimed defects included windows in need of replacement, leaking roof, wet basement and mortar in need of repair); *DiFranco v. Lake Cty. Bd. of Revision* (Apr. 19, 1996), BTA No. 1995-J-560, unreported (defect cited was the adverse effect of neighboring vacant property which has attracted vermin, ground hogs, snakes and rats); *Gammarino v. Hamilton Cty. Bd. of Revision* (Mar. 15, 1996), BTA No. 1995-S-161, unreported (defects included problems with existing electrical system, gutters, roof and windows); *Janson v. Lake Cty. Bd. of Revision* (July 7, 1995), BTA No. 1994-S-711, unreported (claimed defect was flooding); *Stojanovski v. Cuyahoga Cty. Bd. of Revision* (Jan. 13, 1995), BTA No. 1994-T-604, unreported (defects claimed included poor roof and high noise level); *Quinn v. Columbiana Cty. Bd. of Revision* (Nov. 14, 1994), BTA No. 1993-T-823, unreported (defect claimed was property littered with rocks); *Davis v. Butler Cty. Bd. of Revision* (Apr. 29, 1994), BTA No. 1992-T-923, unreported (defects claimed include no natural gas supply, requiring homeowner to rely on propane fuel stored in a tank, sewer easement, overhead electrical lines and towers); *Even, Inc. v. Hamilton*

Cty. Bd. of Revision (July 30, 1993), BTA No. 1991-H-632, unreported (claimed defects were leaking roof and no access to sewer or water). In *Haydu v. Portage Cty.*

Bd. of Revision (June 18, 1993), BTA No. 1992-H-576, we stated:

“A 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 [sic] in value caused by the defects, or some evidence of the value of the property as so diminished. Appellant has established to our satisfaction that there are detrimental aspects to the subject property (which, however, are shared by his neighbors to a large degree, and to certain of the comparables) but he has utilized none of the approaches to value that would allow us to determine a value for the property as affected by the defects.” *Id.* at 435.

However, appellants have demonstrated that the auditor’s property record card valued the subject property at a fair market value of \$46,000 for tax year 2002. This evidence is further supported by the letter of the auditor’s deputy confirming the values to the Gibsons and other public officials. Although Mrs. Gibson testified that it was her understanding that the auditor refused to abide by any agreement allegedly struck by the treasurer, the documentary evidence before this board clearly demonstrates that the auditor (or one of his deputies) did in fact implement the lower values for 2002. We can only presume that the auditor’s decision to lower the valuation of the subject was born from the incomplete nature of the home. Nevertheless, the BOR failed to base its decision upon the auditor’s 2002 values appearing on the face of his own record card.

Given the appellees’ election to waive hearing before this board, the evidence offered by the appellants is uncontroverted. The county appellees have not

appeared to explain why their recently certified copies of the subject's property record card contain the curious changes described above.

Based upon the foregoing, we find that appellants have offered sufficient, probative evidence that the subject property was valued at \$46,000 for tax year 2002, the first year of a triennial cycle in Harrison County. Because our jurisdiction is limited to tax year 2003 and ensuing tax years, this board concludes that the value of the subject property as of tax lien date 2003 is as follows:

07-00016-001	TRUE VALUE	TAXABLE VALUE
LAND	\$ 9,200	\$ 3,220
BUILDING	<u>\$36,800</u>	<u>\$12,880</u>
TOTAL	\$46,000	\$16,100

It is the decision and order of the Board of Tax Appeals that the Harrison 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.⁶

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⁶ We direct the BOR's attention to the Ohio Supreme Court's decisions in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 304; and *Cleveland Mun. School Dist Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285, holding that jurisdiction over the complaint carries forward until finally determined.