ORIGINAL

IN THE SUPREME COURT OF OHIO

Thomas & Nancy Ross	:	
	:	
Appellants	:	15-0517
	:	On Appeal from the Ohio
v.	:	Board of Tax Appeals
	:	
Mark Parks, Cuyahoga County	:	Board of Tax Appeals
Ohio Fiscal Officer	:	Case No. 2013-6389
and	:	
Cuyahoga County Ohio Board	:	
of Revision	:	
and	:	
Joseph W. Testa, Ohio Tax	:	
Commissioner	:	
	:	
Appellees	:	

NOTICE OF APPEAL OF APPELLANTS THOMAS AND NANCY ROSS

J. Alex Morton (0028021) COUNSEL OF RECORD)
5247 Wilson Mills Rd., #334
Richmond Hts., OH 44143
P (440) 461-9370
F (440) 461-9370
jamortlaw@yahoo.com

COUNSEL FOR APPELLANTS, THOMAS AND NANCY ROSS

Timothy J. McGinty
Prosecuting Attorney of Cuyahoga County
Mark R. Greenfield (0015469)
Assistant Prosecuting Attorney
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
P (216) 443-7799

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CLERK OF COURT
SUPREME COURT OF OHIO

F (216) 443-7602
mgreenfield@prosecutor.cuyahogacounty.us

COUNSEL FOR APPELLEES, MARK PARKS
CUYAHOGA COUNTY OHIO FISCAL OFFICER
AND CUYAHOGA COUNTY OHIO BOARD OF
REVISION

Notice of Appeal of Appellants Thomas and Nancy Ross

Appellant's Thomas and Nancy Ross hereby give notice of appeal to the Supreme Court of Ohio from the Decision and Order of the Ohio Board of Tax Appeals (BTA), entered in BTA Case No. 2013-6389, a copy of which is attached hereto. This appeal is pursuant to R.C. 5717.04 and S. Ct. Prac. R. 10.01.

The errors complained of are as follows:

1. The BTA's decision is unreasonable or unlawful regarding its appliction of the law concerning the burden of proof in this case.

2. The BTA's decision is unreasonable or unlawful regarding its conclusion that Appellants failed to present competent and probative evidence in support of their requested valuation.

3. The BTA's decision is unreasonable or unlawful in citing and relying upon the decision in *State ex rel. Park Investment Co. v. Bd. of Tax Appeals*, 175 Ohio St.

410, 195 N.E.2d 908 (1964) as establishing a bright-line rule that a professional appraisal is required in every complaint against valuation case in order to successfully challenge the true value determined by the county fiscal officer/auditor

4. The BTA decision is unreasonable or unlawful in concluding that Appellants provided nothing more than a list of raw sales data leaving the trier of fact to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc. may affect a valuation determination.

5. The BTA's decision is unreasonable or unlawful for citing *Raymond v. Raymond* , 10th Dist. Franklin No. 11AP-363, 2011-Ohio 6173 and *Worthington City Schools Bd. of Ed.n v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014 -Ohio-3620, 17 N.E.3d 537 in support of its conclusion that Appellant's comparables were inadmissible hearsay evidence.

6. The BTA decision is unreasonable or unlawful in finding that Appellants' unsuccessful attempts to sell the subject property were unpersuasive.

7. The BTA decision is unreasonable or unlawful for finding the alleged poor condition to be unavailing, citing the *Throckmorton* and *Gupta* cases.

8. The BTA's decision is unreasonable or unlawful for citing *Fairlawn Assoc.,*

Ltd. v. Summit Cty. Bd. of Revision, 9th Dist. Summit App. No. 22238, 2005-Ohio-1951 for the point of law that the Fiscal Officer is not required to defend the true value originally determined by him/her, but rather the burden is placed on the complainant to bring forth sufficient evidence that the true value is something other than that determined by the Fiscal Officer.

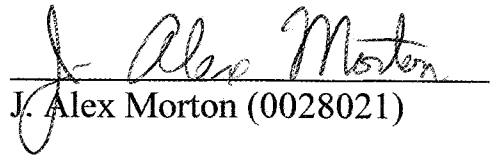
9. The BTA's decision is unreasonable or unlawful for concluding that the BTA has no jurisdiction to decide constitutional claims and failing to make findings concerning such claims.

10. The BTA's decision is unreasonable or unlawful because as the result of the cumulative error set forth in 1 through 6 above, the BTA denied Appellants their constitutional right to due process of law under Article I Section 16 of the Ohio Constitution and the Due Process Clause of the 14th Amendment to the United States Constitution by failing to act as a fair and impartial tribunal.

11. The BTA's decision is unreasonable or unlawful, because it fails to protect Appellant's constitutional rights under Article XII, Section 2 of the Ohio Constitution to have his property taxed within the ten-mill limitation referred to in R.C. 5705.02, and taxed by uniform rule according to value.

12. The BTA's decision is unreasonable or unlawful because it deprives Appellant's right to equal protection of the law under the 14th Amendment of the

United States Constitution, since it fails to protect Appellant's constitutional right under Article XII, Section 2 of the Ohio Constitution to have his property taxed by uniform rule according to value.

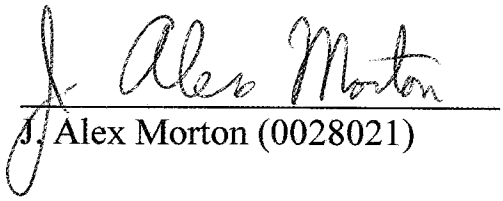


J. Alex Morton (0028021)

COUNSEL FOR APPELLANTS
THOMAS AND NANCY ROSS

Certificate of Service

I hereby certify that a copy of this Notice of Appeal was sent by certified U.S. mail to counsel for appellee Cuyahoga County Fiscal Officer, Mark R. Greenfield, Assistant County Prosecutor, 1200 Ontario Street, 8th Floor, Cleveland, Oh 44113; and to Shelley Davis, Administrator, for appellee Cuyahoga County Board of Revision, 2079 E. 9th Street, 2d Floor, Cleveland, OH 44115; and to appellee Joseph W. Testa, Ohio Tax Commissioner, 4485 Northland Ridge Blvd., Columbus, OH 43229, on April 1, 2015.



J. Alex Morton (0028021)

COUNSEL FOR APPELLANTS,
THOMAS AND NANCY ROSS

OHIO BOARD OF TAX APPEALS

THOMAS & NANCY ROSS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2013-6389

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMAS & NANCY ROSS
Represented by:
J. ALEX MORTON
5247 WILSON MILLS ROAD, #334
RICHMOND HTS., OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, March 6, 2015

Mr. Williamson and Mr. Harbarger concur.

Appellants appeal a decision of the board of revision ("BOR") which determined the value of the subject property, parcel number 684-31-044, for tax year 2012. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearing, and any written argument submitted by the parties.

The subject property's true value was initially assessed at $104,500. A decrease complaint was filed with the BOR seeking a reduction to the subject property's value to $30,000. At the hearing before the BOR, the appellants were represented by counsel who submitted documentary evidence, which included comparable sales data and information related to the subject property's alleged municipal housing code violations, and testimonial evidence of Vladimir Victor, property manager. The BOR issued a decision, which retained the initial valuation, and this appeal ensued.

While this matter was pending before this board, the appellants subpoenaed several Cuyahoga County employees, to which the county appellees responded by filing a motion to quash the subpoenas, which this board denied. Prior to the hearing date, the parties agreed that only Joseph Toledo, Appraisal Systems Administrator at the Cuyahoga County Fiscal Officer's office, would appear. At the merit hearing, the county appellees renewed the motion to quash, which was again denied. The county appellees registered a continuing objection to any testimony elicited from Toledo on behalf of the appellants. Counsel for the

appellants cross-examined Toledo presumably in an effort to challenge the county fiscal officer's method of valuing real property, i.e., the computer assisted mass appraisal process, to support the argument that such valuation method violated the Ohio constitution. The county appellees have filed a motion for payment of witness fees and travel expenses, to which the appellants failed to respond.

It should be noted that the parties agreed to incorporate the record of this board's hearing on this matter into the records of other appeals, specifically BTA Nos. 2013-6573, 2013-6574, 2013-6575 and 2013-6577, because the issues presented and counsel involved were the same.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, "[t]he 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. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

In this instance, there exists no evidence the subject property "recently" transferred through a qualifying sale, nor did appellants provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue. Instead, the appellants advanced a number of arguments to demonstrate that the subject property had been overvalued. Based upon our review of the record, we conclude that the appellants failed to satisfy their evidentiary burden on appeal.

We conclude that the unadjusted sales data is not competent and probative evidence of the subject property's value. We acknowledge that comparable sales data is commonly relied upon by appraisers to develop an opinion of value for residential properties. However, not only must this board be satisfied regarding the reliability of such sales, i.e., that they are actual, arm's-length transactions, but we must also be able to discern the similarity of such properties to the one under consideration and what adjustments, if any, are warranted to account for perceived differences. See, generally, Ohio Adm. Code 5703-25-05 and 5703-25-07(D)(1). "With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a value determination." *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported.

The appellants argued that the list was more than unadjusted sales data because the properties shared several commonalities, including location, construction, and age. The Supreme Court has recently indicated that while an owner may qualify to give an opinion of value for his or her own property, it is important to consider "that the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. See *Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, 2011-0hio-6173, ¶¶ 19-20." *Worthington City Schs. Bd. of Educ. v. Franklin County Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19.

Likewise, we find the appellants' unsuccessful attempts to sell the subject property unpersuasive. The Supreme Court has held that "unaccepted offers to purchase do not constitute a sale price and so raise no such presumption" like the rebuttable presumption raised by actual recent arm's-length sale. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, 400. See, also *Kaiser v. Franklin Cty. Aud.*, Franklin App. No. 10AP-909, 2012-Ohio-820, at ¶12 ("[A] listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value.").

We likewise find the alleged poor condition of the subject property to be equally unavailing. In *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, the Supreme Court pointed out

the affirmative burden attendant to advancing such claims, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Ed. of Revision* (1997), 79 Ohio St.3d 397.

Furthermore, with regard to the testimony and documentary evidence submitted at this board's hearing, we find such evidence completely irrelevant to our conclusion of value. The auditor is not required to defend the value originally concluded to by the mass appraisal system, but rather the burden is placed upon the complainant, i.e., the appellants in this matter, to bring forth sufficient evidence that the value is something other than that assessed by the auditor. *Fairlawn Assocs. v. Summit County Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951. See, also, *Weldon v. Medina Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported.

While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. Therefore, we acknowledge appellants' constitutional claims on appeal, but make no findings in relation to said claims.

As previously noted, subsequent to this board's hearing, the county appellees filed a motion for payment of witness fees and travel expenses, in the amount of $133.72, related to Toledo's travel from Lorain County, Ohio to attend this board's hearing in Franklin County, Ohio. The appellants have failed to respond to the motion. In relevant part, Civ. Rule 45(B) states that: "If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand." We have previously held that such fees, if required, may be tendered to the subpoenaed individual subsequent to service of a subpoena. See, *WCI Steel, Inc. v. Wilkins* (Interim Order May 21, 2007), BTA No. 2005-V-1565, unreported. The record is void of any indication that the associated fees have been paid, therefore, we grant the county appellees' motion and order the appellants to remit $133.72 to Mr. Toledo.

Accordingly, based upon our review of the records, we find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."). It is therefore the order of this board that the subject properties' true and taxable values, as of January 1, 2012, were as follows:

TRUE VALUE
$104,500
TAXABLE VALUE
$36,580

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

Kathleen M. Crowley, Board Secretary