

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SCRANTON-AVERELL, INC.)	CASE NOS.:
)	CV 08-646220
)	CV 08-646234
Plaintiff-appellant)	CV 08-646240
)	
-vs-)	JUDGE JOHN P. O'DONNELL
)	
FRANK RUSSO, <i>e tal.</i>)	<u>JOURNAL ENTRY</u>
)	
Defendants-appellees)	

John P. O'Donnell, J.:

I. STATEMENT OF THE CASE

Plaintiff-appellant Scranton-Averell, Inc. has timely appealed, pursuant to Section 5717.05 of the Ohio Revised Code, three separate decisions of the Cuyahoga County Board of Revision. Although each appeal was filed separately, all three cases involve the same parties and common questions of law and fact. Therefore, the court, on its own motion, has consolidated the cases pursuant to Rule 42(A) of the Ohio Rules of Civil Procedure.¹

II. STATEMENT OF FACTS

Each of these cases involves an appeal by the landowner, Scranton-Averell, Inc., of the true value assigned to three of its parcels of property by the Cuyahoga County auditor for the 2006 tax year. The landowner's appeals to the Cuyahoga County Board of Revision were heard on October 22, 2007. On December 17, 2007, the Cuyahoga County board of revision rejected the landowner's proposed appraisals and adopted the tax values recommended by the auditor.

¹ Consolidation by the court on its own motion is permissible. See, e.g., *In re: Air Crash Disaster at Detroit Metro. Airport* (E.D. Mich., 1989), 737 F. Supp. 391, 394.

The evidence produced to the board of revision pertaining to each parcel of property can be summarized as follows:

CASE NUMBER 646220
2285 AND 2301 SCRANTON ROAD, CLEVELAND
PERMANENT PARCEL NO. 004-25-016

This parcel is about 0.82 acres in size. It is located on the east side of Scranton Road in the Flats of Cleveland, not far from the Animal Protective League on Willey Avenue.

The north portion of the parcel has a building built in 1900 with an addition constructed in 1981. The building has 7,590 square feet of usable first-floor space, and 4,670 square feet on the second floor. Scranton-Averell's appraiser, John A. Davis, believes the second floor has "limited utility due to no elevator and floor plan inadequacies." The appraiser rates the overall quality of the building as "fair to average."

The building on the south portion of the parcel was also built in 1900 and has been remodeled at various times. It is a one-story building consisting of 14,948 square feet. Most of the space is office area with a portion devoted to a warehouse and enclosed dock. This building is also rated by Scranton-Averell's appraiser as "fair to average."

The north building is partially leased. The south building is not currently leased. The parcel is zoned as industrial property.

CASE NUMBER 646234
1896 CARTER ROAD, CLEVELAND
PERMANENT PARCEL NOS. 004-29-010 & 004-29-011

These adjacent parcels consist of about 3.37 acres. The property is on the north side of Carter Road in Cleveland's Flats, just east of the blue Carter Road lift bridge. The north edge of the parcels consists of approximately 390 feet of Cuyahoga River frontage.

The property is zoned general industry and has two buildings. The main building has one story with about 42,845 square feet of floor area. Most of the building was built in 1921 with a substantial addition in 1966. The other building is described as a "garage-type structure" of about 864 square feet. It was built in 1921 and is currently vacant. The main building is occupied by two tenants: Cleveland Tank and Morely Marine. The river frontage has areas where boats are moored.

CASE NUMBER 646240
1840 SCRANTON ROAD, CLEVELAND
PERMANENT PARCEL NO. 004-29-016

This parcel is at the southwest corner of the intersection of Carter and Scranton Roads in Cleveland's Flats. It is about 25,090 square feet and is kitty-corner from Scranton-Averell's property at 1896 Carter Road, the subject of the appeal in case number 646234. This property is fully cleared and paved with asphalt. It has no buildings and is zoned for general industry. There is no evidence that the property is currently being put to any productive use.

THE AUDITOR'S ASSESSMENTS

Section 5713.01 of the Ohio Revised Code provides, in pertinent part, as follows:

County auditor shall be assessor – assessment procedure – employees

- (A) . . . The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation . . .

(B) The auditor shall assess all the real estate situated in the county . . . The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period . . .

The evidence shows that since 1994 the auditor valued the parcels at issue in these cases as follows:

<u>Case Number</u>	<u>Permanent Parcel No.</u>	<u>2006 Value</u>	<u>2000 Value</u>	<u>1994 Value</u>
646220	004-25-016	\$688,400.00	\$661,900.00	\$267,800.00
646234	004-29-010	\$1,550,300.00	\$2,039,000.00	\$1,101,100.00
646240	004-29-016	\$96,300.00	\$100,400.00	\$48,200.00

Although the record is devoid of evidence of the specific considerations taken into account by the auditor in arriving at the various appraisals,² the valuation history is useful in that it shows that the auditor did not simply raise the values by a specified percentage over time, and, in fact, the values of two of the parcels were decreased from 2000 to 2006.

III. LAW

Ohio Revised Code Section 5715.02 establishes a county board of revision as consisting of the county treasurer, county auditor and the president of the board of county commissioners. O.R.C. §5715.11 requires the board of revision to “hear complaints relating to the valuation or assessment of real property.” The board of revision may hear testimony under oath and receive documentary evidence and may accept, increase or decrease the county auditor’s valuation.

An appeal from a decision of a county board of revision may be taken to the board of tax appeals or to the common pleas court. *See*, O.R.C. §§5717.01 and 5717.05.

² The Ohio Administrative Code sets forth the factors the auditor should consider when appraising land and buildings. See OAC 5703-25-11, *et seq.* In the absence of "substantial evidence supporting the claim of a taxpayer," the presumption is that the auditor's valuation is valid, done in good faith, and in the exercise of sound judgment. [Selig v. Bd. of Revision \(1967\), 12 Ohio App.2d 157, 163.](#)

The common pleas court may hear the appeal solely on the record and the evidence previously submitted or it may consider additional evidence. *See*, O.R.C. §5717.05. The common pleas court is then required to make its own independent decision as to the taxable valuation of the property. *Park Ridge Co. v. Franklin Cty. Bd. Of Revision* (1987), 29 Ohio St.3d 12, at *syllabus* 1.

Neither the property valuation by a board of revision nor an auditor's appraisal is entitled to a presumption of validity. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. Of Revision* (1994), 68 Ohio St.3d 493, 494-495. However, the taxpayer has the initial burden of proof to demonstrate the right to a reduction when challenging the auditor's assessment. *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 28. The common pleas court is not required to adopt the valuation of any witness, but is instead vested with wide discretion to determine the weight of the evidence and the credibility of the witnesses. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St. 3d 402, 405.

The best evidence of the true value of real property is an actual, recent sale of the property in an arm's length transaction. *Ridgehaven v. Frank Russo Cty. Auditor*, 2008—Ohio—2810, Cuyahoga Cty. App. No. 90070, ¶14. In these cases, however, there is no evidence of any recent sales to support a true value determination. Where there is no evidence of an arm's length transaction, the value of real property can be alternatively established by three different methods: the cost approach, the market approach, and the income approach. Scranton-Averell's appraiser defined these approaches as follows:

- Cost Approach: The estimated value developed in this approach is formulated by estimating the cost-new of all improvements, as of the effective date of the appraisal, and by subtracting from that amount, accrued depreciation for all causes. The difference is the depreciated value of the improvements, which when added to the land value, yields an estimate of value of the subject in its entirety.
- Market Approach: The estimated value of the property being appraised is developed in this approach by analyzing properties, which have sold and are

similar to the subject of this report. Adjustments made to the sale's price to account for differences in location, physical features and other factors will result in an indicated value from each sale. These indications of value are the basis of this approach.

- Income Approach: This technique is based upon the estimation of net income that the subject can generate after having satisfied the expenses typical for this type of property. The amount of net income is converted to an estimate of value when it is divided by an interest rate, which represents the rate of return that investors expect from properties with the subject's investment characteristics. The means of converting income to value is the capitalization process, which is the basis of this approach.
(See, Exhibit C, John A. Davis 8/14/07 summary appraisal report, p. 13.)

In each of the three cases here the landowner's appraiser developed a value using the market approach. In Case No. 646234 (1896 Carter Road) the appraiser also developed a value using the income approach.

The market approach is by definition highly subjective. This approach requires finding recent sales of parcels that are comparable to the one at issue to estimate the true value of the parcel in question. This figure can vary greatly depending on parcels selected by an appraiser as being comparable. Moreover, comparability is in the eye of the beholder. Although the landowner's appraiser here did select several parcels to compare to the parcels at issue in each of these three cases, it is not known what parcels, if any, he considered and rejected as comparables, nor is there evidence of possible comparable properties that weren't even considered. Scranton-Averell's appraiser concedes that, where there is a lack of "matched pair" market data, his adjustments to value based on comparable properties are "quite subjective." See, e.g., Ex. C to case no. 646220, Davis appraisal, p. 15.

As to the particular parcels in question, in case number 646220 the appraiser developed four comparables for the north (industrial) building on parcel number 004-25-016 (2285 Scranton Road). After analyzing these comparables, he concluded that the estimated value of the north building was \$23.50 per square foot. Using that estimate, he calculated the market

value of the north building as \$178,000 based only upon the square footage of the first floor. He did not attribute any value to the 4,670 square feet of the second floor. Had he attributed the same value to the square footage of the second floor that he did to the first, there would have been an additional \$109,745 (\$23.50 per square foot times 4,670 square feet) of value attributed to the building. Had that been the case, the appraiser would have had to conclude that the north building had a total value of approximately \$387,745. This would have resulted in a total appraiser's value of \$735,745, or over \$47,000 more than the auditor's appraised value.

While it is understandable that the second floor of the north building would have decreased utility due to the lack of an elevator and unexplained "floor plan inadequacies," it does not seem conceivable that the second floor has no value. To attribute a value of zero to the second floor damages the appraiser's credibility.

In Case No. 646234 (1896 Carter Road; permanent parcel nos. 004-29-010 and 011) the market value approach failed to consider comparable properties with riverfront access. Moreover, the appraiser's report does not address the effect on true value of the fact that this property has nearly 400 feet of river frontage. While this court has no way of knowing, under the circumstances, whether river frontage adds to or detracts from the overall value of this particular piece of property, it surely has some influence on the value and the fact that the appraiser did not account for this influence damages his credibility.

The appraiser's valuation of this property using the income approach is also deficient for that same reason. He does not explicitly account for the presence of the river frontage and address whether this increases or decreases the likely available economic rent. The conclusions of the income approach call the appraiser's credibility into question for the

additional reason that he does not adequately explain why a property currently rented for a gross total of \$153,369 per year actually has a “net operating income” of \$61,186 per year.

The appraiser’s valuation of the property in Case No. 646240 (1840 Scranton Road; permanent parcel no. 004-29-016), the vacant lot, illustrates how the subjectivity inherent in the market approach may result in an appraised value that is not credible. All four of the parcels chosen for comparison were well south of the downtown Flats location of the subject parcel. Although the parcel probably cannot be properly considered to be part of the entertainment district of the Flats, it is at least adjacent to that district and readily accessible by use of the Carter Road lift bridge. This location surely makes it different in character than the other parcels cited by the appraiser, yet this factor is not mentioned by the appraiser. The subject parcel is also near, but not in, the Tower City area. The impact of this factor, if any, on the property’s value is not commented upon by the appraiser. Finally, the appraiser looked at the price per acre of allegedly comparable parcels of land that were all at least 16 times as large as the subject parcel. While the appraiser notes the larger size of the comparables in his “land value analysis” and even attributes a greater value to the subject property because of it, the appraisal does not specify why a particular percentage of increased value was attributed to the subject property based upon the larger size of the comparable pieces of property, nor is a consistent pattern discernible from the numbers given.

For example, land sale one was about 78 times as large as the subject property and the appraiser opined that the subject property’s value was 20 per cent greater per acre as a result. The same calculations for land sale two are 88 times larger and 22 per cent greater in value per acre; for land sale three 17 times larger and 5 per cent greater in value per acre; for land sale four, 40 times larger and 10 per cent greater in value; and for land sale five 19 times larger with a 5 per cent greater value per acre (albeit with “two frontage parcels.”) All of this

contributes to a sense that the appraiser's methods were something less than scientific and therefore not especially probative.

Finally, it did not escape the court's notice that the landowner retained the same appraiser for all three cases and that in each case the appraiser's valuation was less than the county auditor's. It is not unfair to consider the interest a witness has in the outcome of the case when assessing credibility.

IV. CONCLUSION

For all of the foregoing reasons, the court finds that the appellant's evidence, while competent, was not sufficiently credible or probative in any of the three cases to allow it to be substituted for the values arrived at by the county auditor and adopted by the board of revision, and the court therefore declines to disturb the board of revision's adoption of the county auditor's appraisals.

The court hereby certifies to the county auditor that the true value of:

- 1) Permanent Parcel No. 004-25-016 is \$688,400;
- 2) Permanent Parcel No. 004-29-010 (listed with PPN 004-29-011) is \$1,550,300; and
- 3) Permanent Parcel No. 004-29-016 is \$96,300

IT IS SO ORDERED.

Date: November ____ 2008

JOHN P. O'DONNELL, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry was sent by regular U.S. Mail this _____ day of
October, 2008, to the following:

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