

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

DIEMER REALTY, LTD.)	CASE NO. CV-16-871078
)	
Plaintiff,)	JUDGE SHANNON M. GALLAGHER
)	
vs.)	
)	<u>OPINION AND ORDER</u>
CUYAHOGA COUNTY BOARD)	
OF REVISION, ET AL.,)	
)	
Defendant)	

Shannon M. Gallagher, J.:

Appellant Diemer Realty, Ltd. appeals from the Cuyahoga County Board of Revision’s decision of “no change” concerning the taxable value of Appellant’s Property, pursuant to R.C. 5717.05. For the reasons that follow, Diemer Realty, Ltd.’s appeal is sustained and the taxable value of the Property is reduced from \$167,400 to \$42,000. Appellant has presented competent and probative evidence establishing its right to a reduction in the Board of Revision’s valuation of the subject property.

I. FACTS AND PROCEDURAL HISTORY

Appellant Diemer Realty, Ltd. (“Diemer”) owns a parcel of undeveloped land in Cleveland, Ohio, identified as Permanent Parcel No. 125-11-009 (the “Property”). The Property is approximately four acres located north and east of 7000 Hubbard Avenue in an economically depressed area of Cleveland. The Property has no road frontage and only has access over an easement through a neighboring parcel’s parking lot. It is zoned primarily as General Industry District, with a small portion zoned as Semi-Industry District.¹

¹ According to appraiser Matthew Davis, there is no difference between general industry and semi-industry in terms of adjusting for valuation. Hearing Transcript p. 31.

Diemer purchased the Property in 2007 for \$75,000 from Cleveland Hubbard Property, LP. The transaction was conducted at arm's length between two unrelated/separate parties. At the time of the purchase, the Property was 4.457 acres and had a cell phone tower located on it.

In 2008, Diemer sold the portion of the Property with the cell phone tower for \$40,000. This transaction was once again an arms' length transaction between two unrelated/separate parties.

For the 2015 tax year, Cuyahoga County assigned a market value of \$167,400 to the Property. Appellant obtained a professional appraisal, which assessed the Property's market value as \$42,000.

On March 30, 2016, Diemer filed its complaint to dispute the county's valuation of the Property. On April 29, 2016, the Cleveland Municipal School District Board of Education ("School Board") filed a counter-complaint opposing Diemer's request to change the valuation amount. On September 22, 2016, a hearing was held before the Board of Revision. The only witnesses to testify at the hearing were Diemer's representative, Mr. Vanderburg, and Diemer's professional appraiser, Matthew Davis.

After the hearing, the Board of Revision rendered a decision of "no change" on Appellant Diemer's complaint, finding that the evidence presented at the hearing supported a taxable valuation of \$167,400 for the Property. The hearing officer issued the following comment: "Appraiser used 5 sales, two of which were prior to 2008 and one was in 2010, remaining two sales were from 2014 and 2015. BOR finds sales 5 to 9 years prior to tax lien date too far removed to be credible for tax lien date of 1/1/2015, in addition, Appraiser did not make a time adjustment for the old sales but indicated that significant changes in the market had occurred

during the time and no other evidence was submitted to indicate a value for tax lien date 1/1/2015. BOR does not find appraisal to be credible. No change.”

Based upon the evidence in the record, the appraisal report and testimony offered by Mr. Davis is competent and credible evidence. This evidence supports a determination that the taxable valuation of the Property is \$42,000.

II. LAW AND ANALYSIS

Appellant brings this appeal pursuant to R.C. 5717.05, which enables a party to appeal a decision of the county board of revision directly to the court of common pleas. In reviewing a board of revision’s valuation of property, the court “should reach its own decision without any deference to the administrative finding.” *Park Ridge Co. v. Franklin County Bd. of Revision*, 29 Ohio St. 3d 12, 14, 504 N.E.2d 1116 (1987), paragraph one of the syllabus. The court’s determination as to the taxable valuation of the property need only be supported by the evidence in the record. *Jones & Laughlin Steel Corp. v. Lucas County Bd. of Revision*, 320 N.E.2d 658, 40 Ohio St. 2d 61 (1974). The court may hear the appeal on the record and the evidence submitted or it may hear and consider additional evidence. *Black v. Board of Revision*, 16 Ohio St. 3d 11, 475 N.E.2d 1264 (1985), paragraph one of the syllabus.

Appellant landowner has the initial burden to establish the right to a reduction when challenging a county auditor’s property valuation. *Bd. of Educ. v. Montgomery County Bd. of Revision*, 106 Ohio St. 3d 157, 2005-Ohio-4385, 833 N.E.2d 271. When a landowner presents competent and probative evidence establishing the Property’s correct value and showing the landowner’s right to a reduction in that value, the burden shifts to the fiscal officer to defend his/her valuation. *Fairlawn Assocs. v. Summit County Bd. of Revision*, 9th Dist. Summit No. 22238, 2005-Ohio-1951, ¶12.

Appellant's licensed appraiser, Matthew Davis, submitted a detailed report supporting his valuation of the Property at approximately \$10,000 per acre. Mr. Davis' report describes the scope of his work, which included touring the Property, collecting relevant information about the potential use of the Property, reviewing relevant market data from the surrounding market area, and researching land sale information in the subject market area.

Mr. Davis employed the "sales comparison approach" as the method for valuating the Property. Mr. Davis testified that he conducted a search of industrial sales within the City of Cleveland and looked through about 100 sales. He then narrowed down the sales to the five that were, in his opinion, most comparable: Sale #1 is the original sale of the Property in 2007 when Diemer purchased the Property for \$16,827 per acre; Sale #2 is a 2006 sale of property in the same neighborhood as the Property at issue, sold for \$10,601 per acre; Sale #3 is a 2010 sale of property in the same neighborhood as the Property at issue, sold for \$6,023 per acre; Sale #4 is a 2015 sale of property in Maple Heights, sold for \$20,000 per acre; and Sale #5 is a 2014 sale of property in Garfield Heights, sold for \$18,237 per acre.

Mr. Davis made adjustments to the sale price of each of the five comparable sales, taking into account a variety of factors affecting the market value of each. He then calculated an average price per acre, giving more weight to Sales #1 and #2, because they are in the same neighborhood as the Property. Mr. Davis placed greater weight on the location of the comparable property sales because the Property is within a depressed area without much development. Hearing Transcript p. 9, 29, 30, 33.

Sale #1 is the most comparable sale because it is the actual sale of the Property to Diemer. The sale was an arms-length transaction between two unrelated entities. Pursuant to

R.C. 5713.03 the sale price in a recent arms-length transaction between a willing seller and a willing buyer shall be considered the true value of the property for taxation purposes.

Diemer originally purchased the Property for \$75,000 in 2007. Diemer then sold the portion of the Property with the cell phone tower for \$40,000. According to Mr. Davis, it is reasonable to assess the value of the remaining Property as \$75,000 less the \$40,000, for a remaining value of \$35,000. Mr. Davis ultimately estimated that the market value of the Property was \$10,000 per acre, effective January 1, 2015, for a total valuation of \$42,000.

The Court finds that Diemer has presented competent and probative evidence establishing the Property's taxable valuation as \$42,000. The burden now shifts to the Board of Zoning to defend its valuation. *See Fairlawn Assocs., supra*, 9th Dist., 2005-Ohio-1951, ¶12. The Board of Revision's decision purports to increase the value of the Property from \$35,000 in 2007 to \$167,400 in 2015. There is no competent and probative evidentiary support for this conclusion.

The Board of Revision discounted Mr. Davis' report and testimony because "sales 5 to 9 years prior to tax lien date too far removed to be credible for tax lien date of 1/1/2015." The Board erroneously concluded that Mr. Davis "did not make a time adjustment for the old sales but indicated that significant changes in the market had occurred during the time."

Mr. Davis did acknowledge that 2006 and 2007 were better economic times. Hearing Transcript p. 21. Yet, he opined that, in his professional opinion as a licensed appraiser with his knowledge of the market area, no adjustment for time was necessary for Sale #1 and Sale #2. There would not have been a significant change in sale price had the properties been sold in 2015, rather than 2007 and 2006, respectively. Hearing Transcript p. 44-45. Had there been any adjustment, it would have ultimately decreased the value of the Property. It is undisputed that

there were not many sales of properties in the neighborhood, so Mr. Davis used his professional judgment and relied on older sales. Hearing Transcript p. 15-16, 30.

During the hearing, counsel for the School Board asked Mr. Davis why he was not valuing the Property at \$14,000 or \$15,000, which is closer in value to the Comparable Sales #4 and #5. Mr. Davis explained that, even though they were closer to the lien date at issue, Sales #4 and #5 were not in the subject neighborhood or a neighborhood facing similar economic depression. Therefore, these Sales were not as relevant to the valuation of the Property. Hearing Transcript p. 32-33.

The Board of Revision apparently gave great weight to five examples of property sales submitted by the School Board. These properties are as follows: 1) three acre property sold in Macedonia in 2014 for \$50,000 per acre; 2) three acre property sold in Maple Heights in 2015 for \$20,000 per acre; 3) two acre property sold in Garfield Heights in 2011 for \$35,000 per acre; 4) three acre property sold in Strongsville in 2016 for \$42,000 per acre; and 5) six acre property sold in Macedonia in 2009 for \$50,000 per acre.

However, the School Board did not make any adjustments for distinguishing factors, nor did the School Board hire an expert to opine as to how similar the sales were to the subject Property. Mr. Davis testified that he had knowledge of all five properties submitted by the School Board but chose not to rely upon them because they are not as similar as the five properties he selected. Hearing Transcript p. 45-47. The School Board's evidence is not probative of the taxable valuation of the Property.

The evidence in the record does not support the Board of Revision's valuation of the Property at approximately \$40,000 per acre. The only competent and credible evidence before the Board of Zoning establishes the Property's true taxable value as \$42,000.

III. CONCLUSION

Pursuant to R.C. 5717.05 and based upon a thorough review of the competent and probative evidence in the record, the Court determines that the taxable valuation of the Property is \$42,000. Costs assessed to the Board of Zoning and the School Board.

IT IS SO ORDERED.

Date: May 25, 2017

SHANNON M. GALLAGHER, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Judgment Entry was sent through the court's e-filing system on May 31, 2017, to the following:

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