

[Cite as *Carr v. Cuyahoga Cty. Fiscal Officer*, 2017-Ohio-1050.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104652

GINA M. CARR

PLAINTIFF-APPELLEE

vs.

CUYAHOGA COUNTY FISCAL OFFICER, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
REVERSED AND REMANDED**

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-857690

BEFORE: S. Gallagher, J., E.A. Gallagher, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: March 23, 2017

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SEAN C. GALLAGHER, J.:

{¶1} The Cuyahoga County Board of Revision (“BOR”) and the Cuyahoga County Fiscal Office appeal the trial court’s decision that (1) overturned the BOR’s administrative decision that lowered Gina M. Carr’s property valuation for the 2014 tax year from \$392,900 to \$293,000; and (2) found the reasonable value of Carr’s property to be \$260,000. For the following reasons, we reverse and remand for further proceedings.

{¶2} Carr is the sole owner of the subject property. For the 2014 property tax year, Carr initiated an appeal to the BOR regarding the estimated market value of her residential property. Carr’s husband Bryan (“Attorney Carr”), a licensed attorney at law, represented Carr in the administrative proceeding. Carr did not attend. Instead, Attorney Carr introduced himself as the sole witness providing evidence of the market value of the subject property. From what appears in the record, Attorney Carr is neither an appraiser nor is he involved in the real estate industry.¹

{¶3} At the administrative hearing, Carr sought a reduction in the market value of the subject property to \$250,000, based on the sales prices of two nearby properties. All properties will be identified, for ease of discussion, by their street number. In regard to the first property, 6722, the county estimated its market value to be \$296,900, but the

¹The propriety of allowing Attorney Carr’s opinion evidence is not before this court. From the record, it appears the BOR provided Carr with information regarding comparable properties upon which the BOR relied in granting Carr a reduction in the estimated market value of her property from \$392,900 to \$293,000. Accordingly, we will address the issues advanced regarding the evidence as considered by the BOR and the trial court without rendering any decision on the ability of a lay witness, who is not the homeowner, to offer an opinion.

property sold for \$255,000 in 2012. Property 6746 had an estimated market value of \$328,300 and sold for \$275,000 in 2015. The lot sizes of those properties are not included in the record, but the subject property's lot size is listed as 87,120. At the administrative hearing, the BOR noted that the sale for the 6722 property occurred in 2012, well outside the 2014 tax lien date in question, but accepted property 6746 as a potential comparable property.

{¶4} Despite Carr's failure to sustain her burden of demonstrating her property was worth \$250,000, the BOR provided Attorney Carr with a list of five other comparable properties it intended to consider in making a decision:

Property	Sales Price	Est. Market Value	Lot Size
6714	\$210,000	\$265,000	95,832
6674	\$267,534	\$357,800 ²	87,120
6300	\$280,000	\$348,600	64,904
34800	\$310,000	\$310,000	108,900
36100	\$370,000	\$401,600	113,256

²The 6674 property information included information gleaned from the supplemental evidence Carr submitted for the trial court's consideration. The 6674 property owner sought a reduction for the 2014 tax year of the market value of the property. The BOR reduced the market value from \$357,800 to \$267,600 based on the sale information for that property even though the transaction occurred through an estate sale.

No one objected to the BOR's use of its own evidence. The testimony from the administrative hearing indicated the 6674 property was sold at an estate sale, and the property appeared to be in need of remodeling. Further, the sales prices of the properties were not demonstrably related to the lot size. Carr did not dispute or contradict the BOR's finding but supplemented the trial court's record with the BOR's decision to reduce the estimated market value of the 6674 property to the sales price. Based on the evidence introduced at the administrative hearing, the BOR reduced the market value of Carr's property from \$392,900 to \$293,000 for the 2014 tax year.

{¶5} Unsatisfied with the size of the reduction, Carr timely appealed the BOR's decision directly to the trial court under R.C. 5717.05. Carr filed a brief in which she claimed the reasonable market value of her property should be \$260,000. The trial court agreed, reversed the decision of the BOR over the county's objection, and declared the reasonable value of the subject property to be \$260,000. According to the trial court, the homeowner introduced evidence of that valuation and the county failed to present evidence in support of the BOR's decision. The county timely appealed the decision on questions of law. R.C. 5717.05 (“[a]ny party to the appeal may appeal from the judgment of the court on the questions of law as in other cases.”).

{¶6} In considering an appeal under R.C. 5717.05, the trial court independently weighs and evaluates the evidence presented to make a determination regarding the valuation of a property. An appeal under R.C. 5717.05 requires more than a mere review of the decision of the board of revision by the trial court. The inquiry, however, is

limited to a consideration of the existing evidence and, at the court's discretion, to an examination of additional evidence. R.C. 5717.05. The trial court then independently values the property, and its decision is not to be reversed absent an abuse of discretion. *Black v. Bd. of Revision of Cuyahoga Cty.*, 16 Ohio St.3d 11, 14, 475 N.E.2d 1264 (1985). Underlying any analysis is the proposition that the BOR "bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the [board of tax appeals or the common pleas court] is justified in retaining the [BOR's] valuation of the property when an appellant fails to sustain its burden of proof * * *." *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196, ¶ 23.

{¶7} In her R.C. 5717.05 appeal, Carr's evidence in support of a further reduction from what the BOR provided administratively was based on information regarding four nearby properties, all of which were considered during the administrative proceedings. Carr's evidence was limited to the following information:

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Property	Sales Price	Est. Market Value	Lot Size
6714	\$210,000	\$265,000	95,832
6674	\$267,534	\$357,800	87,120
6722	\$255,000	\$296,900	n/a
6746	\$275,000	\$328,300	n/a

Carr then solely focused on the sales prices of the four properties to the exclusion of all other variables that affect the market value of a property. These variables could include the square footage of each residence, the number of bathrooms, the number of bedrooms, the overall condition of the home, and a host of other considerations that generally determine true value. Carr did not address the BOR’s conclusion that property 6722 was not evidence of the 2014 tax-year value of her property in light of the fact that the sale occurred in 2012, and she also failed to offer any explanation as to the varied estimated market values of the properties from which the R.C. 5717.05 analysis begins.

{¶8} The mere listing of sales prices of other properties provides no guidance in determining the subject property’s market value for any given tax year. *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶ 19. The three recognized approaches to value a property in the absence of a recent arm’s-length transaction of the subject property are (1) sales comparison or market data approach, (2) the income approach for commercial properties, and (3) the cost approach for unique properties with few to no comparable sales. Ohio Adm. Code 5703-25-07(D). “The

purpose of the sales comparison approach, one of three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place.” *Id.*, citing *Kaiser v. Lorain Cty. Bd. of Revision*, BTA No. 2009-V-1090, 2010 Ohio Tax LEXIS 1799 (Nov. 2, 2010), and *Specca v. Montgomery Cty. Bd. of Revision*, BTA No. 2006-K-2144, 2008 Ohio Tax LEXIS 563 (Mar. 25, 2008). This approach is only viable if the comparable sales are adjusted for all “other meaningful differences between properties.” *Id.*

{¶9} Carr did not account for any differences among the properties and, instead, solely relied on the end sales price. There is no additional information about these properties that enables a comparison to Carr’s residence. It is the homeowner’s burden to demonstrate a basis to conclude that the sales prices are indicators of the value of the subject property. The sales price of alleged other properties, even those located on the same street, is not evidence of the subject property’s market value in isolation. All homes are unique. Not all properties have identical structures or outbuildings, the same number of bedrooms or bathrooms, or the same level of interior design or amenities. As a result, there must be some common denominator to equate other properties to the homeowner’s property.

{¶10} In this case, Carr did not identify any common denominator with which to compare the properties. The market value of the other properties was much lower than Carr’s property as demonstrated by the estimated market valuation of each property. The

estimated market value of Carr's property was \$392,900 while the comparison properties were valued at \$265,000, \$296,000, \$328,300, and \$357,800, two of which were built on a similarly sized lot as the subject property. The sales prices of those other properties provide no guidance as to the value of Carr's property without accounting for the different beginning value of each of the properties.

{¶11} For example, if by some chance a nearby property was valued at \$1 million for tax purposes and sold for \$950,000, the county could not rely on that sales price alone to demonstrate Carr's property was worth \$950,000. Such a position would defy logic. The same concept, however, must equally be applied to the homeowner. Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning.

{¶12} The other properties Carr relied on all sold for 15 to 25 percent less than the property's respective estimated market value — the only information contained in the record upon which the sales prices can be scaled for the sake of comparing the different properties. No evidence was presented to support the conclusion that Carr's property is reasonably worth \$260,000. Carr actually presented evidence generally supporting the BOR's conclusion (\$392,900 reduced by 25 percent is roughly the \$293,000 valuation provided by the BOR).

{¶13} Notwithstanding Carr's inadvertent support of the BOR's valuation, a "taxpayer's failure to sustain a burden of persuasion will justify approving the board of

revision's valuation of the property even where no evidence is adduced in support of the validity of the auditor's valuation." *Kaiser*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶ 20, citing *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 48, 1998-Ohio-443, 689 N.E.2d 22. Carr based her claim on a method of valuation that is not recognized by law. A trial court cannot accept the sales price of another property as the sole evidence of the subject property's value in an R.C. 5717.05 appeal. The comparable sales must be adjusted for all "other meaningful differences between properties." *Id.* at ¶ 19.

{¶14} In addition to inartfully, but sufficiently, contesting the evidence upon which the trial court based its conclusion, the county largely claimed that a homeowner must present an independent appraisal in the absence of an arm's-length sale of the subject property. We need not render any decision precluding the homeowner herself from rendering an opinion as to the value of her property in light of our above conclusion. The potential financial burden associated with an independent appraisal upon homeowners who seek a reduction in the market value of their properties weighs on our consideration of the county's argument. *Weiler v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 101822, 2015-Ohio-1383, ¶ 11-12. We have acknowledged the possibility of the homeowner presenting the BOR with comparable sales, corresponding real estate listings, and photographs with enough specificity to enable the factfinder to determine "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.” *Id.* The emphasis should be on the specificity of the information allowing a factfinder to compare different properties, not the use of an independent appraiser — although the appraiser would provide an additional level of credibility to the homeowner’s position. We have been not been presented with any reasons to abandon the approach set forth in *Weiler*.

{¶15} Although Carr has not provided the specificity noted in *Weiler* and never appeared to present her valuation of the property, even if we resolve every benefit of the doubt in her favor, there is no evidence supporting a different valuation of the subject property in the record. *See Zimmerman v. Montgomery Cty. Aud.*, 2d Dist. Montgomery No. 25775, 2013-Ohio-5044, ¶ 16 (the county’s valuation of the property can be adopted upon the failure of the homeowner to present evidence demonstrating an entitlement to a decrease in the property’s value). Without any evidence supporting the proposed valuation of the subject property and because Carr did not present any arguments demonstrating how the record affirmatively contradicted the BOR’s valuation, the trial court should have accepted the BOR’s conclusion, or if deciding to deviate, the trial court would have to base its independent valuation of the subject property or any differences between the comparison properties and the subject property, including differences in building or property size, number of bedrooms or bathrooms, the existence of any outbuildings, appurtenances, or similar variables affecting the market price of a property. The sales price alone of alleged comparable properties is insufficient in and of itself to deviate from the estimated market value determined by the BOR.

{¶16} We reverse the decision of the trial court. The trial court, at Carr's urging, relied on the sales prices of nearby properties as the sole evidence in support of the \$260,000 valuation. The sales comparison approach to valuing real property requires consideration of all factors that affect the market price of a property, not just the sales price. We recognize this is an experienced and thoughtful trial judge who was trying to make an equitable decision, a decision arguably frustrated by the county's unwillingness to provide information to establish a proper valuation. The county felt it was under no requirement to do so.

{¶17} We remand to the trial court for the purpose of determining a reasonable valuation of the property based on the sales comparison approach.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR