

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

VALLEY OF THE EAGLES, LLC

C.A. No. 16CA010918

Appellant

v.

LORAIN COUNTY BOARD OF
REVISION, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 15CV187110

Appellees

DECISION AND JOURNAL ENTRY

Dated: January 31, 2017

WHITMORE, Judge.

{¶1} Appellant, Valley of the Eagles, LLC (“Valley of the Eagles”), appeals the decision of the Lorain County Court of Common Pleas determining the tax value of parcel number 06-25-167-000-001 as of January 1, 2014. We affirm.

I.

{¶2} Valley of the Eagles owns the subject property and 16 other parcels that jointly comprised the former Spring Valley Country Club. The 17 parcels have historically been used as a golf course. On the tax lien date in issue, the property was being renovated and was not open as a business. The county auditor valued the subject property at \$1,483,140, allocating \$132,030 to the land and \$1,351,110 to improvements.

{¶3} Valley of the Eagles filed a complaint with the Lorain County Board of Revision alleging the property was raw land with no structures. At the board of revision hearing, Valley of the Eagles presented testimony from one of its managing members, Robert Corna. In

addition, it presented an appraisal report and testimony from Kevin Riley, a licensed real estate salesperson. Mr. Riley opined that the value of the subject property was its land value only, which he opined was \$136,000. The board of revision maintained the county auditor's value.

{¶4} Valley of the Eagles appealed to the Lorain County Common Pleas Court. The court decided the appeal based on the record from the board of revision and briefs submitted by the parties to the trial court. The court found: (1) Valley of the Eagles did not challenge the numerical figures for the land value or the building value; (2) Valley of the Eagles challenged only the building value being allocated to this particular parcel; and (3) Valley of the Eagles did not meet its burden of proof to show it was entitled to a reduction in the value of this particular parcel by removing the value for the building. The court noted it was "undisputed that this parcel is one of seventeen parcels * * * formerly known as Spring Valley Count[r]y Club." In addition, as the parcel was landlocked and in a floodplain, it derived its value "as part of the golf course economic unit." The court concluded the value of the parcel for tax year 2014 was \$1,483,140.

{¶5} Valley of the Eagles appeals raising three assignments of error.

II.

Assignment of Error Number One

THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO INDEPENDENTLY WEIGH AND EVALUATE THE UNCONTRADICTED EVIDENCE IN THE ADMINISTRATIVE RECORD CONCERNING THE CORRECT AND ACCURATE VALUATION OF THE PARCEL.

Assignment of Error Number Two

THE TRIAL COURT ERRED IN FAILING TO MAKE AN INDEPENDENT DETERMINATION, FOLLOWING AN EVIDENTIARY HEARING, OF THE CORRECT AND ACCURATE VALUATION OF THE PARCEL.

Assignment of Error Number Three

THE TRIAL COURT ERRED IN DISREGARDING [VALLEY OF THE EAGLES'] COMPETENT AND PROBATIVE (AND UNCONTRADICTED) EVIDENCE OF THE CORRECT VALUE IN 2014 AND 2015^[1] OF (I) THE BUILDING ON THE PARCEL, AND (II) THE PARCEL AS A WHOLE SINCE NO BUILDING IS LOCATED ON THE PARCEL.

{¶6} Although Valley of the Eagles has identified three assignments of error, it has argued them jointly. App.R. 16(A)(7) requires an appellant separately argue each assignment of error. While combining assignments of error in this manner may, in the usual case, prevent this Court from considering one or more of the assigned errors, the three assigned errors in this case all assert the same error – namely that the trial court erred in its valuation of the property. We thus consider this error in the context of the parties' briefs.

{¶7} Valley of the Eagles appealed the board of revision decision to the common pleas court pursuant to R.C. 5717.05. The statute provides, in pertinent part: “The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of * * *.” R.C. 5717.05. The common pleas court has a “duty on appeal to independently weigh and evaluate all evidence properly before it [and] * * * to make an independent determination concerning the valuation of the property at issue.” *Black v. Bd. of Revision of Cuyahoga Cty.*, 16 Ohio St.3d 11, 13 (1985), citing *Cleveland v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio App. 483 (8th Dist.1953); *see also Park Ridge Co. v. Franklin Cty. Bd. of Revision*, 29 Ohio St.3d 12 (1987), paragraph one of the syllabus (“the common pleas court should make its own independent decision but is not required to conduct an independent proceeding”).

¹ Although Valley of the Eagles lists tax years 2014 and 2015, it acknowledged, at oral argument, that only tax year 2014 is before us in this appeal.

{¶8} The court is not required, however, to reverse a board of revision decision merely because some evidence is presented that may contradict the board’s findings. *Mazzola v. Bd. of Revision*, 9th Dist. Summit No. 16254, 1993 WL 539587, *2 (Dec. 22, 1993). Rather, the “appellant has a duty to establish that the valuation did not reflect the property’s true value.” *Id.* “In the absence of probative evidence of a lower value, * * * the [board of revision] and the [board of tax appeals or common pleas court²] are justified in fixing the value at the amount assessed by the county auditor.” *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193, 195 (1998).

{¶9} While “[n]umbered permanent parcels facilitate conveyancing * * * there is no valid reason why their relatively arbitrary boundaries must always limit valuation practices for real property taxes.” *Park Ridge* at 15. “For tax valuation purposes, property with a single owner, for which the highest and best use is a single unit, constitutes a tract, lot, or parcel.” *Id.* at 16. When property consists of an economic unit, the valuation need not be apportioned among individually numbered parcels. *See id.* “The decision whether the property serves its highest and best use as a single unit or as multiple units is generally a factual issue” that “[a]n appellate court should not disturb * * * unless the trial court abuses [its] discretion.” *Id.* at 16. An abuse of discretion implies that the court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

² Because “the common pleas court and the [Board of Tax Appeals] fulfill the same functions when reviewing a decision of a board of revision, * * * [Board of Tax Appeals] case law may be applied to the common pleas court proceedings in such appeals.” (Alterations sic.) *Lockhart Dev. Co. v. Summit Cty. Bd. of Revision*, 9th Dist. Summit No. 25728, 2011-Ohio-5000, ¶ 5, quoting *Murray & Co. Marina, Inc. v. Erie Cty. Bd. of Revision*, 123 Ohio App.3d 166, 172 (6th Dist.1997).

{¶10} Valley of the Eagles argues that the “uncontradicted” evidence was that the subject parcel was vacant land,³ without a building on it. Mr. Riley’s appraisal report states, “Lorain County Auditor is applying an improvement value to the subject property for an improvement which lies upon an adjoining parcel (same owner).” Valley of the Eagles does not contend that the building is being taxed on the other parcel, and therefore, subject to double taxation. At oral argument, counsel for Valley of the Eagles conceded, “the assessment for 2014 didn’t reflect that [other] parcel as having the building on it.” But, Valley of the Eagles contends that the trial court “erred in accepting the argument” that the parcel is part of an economic unit “without any evidentiary support for such argument.”

{¶11} Valley of the Eagles notes that Mr. Corna and Mr. Riley were the only two witnesses and “no contrary evidence and no different appraisal” was offered at the board of revision hearing. Mr. Corna testified that the main building was not on this particular parcel, but a “porch” was. Mr. Riley’s appraisal report stated that “significant improvement” was “absent” from the subject parcel. At the hearing before the board of revision, however, he stated that aerial maps indicate that a portion of the clubhouse is on the subject parcel. A map included within Mr. Riley’s report shows portions of multiple buildings on the subject parcel. Thus, while Mr. Corna and Mr. Riley indicated that there were not significant improvements on the subject parcel, they did not testify that as of the tax lien date it was entirely vacant.

{¶12} In its brief to this Court, Valley of the Eagles further argues that there was no evidence presented that the subject parcel was part of a larger economic unit. At oral argument, Valley of the Eagles’ current attorney asserted that the economic unit argument was not even raised before the board of revision. The record from the board of revision hearing belies this

³ Valley of the Eagles acknowledges that Mr. Riley’s appraisal supports the county auditor’s valuation of the land.

assertion. At the hearing, multiple questions were asked regarding whether the subject parcel was part of an economic unit. In addition, Valley of the Eagles' attorney at the board of revision level specifically argued that it was not part of an economic unit. He contended: "We're here on a single parcel. As of January 1 of 2014, it was not part of a single, economic unit."

{¶13} It is undisputed that, on the tax lien date, the 17 parcels were owned by a single owner, namely Valley of the Eagles. The issue, therefore, is whether the trial court abused its discretion in finding that the evidence supported that the "highest and best use" was as a single, economic unit.

{¶14} The complaint filed with the board of revision by the property owner specified that the principle use of the property was as a golf course. Explaining the decision to challenge the value of just one of the parcels, Mr. Corna testified that the subject parcel was valued disproportionately higher than the rest of the parcels making up the golf course with two-thirds of the value listed on this parcel. Although Mr. Corna testified that the golf course closed in October 2013, he also indicated that he would not sell the subject parcel separately because he intended to develop it as a golf course. When questioned whether the golf course would operate as a single, economic unit, Mr. Corna responded that it would, but also indicated that he would separate the clubhouse into different ownership in the future if he could.

{¶15} Similarly, Mr. Riley's appraisal report noted that the "[p]arcel is a golf course-use." At the board of revision hearing, he described his appraisal assignment as a "special purpose land use application, a golf course application." In his report, Mr. Riley explained that he used a "[d]irect [s]ales [c]omparison [m]ethod" because "the subject parcel by itself is a *fractional part of a larger golf course * * **" (Emphasis added.) He, therefore, "develop[ed] a value opinion based on available comparable sales of whole golf courses" using the sale price to

arrive at a per acre value. Although only offering an opinion of the land value, Mr. Riley's report opined the "[h]ighest and best" use remained the "[p]resent use," which was a golf course.

{¶16} Based on this evidence, the trial court did not abuse its discretion in finding the subject parcel was "part of the golf course economic unit."

{¶17} Valley of the Eagles mentions that the court did not hold an evidentiary hearing. Valley of the Eagles has not identified where in the record any party requested an evidentiary hearing. *See* App.R. 16(A)(7); *see also* R.C. 5715.19(G) (common pleas court may admit additional evidence if complainant shows good cause for its failure to provide that evidence to the board of revision). Valley of the Eagles has not developed an argument that the trial court erred in deciding the appeal on the administrative record alone. We decline to develop an argument for Valley of the Eagles in this regard. *See Cardone v. Cardone*, 9th Dist. Summit No. 18349, 1998 WL 224934, *8 (May 6, 1998).

{¶18} Finally, Valley of the Eagles argues, "Even if the trial court accepted the argument that all 17 parcels comprise one economic unit, * * * the trial court still failed to make an independent determination of the correct value of that building * * *." As it pertains to this issue, the trial court found that Valley of the Eagles did "not challenge the numerical figures for * * * the building value." Without a challenge to the building value, the trial court was justified in fixing its value at the amount assessed by the county auditor. *See Salem Med. Arts & Dev. Corp.*, 82 Ohio St.3d at 195.

{¶19} Valley of the Eagles' brief to the trial court echoed its complaint before the board of revision stating that the parcel "is raw land that has no structures on it." Its brief to the trial court did not mention the condition of the building, nor did it allege that the building itself was incorrectly valued. Rather, it contended that the building could not be taxed on the subject parcel

at all and the parcel should be valued “based on the value of the land only.” At the board of revision hearing, Mr. Riley testified that his assignment was to arrive at a land value for the parcel. He did not offer an opinion of value for the building.

{¶20} Valley of the Eagles’ brief to this Court contains conclusory assertions without any citation to the record regarding the alleged condition of the building. *See* App.R. 16(A)(7). While Valley of the Eagles asserts, to this Court, “[o]f course it challenged the building value,” that challenge was not raised in its brief to the trial court. It is axiomatic that a party cannot raise an argument to this Court that it did not first raise below. *See Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision and Fiscal Officer*, 9th Dist. Summit No. 22238, 2005-Ohio-1951, ¶ 8.

{¶21} Accordingly, Valley of the Eagles’ assignments of error are overruled.

III.

{¶22} Valley of the Eagles’ assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

SCHAFFER, J.
CONCURS.

CARR, P. J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

ERIC H. ZAGRANS, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and JOHN P. KILROY, Assistant Prosecuting Attorney, for Appellee.

NEAL HUBBARD and BARRETT HUBBARD, Attorneys at Law, for Appellee.