

[Cite as *Candu Properties, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 2016-Ohio-299.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103041

CANDU PROPERTIES, L.L.C.

PLAINTIFF-APPELLEE

VS.

**CUYAHOGA COUNTY BOARD OF REVISION,
ET AL.**

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-839765

BEFORE: Jones, A.J., Keough, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: January 28, 2016

ATTORNEYS FOR APPELLANT

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Reno J. Oradini
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ATTORNEY FOR APPELLEE

Brendon P. Friesen
Mansour, Gavin, Gerlack & Manos Co.
North Point Tower
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114

LARRY A. JONES, SR., A.J.:

{¶1} Defendants-appellants, Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer (collectively the “Board”), appeal from the trial court’s April 4, 2015 judgment reducing the 2013 tax value of the property located at 5814 Franklin Boulevard, Cleveland, from \$188,900 to \$106,000. We affirm.

I. Procedural History and Facts

{¶2} In March 2014, plaintiff-appellee Candu Properties, L.L.C., filed a complaint with the Board relative to its 2013 tax year valuation of the Franklin Boulevard property, which was owned by Candu. The Board had valued the property at \$188,900; Candu sought to have the value reduced to \$106,000.

{¶3} A hearing was held before the Board in December 2014. The following was adduced at the hearing. The house on the property was a 1910 duplex colonial style dwelling that sat on .04 acres of land. It consisted of approximately 2,536 square feet and had a detached three-car garage.

{¶4} Reginald Friesen, the owner of Candu, testified that Candu purchased the property in 2008 for \$66,000, and replaced the copper plumbing and hot water tank. Candu also painted the interior and exterior, and refinished the floors. Friesen testified that the company was limited in the amount of renovations that it could do because the house was so old.

{¶5} In 2009, the company put the house on the market for \$174,500. The

company was unable to sell the house, however, and therefore, started renting it out. Friesen testified that the company rented the downstairs unit for \$900 per month, and the upstairs unit for \$400 per month. The company paid approximately \$2,400 a year for water and sewer, \$1,200 a year for insurance, and \$1,200 a year for lawncare and snow removal.

{¶6} One of the Board members mentioned a \$155,000 sale of a neighboring property, with 2,300 square feet that took place toward the end of 2012. The Board member also mentioned, however, that he found a few sales in the \$80,000-\$90,000 range.

{¶7} The record indicates that Friesen gave the Board members a map with values of homes in the area. But as one Board member pointed out, the map did not show sales or addresses. Friesen offered to research it and provide addresses later, but a Board member said that he would do the research.

{¶8} On January 2, 2015, the Board issued its decision; it did not change the \$188,900 value of the property for the 2013 tax year. Candu appealed to the Cuyahoga County Common Pleas Court. Candu filed a motion for leave to submit additional evidence, which consisted of an appraisal of the property prepared by Nicholas Salvatore. The motion was unopposed, and the trial court granted it. Salvatore appraised the property at \$86,000. The matter was submitted on briefs, and in April 2015, the court issued its decision, stating the following:

The court has reviewed the briefs of the parties in this administrative appeal.

The court finds that the appellant-owner provided competent probative evidence in the form of the appraisal report. The appellee-Board failed to respond to the appraisal or otherwise attempt to rebut the evidence.

Therefore the court finds the evidence of the appellant-owner to be competent and persuasive and enters this order to establish the fair market value of the real property located at 5814 Franklin Blvd., Cleveland, 44102 for the tax year 2013 to be \$106,00[0] and thereby reverses the Board's decision which valued the property at \$188,900. The court further notes that the county auditor did not provide any persuasive rationale for the valuation at either the Board level or in the briefs in this appeal. It is so ordered.

{¶9} The Board now appeals, raising the following three assignments of error for our review:

I. The court of common pleas abused its' [sic] discretion and acted in an unreasonable, or arbitrary manner, contrary to law, in finding an appraisal with an effective value date of 02/21/15 for the tax lien date in question of 01/01/13 to be probative, competent, and persuasive evidence for a valuation reduction, and even if the appraisal was relevant, the appraiser did not authenticate his appraisal with testimony, and such could not be cured by appellee's counsel's argument.

II. The court of common pleas abused its' [sic] discretion and acted in an unreasonable, or arbitrary manner, contrary to law, in finding appellee presented probative, competent, and persuasive evidence for a valuation reduction.

III. The court of common pleas abused its' [sic] discretion and acted in an unreasonable, or arbitrary manner, contrary to law, in finding appellant was required to present persuasive rationale for the county's valuation, and failed to do so at both the Board level and in the briefs to the court.

II. Law and Analysis

{¶10} The Board's three assignments of error are interrelated and will be considered together.

{¶11} Under R.C. 5717.05, a party may appeal a decision of a county board of revision to the court of common pleas. The common pleas court is to independently weigh and evaluate all proper evidence and make an independent determination of the

valuation of the property. *Black v. Bd. of Revision of Cuyahoga Cty.*, 16 Ohio St.3d 11, 14, 475 N.E.2d 1264 (1985). The evidence that the court should consider includes not only evidence contained in the record, but also any additional evidence submitted by a party that the court, in its discretion, allows. R.C. 5717.05.

{¶12} Our standard of review in this case is whether the common pleas court abused its discretion in making its determinations. *Black* at paragraph one of the syllabus. An abuse of discretion is more than just an error of law; it must be demonstrated that the court's judgment was "unreasonable, arbitrary or unconscionable." *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985).

{¶13} In its first assignment of error, the Board contends that the trial court improperly considered Salvatore's appraisal because it was dated February 2015, but the tax year at issue was 2013. Upon review, however, the appraisal was apparently conducted in February 2015, but related to 2013. For example, the appraisal contains three comparable sales in the neighborhood with the following sale dates: (1) December 9, 2013, (2) April 18, 2013, and (3) December 13, 2013. In light of this, we find the Board's contention to be without merit.

{¶14} The Board also contends in the first assignment of error that the trial court improperly relied on Salvatore's appraisal because he did not testify to authenticate his appraisal. Candu contends that the Board waived the issue by not raising it below and cites *Plain Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, 957 N.E.2d 268, for the proposition that "consideration of a written

appraisal report when the appraiser who prepared the report did not testify was *not* plain error in a valuation dispute.” (Emphasis sic.)

{¶15} In *Plain Local School Bd. of Edn.*, the property owner challenged the value the auditor assigned to its property. The county board of revision reduced the value, and the school board appealed to the Ohio Board of Tax Appeals (“BTA”). The BTA affirmed the decision of the board of revision, and the school board appealed. One of the issues on appeal before the Ohio Supreme Court was whether the board of revision and the BTA erred by determining the value of the property based, in part, on an appraisal when the appraiser who prepared the report did not testify. Instead of the preparer of the appraisal testifying, the property owner presented the testimony of another appraiser, who had independently inspected the property and then testified about the report prepared by the other appraiser.

{¶16} The school board, which was represented by counsel at the hearing during which the appraiser testified, objected to the appraisal on two grounds: (1) it allegedly did not offer an opinion of value relative to the tax year at issue, and (2) the appraisal was not “prepared for ad valorem taxation purposes.” *Id.* at 232. Counsel for the school board neither questioned the testifying appraiser, nor raised an objection that the appraisal was hearsay.

{¶17} The Ohio Supreme Court held that the school board’s failure to raise a hearsay objection to the appraisal disposed of its proposed error regarding the appraisal. *Id.* at 234. In so holding, the court noted that the Ohio Rules of Evidence do not directly

apply in administrative proceedings; rather, they may be consulted for guidance. *Id.* at 234-235. The court further noted that if hearsay challenges are not objected to during the relevant proceeding, they are waived, absent plain error. *Id.* at 235.

{¶18} The court found no plain error. *Id.* Specifically, the court found that the testimony showed that the appraisal was prepared by an established and certified appraiser for a specific business purpose and was used for that business purpose. *Id.* The court also found that the contents of the appraisal were certified by the preparer of the appraisal. *Id.*

{¶19} Here, as to whether the Board waived objection to Salvatore's appraisal, we note that Candu's motion to submit the appraisal was unopposed. Further, in its brief filed with the trial court, the Board, in its statement of the case, contended that the \$188,900 valuation of the house was correct because: "1) Appellant's most recent sale was remote, and a HUD sale; 2) Appellant presented unadjusted comparable sales and non-expert testimony; 3) the appraisal report does not relate to the tax year in question; and 4) the [Board] is not required to submit evidence in support of the Fiscal Officer's valuation."

{¶20} Elsewhere in its trial court brief, the Board did contend that "*Appellant's explanation* as to the validity of the appraisal *should be stricken from the record*, and not considered, because they are the words of the Appellant, who did not prepare the appraisal, and is not even an appraiser, and not the words of the appraiser, who prepared the appraisal." (Emphasis added.) The Board contends that that statement was an objection

to the hearsay nature of the appraisal. We disagree. A fair reading of the statement, considered in context with the rest of the brief, is that it was objecting to what Candu was proffering about the appraisal, not to the appraisal itself.

{¶21} Thus, we review for plain error. In applying the doctrine of plain error in a civil case, reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997).

{¶22} Upon review, we find no error. We specifically note the Ohio Supreme Court's holding regarding review of a board of revision's valuation of property:

In reviewing a board of revision's valuation of property, the common pleas court should make its own independent decision but is not required to conduct an independent proceeding. It should reach its own decision without any deference to the administrative finding. However, it should consider the administrative record, giving that record whatever weight the court deems appropriate, even if the court accepts additional evidence.

Park Ridge Co. v. Franklin Cty. Bd. of Revision, 29 Ohio St.3d 12, 504 N.E.2d 1116 (1987), paragraph one of the syllabus.

{¶23} The appraisal and Friesen's testimony support the \$106,000 valuation of the property. That evidence included comparable sales in the area for 2013; evidence of Candu's purchase price; and evidence of repairs Candu made to the property after Candu purchased it. Thus, Candu presented competent, credible evidence to support its initial

burden justifying the reduction. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 494-495, 628 N.E.2d 1365 (1994).

{¶24} Although the Board has no corresponding burden to defend its valuation and a taxpayer is not automatically entitled to a reduction when the Board does not present evidence to rebut the request for reduction, the Board's duty to defend its valuation is triggered once the taxpayer presents competent, probative evidence to support a reduction.

Murray & Co. Marina v. Erie Cty. Bd. of Revision, 123 Ohio App.3d 166, 172-174, 703 N.E.2d 846 (6th Dist.1997). The Board did not present any evidence, and as already discussed, the evidence presented by Candu in support of its request for reduction was competent and probative.

{¶25} On this record, we find no abuse of discretion in the trial court's judgment reducing the value of the property from \$188,900 to \$106,000. The Board's three assignments of error are therefore overruled.

{¶26} Judgment affirmed.

It is ordered that appellee recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and
ANITA LASTER MAYS, J., CONCUR