

OHIO BOARD OF TAX APPEALS

Orville Charles Miller,)	
)	
Appellant,)	CASE NO. 01-A-577
)	
vs.)	(REAL PROPERTY TAX)
)	
Muskingum County Board of)	DECISION AND ORDER
Revision and Muskingum County)	
Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Orville C. Miller, *pro se*
2640 Vista View Drive
Nashport, Ohio 43830

For the County
Appellees - James R. Gorry
Special Counsel
20 East Broad Street
Columbus, Ohio 43215

Entered: February 15, 2002

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Muskingum County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2000.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board by the county board of revision, and the record of the hearing before this Board.

The subject real property, one parcel that consists of approximately 1.876 acres of land in the Wayne Township – Franklin Local School District taxing district, Muskingum County, Ohio, appears on the auditor’s records as parcel number 73-73-60-01-31-002. The value of the parcel, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 9,800	\$ 3,430
Bldg	-0-	-0-
Total	\$ 9,800	\$ 3,430

Appellant contends that the subject’s true value is \$2,500, with a corresponding taxable value of \$875.

In his written statement made to the county board of revision, appellant, Mr. Miller, discussed the subject property, as follows:

“This property is in a pasture field with brush in the rear of the property.

“I was going to build on it but the Wayne Twp. Zoning Board wanted to set the building back as to make it hard to get out of it in the winter so I decided not to build on it.

“We paid \$2,000 for it.” (S.T., Ex. D)

Specifically, Mr. Miller purchased the subject land from his mother in 1996. When determining value, the Supreme Court has on numerous occasions held that “the best evidence of ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction,” *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. “An arm’s-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23. Without more details about the subject sale, this Board cannot determine that the sale in question was arm’s-length, especially due to the fact that the sale occurred some four years before the tax lien date in question and it was consummated between family members. Accordingly, the Board will not rely upon the sale price paid by Mr. Miller.

With his testimony before this Board, Mr. Miller offered Exhibit 1, printouts from the county for two lots which he deemed comparable to the subject and which arguably, he felt demonstrated that the subject lot was being taxed in excess. The printouts detailed the size of the two “comparable” lots (which are located in a subdivision) as well as the tax history for the two lots. In valuing the subject property herein, we must reiterate our past-stated position that evidence of the tax valuation of land neighboring that which is under consideration is not necessarily helpful. “Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.” *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), B.T.A. No. 92-H-576, unreported. See, also, *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), B.T.A. No. 92-B-879, unreported; *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), B.T.A. No. 93-B-722, unreported, at 6; *Davis v. Butler*

Cty. Bd. of Revision (Apr. 29, 1994), B.T.A. No. 92-T-923, unreported. Especially in light of the fact that the subject land is farm land and the comparables are located in a subdivision, we are unwilling to draw any valuation parallels between them, without more information about the comparable properties, including but not limited to location in relation to the subject, size, topography, and zoning. In addition, while we acknowledge that “Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property,” the testimony must also be probative and credible. *Smith v. Padgett* (1987), 32 Ohio St. 3d 344, 347. Unfortunately, Mr. Miller has not given this Board competent and probative evidence of value for the subject property upon which we can base the valuation.

In the statutory transcript, the board of revision, in making its valuation determination, indicated that it relied upon the comments of a county appraiser who evaluated the subject property as follows:

“Highest & Best use of property is as residential building site. As per owner note, approved for such by Wayne Twp. Zoning board. Comp sales found in subject neighborhood. See 7373-60-01-19-001, 5 acres sold 9-98 for 16500 – 73-73-06-05-15-000m 1.70 acres sold 5-98 for 12000 – 73-73-21-01-07-00 – 2.14 acres sold 1-99 for 13000. Value can be supported.”

Ultimately, the board of revision, based upon the remarks of the county’s appraiser, made no change to the subject’s valuation, maintaining the auditor’s valuation of \$9800. (S.T., Exs. C, E)

We note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v.*

Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

Based upon the foregoing, we would find that appellant has not offered sufficient, probative evidence of the subject's value. Accordingly, with no evidence of market value before us that we find to be probative and credible, we will utilize the county board of revision's valuation of the subject, as supported by the county appraiser's evaluation of the subject. As the Supreme Court stated in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, "(W)here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation * * * ."

Thus, the value of the subject property, as of January 1, 2000, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 9,800	\$ 3,430
Bldg	-0-	-0-
Total	\$ 9,800	\$ 3,430

It is the Decision and Order of the Board of Tax Appeals that the Muskingum County Auditor shall list and assess the subject property in conformity with this decision.

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