

OHIO BOARD OF TAX APPEALS

Roy D. Miller,)
)
 Appellant,) CASE NO. 2002-T-1559
)
 vs.) (REAL PROPERTY TAX)
)
 Montgomery County Board of) DECISION AND ORDER
 Revision and the Montgomery)
 County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Roy D. Miller, pro se
931 Kammer Avenue
Dayton, Ohio 45417

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Douglas M. Trout
Assistant Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422

Entered July 11, 2003

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Roy D. Miller. Mr. Miller appeals from a decision of the Montgomery County Board of Revision, in which the BOR determined the true value of the subject property to be \$32,740 for tax year 2001. Mr. Miller claims in his notice of appeal that the correct true value should be between \$18,000 and \$20,000.

The subject property is identified in the Montgomery County Auditor's records as permanent parcel number R72-125-3-13. It is comprised of approximately .1988 acres of land. The subject is improved with a two-story building erected in 1913. The 1664 square foot dwelling contains eight rooms, including four bedrooms. The improvements are listed in county records as being in "poor" condition.

Pursuant to assignment, this matter was scheduled for a hearing before this board for the purpose of offering each party an opportunity to present additional evidence of value. Mr. Miller did not appear at the scheduled place and time, and the county appellees waived their opportunity to appear and present additional evidence. Consequently, we will consider this matter upon the record and the transcript certified by the Montgomery County Auditor. R.C. 5717.01. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 1996-Ohio-432.

This matter came before the BOR pursuant to a decrease complaint filed by Mr. Miller, in which he sought a value of \$12,000 for the subject. In essence, Mr. Miller argued that the auditor had overvalued the subject property by failing to take into consideration certain existing defects. These defects include: extensive electrical and plumbing problems, damage to walls and ceilings, the need for a new roof, windows that are in poor condition, and deteriorated crossbeams and ceiling boards.

At his BOR hearing, Mr. Miller further discussed the building's defects. He testified that his walls and ceilings had been extensively damaged due to moisture and cold. He testified that the damage occurred in 1992, during a time when the electricity in the house had been shut off by the utility provider. As to the house's

electrical problems, Mr. Miller testified that the entire electrical system needs to be replaced. He mentioned that some outlets are now unusable. Several outlets that are still in service often spark or smoke when appliances are connected. Water problems include very low pressure. Mr. Miller testified that he cannot use the shower and that it takes several hours to simply fill a bucket from an outside spigot. Mr. Miller testified that one-half of the subject's windows have been replaced, at a cost of \$900. The remaining windows are in poor condition. A leaking roof, together with deteriorated gutters, has caused damage to the house's ceilings. In addition, Mr. Miller testified that the house's siding needs to be replaced, concrete walks and walls are deteriorating, and that a new furnace is needed. Photographs showing damage and deferred maintenance were submitted to the BOR.

Mr. Miller could not give an estimate as to the cost to rectify the defects but testified that it would take "thousands of dollars" to make repairs. He stated that his opinion of value was based on the fact that he purchased the subject in 1988 for \$15,000 and that the needed repairs indicate that the subject is worth less than the purchase price. Upon review of the evidence before it, including a field check performed by the auditor's office, the BOR determined the value of the subject property to be \$32,740, the same value previously assigned by the auditor.¹

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has a burden to prove its

¹ We do note that the BOR allocated the value between land and improvements differently than the allocation made by the auditor. No explanation for this change is contained in the record. As we are concerned with the overall valuation of the subject property, we need not address this issue.

right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336. Consequently it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence that demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Furthermore, the issue on appeal is the true value of the subject property. Accordingly, we must examine the available record and determine value based upon the evidence before us. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Mr. Miller asserts that a decrease is warranted to account for the needed repairs and other conditions that exist on the subject property. Both the Supreme Court of Ohio and this board have previously considered the impact of adverse conditions upon the true value of real property. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 1996-Ohio-226, the court held that “[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA.” *Id.* at 228.

In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, we held the existence of a condition does not itself mandate a reduction in value of the real property. “A mere recitation of defects in a taxpayer’s property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the diminution in value caused by the defects, or some evidence of the value of the property as so diminished.” *Id.* at 7. It may be true that the property owner cannot avoid the cost of the needed repair; however, cost is not invariably equated with value. *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339 at 349, citing *Inmar Assoc., Inc. v. Borough of Carlstadt* (1988), 112 N.J. 593.

While Mr. Miller has identified several repairs that need to be made to the subject’s building, Mr. Miller’s evidence demonstrates only that such conditions exist. Mr. Miller did not provide any type of documentation that would indicate the

cost to repair the deficiencies. More importantly, Mr. Miller, who did not appear at this board's hearing, has not presented an appraisal or other probative evidence to support the decrease in true value sought due to the deficiencies identified on the complaint. Absent evidence that indicates the diminutive effect the deficiencies have upon the value of the subject property, we are unable to conclude that Mr. Miller has met his burden of persuasion. As that burden has not been satisfied, we are unable to find that Mr. Miller has proven his right to a decrease in value. *Cincinnati School Bd. of Edn.*, supra; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454.

“Where 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 ***.” *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, at the syllabus. Here, the only other evidence of value contained in the record is the property record card and an indication that the auditor's office performed a field check on the subject property. Thus, the record suggests that the issues identified by Mr. Miller may have been taken into consideration when the auditor and the BOR valued the property. Given our review of the BOR's record as a whole, and given that there is no other evidence from which we may independently determine value, we approve the BOR's valuation of \$32,740. *Simmons*, supra.

As a final matter, Mr. Miller states in his notice of appeal that “[a]t least we could begin with the homestead exemption thing.” We assume Mr. Miller is

asking us to grant him tax relief under R.C. 323.151, et seq., which provides for a reduction in real property tax known as the “homestead exemption.” Generally, a homestead is defined as the dwelling, including a unit in a multiple-unit dwelling and a manufactured or mobile home, and so much of the surrounding land, not to exceed one acre, as is considered necessary for the use of the dwelling as a home. R.C. 323.151(A).

The reduction has two forms. The first provides a reduction in taxes for owners of a homestead who are aged sixty-five or older, owners who are permanently and totally disabled, or for the surviving spouse of one who was permanently and totally disabled or who was aged sixty-five or older and who had applied and qualified for the reduction in the year in which the person dies. R.C. 323.152(A). The level of reduction depends upon income. The second type of reduction is a general reduction granted to any owner of a homestead who obtains a certificate of reduction from the county auditor. This reduction is given without regard to the owner's age, health, or income. R.C. 323.152(B). This general reduction is commonly referred to as the “homesite” reduction.

However, it is not within this board’s power to grant Mr. Miller a homestead exemption. The owner of a dwelling must apply for the homestead exemption with the auditor of the county in which the property is located. If the application is approved, the owner will receive the proper reduction in the amount of real property taxes due on the property.

In conclusion, we find that Mr. Miller has not presented sufficient competent or probative evidence of value for the subject property. Accordingly, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows for tax year 2001:

	TRUE VALUE	TAXABLE VALUE
Parcel R72-125-3-13		
LAND	\$ 8,410	\$ 2,940
BUILDINGS	\$ <u>24,330</u>	\$ <u>8,520</u>
TOTAL	\$ 32,740	\$ 11,460

The Auditor of Montgomery County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

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