

OHIO BOARD OF TAX APPEALS

Gina Blatt,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Hamilton County Board of Revision) **Appeal Filed Dec. 8, 2008**
 and Hamilton County Auditor,) **Ohio Supreme Court**
)
 Appellees.)

APPEARANCES:

For the Appellant - Aronoff, Rosen & Hunt
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425 Walnut Street
Cincinnati, Ohio 45202

For the County Appellees - Joseph T. Deters
Hamilton County Prosecuting Attorney
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Entered November 25, 2008

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

Gina Blatt appeals from a decision of the Hamilton County Board of Revision (“BOR”), in which the BOR determined the true value of parcel number 023-0002-0222-00 to be \$834,000 for tax year 2005. Appellant asserts in her notice of appeal that the total true value should be \$775,000.¹

The Hamilton County Auditor’s (“auditor”) records indicate that the subject property is located in the city of Cincinnati taxing district. The subject

¹ Line 5 of DTE Form 3 indicates that appellant filed her notice of appeal with the BOR on November 20, 2007. However, the notice of appeal included in the statutory transcript (“S.T.”) indicates a filing date of November 7, 2006. S.T., Ex. VI.

property is a residential home located in the Mt. Lookout area of Cincinnati. According to the subject's property record card, included as an attachment to the auditor's residential appraisal review and retrieved from the auditor's website, the subject's structure is subject to a Community Reinvestment Area ("CRA") abatement through tax year 2019, pursuant to R.C. 3735.65, et. seq. S.T., Ex. III.C.I. at 4. This abatement apparently applies to new construction, with an abated value of \$238,800. Id. The values of the subject property, as determined by the auditor and the BOR for tax year 2005, were as follows:

AUDITOR

Permanent Parcel No. 023-0002-0222-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 534,000	\$186,900
BUILDINGS	\$ <u>507,300</u>	\$ <u>177,560</u>
TOTAL	\$1,041,300	\$364,460

BOARD OF REVISION

Permanent Parcel No. 023-0002-0222-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 534,000	\$186,900
BUILDINGS	\$ <u>300,000</u>	\$ <u>105,000</u>
TOTAL	\$ 834,000	\$291,900

This matter came to the BOR pursuant to a complaint timely filed by appellant. In her complaint, appellant asked the BOR to decrease the value of the subject property to \$775,000. S.T., Ex. I. Included in the statutory transcript is a copy of a conveyance fee statement related to a January 2, 2004 sale of the subject property

for \$534,000. S.T., Ex. C. After appellant purchased the subject in early 2004, the residence located on the property was razed, and a new home was constructed. Construction of the new home was essentially complete as of the January 1, 2005 tax lien date in issue. S.T., BOR Hearing Record at 3. Before the BOR, counsel for appellant primarily contested the \$534,000 land value assigned by the auditor, not the \$507,300 value allocated to the building. Id. at 4. Appellant submitted several documents related to the construction of the new home, including a sales agreement, building specifications, and construction costs. S.T., Ex. III.A. Additionally, appellant submitted a document titled “Comparable Land Values,” which listed assessed land values of neighboring properties. S.T., Ex. III.B. Counsel for appellant also presented various provisions of the Ohio Administrative Code related to the valuation of real property. S.T., Ex. III.C. County appellees submitted a “Residential Appraisal Review” pertaining to the subject property, with a date of valuation of January 1, 2005. The auditor’s appraiser who prepared this review, William Grauvogel, testified at the hearing before the BOR.

During his testimony, Mr. Grauvogel stated that it was difficult to find newly constructed properties in the area that were comparable to the subject. S.T., BOR Hearing Record at 6. One of the three comparables utilized in Mr. Grauvogel’s review was in the subject’s neighborhood, with the other two located in a nearby area. Each comparable was within one and one-half miles of the subject, and all were within the same school district. S.T., III.C.1. Mr. Grauvogel’s review adjusted for location, site size, view, design, quality, age, condition, room count, living area, basement, garage, functional utility, amenities, and dates of sale. Id. The subject was appraised

as if 75% complete. Mr. Grauvogel's review concluded to a value of \$1,018,500 based upon the sales comparison approach to value. A cost approach value was also contained in the review, indicating a value of \$1,192,388. This amount included a site value of \$540,000. The income approach was not utilized. At the BOR hearing, Mr. Grauvogel estimated another value for the subject. Apparently believing that the subject property was only 75% complete as of the relevant tax lien date, Mr. Grauvogel subtracted \$100,000 to arrive at a building value of \$300,000. He then added the \$534,000 sale price as the land value, concluding to a total true value of \$834,000 for the subject property. S.T., BOR Hearing Record at 7.

Following Mr. Grauvogel's testimony, appellant's counsel argued that the 2004 sale price of the subject property was not arm's length, since an improvement had been added subsequent to the sale. S.T., BOR Hearing Record at 9. Additionally, counsel argued that the land value of the subject should be consistent with other assessed land values of properties located on the subject's street. *Id.* at 10.

Upon review of the evidence before it, the BOR voted to decrease the value of the subject property to \$834,000, agreeing with the value opined by Mr. Grauvogel at the BOR hearing. S.T., Exs. IV, V. The BOR agreed with Mr. Grauvogel's land and building values, electing to value them at \$534,000 and \$300,000, respectively. *Id.* at V.

County appellees' counsel submitted to this board a stipulation, signed by counsel for both parties, that stated each party wished to waive its right to appear at a hearing before this board. In this regard, we remind the parties that our duty is to conduct a de novo review of the record and to "determine the value of the property."

R.C. 5717.03. Where the parties elect to present no additional evidence on appeal, we will independently review the record developed by the parties before the county board of revision and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (quoting *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 14, and holding that this board ““has a duty on appeal to independently weigh and evaluate all evidence properly before it.””). We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified to this board by the auditor, and the briefs submitted by the parties.

We begin our review of this matter by noting that “[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In determining value, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

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 offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

R.C. 5713.03 provides that if “a tract, lot, or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.” In construing R.C. 5713.03, the Ohio Supreme Court has specified, “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶ 13. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059. Recently, the court reiterated this holding, stating, “[u]nder *Berea*, *** [a] sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the sale was sufficiently recent and genuinely at arm’s length between a willing buyer and a willing seller.” *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, at ¶8. See, also, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13 (“[A] sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm’s-length character between a willing seller and a willing buyer are genuinely present for that particular sale.”).

“[A]n 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* (1989), 47 Ohio St.3d 23, at the syllabus. The absence of a single one of

these factors is sufficient to demonstrate that a transaction was not conducted at arm's length. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, at ¶ 13, citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145. See, also, *RLG Properties, LLC v. Franklin Cty. Bd. of Revision*, Franklin App. Nos. 06AP-132, 133, 134, 2006-Ohio-5096.

We begin by addressing the January 2, 2004 sale of the subject property. As noted above, a copy of the conveyance fee statement is included in the record. S.T., Ex. C. We have previously held that evidence of a sale exhibited through a conveyance fee statement, not otherwise controverted, is considered competent and probative evidence of a property's value for tax purposes. *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported; *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. In order to constitute a proper measure of value, the sale must also have been made within a reasonable time of tax lien date. *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, at 59. Here, the sale occurred approximately twelve months prior to the January 1, 2005 tax lien date. Taken together, the conveyance fee statement and date of sale would appear to be competent and probative evidence of value. However, the record reflects that soon after the sale of the subject property in early 2004, the residence located on the property was razed. By the tax lien date of January 1, 2005, a new residential home had been erected on the subject property.

R.C. 5713.03, which relates to the taxable valuation of real property, provides:

“*** In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm’s length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

“(A) The tract, lot, or parcel of real estate loses value due to some casualty;

“(B) *An improvement is added to the property.*” ***.
(Emphasis added.)

See, also, Ohio Adm. Code 5703-25-06(F).

Here, the improvement added to the property is the construction of appellant’s new home subsequent to the January 2, 2004 sale of the subject property. This board has previously considered whether a sale price should be disregarded in determining value if an improvement to a property takes place between the date of sale and the tax lien date. *Cuyahoga Falls Downtown Development Corp. v. Summit Cty. Bd. of Revision* (Mar. 10, 1995), BTA No. 1993-T-1015, unreported (holding that the sale of the property in question was not indicative of value due to the fact that it was subsequently improved); *Wal-Mart Stores, Inc. v. Medina Cty. Bd. of Revision* (Nov. 9, 1995), BTA No. 1994-T-660, unreported (recent, arm’s-length sale not a reliable indication of value as property was improved with multi-million dollar retail building by tax lien date); *Streetsboro City School District Bd. of Edn. v. Portage Cty. Bd. of*

Revision (June 30, 2005), BTA No. 2004-K-601, unreported (affirming auditor's and BOR's determination of value based upon rejection of sales price, as property had been improved as of tax lien date). As the testimony and evidence contained in the record reflect the construction of an improvement upon the subject property subsequent to the 2004 sale of the subject, but prior to the relevant tax lien date, the 2004 sale price is not indicative of the subject's total true value. *Cuyahoga Falls, Wal-Mart Stores*, and *Streetsboro*, supra.

We must now review the record to determine if appellant has proven, by competent and probative evidence, its asserted value of \$775,000 as of January 1, 2005. Appellant argues that the value of the property consists of \$225,000 for land and \$550,000 for the building. S.T., Ex. I. Appellant also asserted a value of \$215,000 for the land before the BOR, basing this upon a document prepared by counsel for appellant that listed assessed land values of neighboring properties. S.T., Ex. III.B. Ohio courts have held that a showing that two parcels of property have different values, without more, does not demonstrate that the subject property is not being properly valued, nor does the reliance upon the values assigned to other properties present competent evidence of the subject property's value. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29; *Sherman v. Cuyahoga Cty. Bd. of Revision* (Mar. 17, 2000), Cuyahoga App. No. 75971, unreported. Similarly, in *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, we concluded that taxable values reflected on other properties provide little insight into the value of the property at issue:

“The appellant has attempted to show a lower value than that assessed by the BOR. However, appellant’s presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly 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.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA Case No. 92-H-576, unreported.” Id. at 6.

Here, appellant provided square foot valuation amounts based only upon the auditor’s assessed land values. We do not find this evidence to be helpful in determining the value of the subject property, as appellant is relying solely on assessed values without providing evidence as to how the auditor arrived at those values. Furthermore, there is nothing in the record that supports appellant’s asserted building value of \$550,000.

We now briefly address the appellant’s argument of only challenging the land value. The complaint filed with the BOR, and the notice of appeal filed with this board, indicate a challenge to the total value of the subject.² As such, we must evaluate the property as a whole, not just in terms of a land value. “While the appellant may wish to limit testimony to only the land valuation of a subject property, upon complaint to the BOR, he placed the total valuation of the subject property in issue. Once the ‘total’ valuation was placed into issue and appealed to this board, this board has the obligation to fulfill its statutory duty. We are obligated to determine the

² It should be noted that while appellant indicates a challenge to the value of the parcel as a whole in her complaint to the BOR, she does state that her reason for requesting the change is because the land is overvalued. S.T., BOR Hearing Record at 4.

market value of a subject property – not the market value of only the land or only the buildings thereon. While some properties may be properly valued in part, and therefore, the board would determine a change in only the land or building portion of the valuation, our broad investigatory powers as well as our legislative mandate lead us to conclude that we have a duty to consider the total property in our valuation findings.” *Amsdell, Trustee v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Nov. 14, 1994), BTA No. 1993-M-1336, unreported. See, also, *Soin v. Greene Cty. Bd. of Revision* (Oct. 7, 2005), BTA No. 2004-V-490, unreported (involving valuation of a “white elephant” property), affirmed 110 Ohio St.3d 408, 2006-Ohio-4708; *M.H. Murphy Dev. Co. v. Franklin Cty. Bd. of Revision* (Dec. 3, 2004), BTA No. 2003-R-1177, unreported; *Heskett v. Ross Cty. Bd. of Revision* (Oct. 17, 2003), BTA No. 2002-M-2107, unreported; *Midland Food Services, LLC v. Cuyahoga Cty. Bd. of Revision* (May 3, 2002), BTA No. 2001-G-151, unreported. Compare *Am. Steel & Wire Co. v. Bd. of Revision of Cuyahoga Cty.* (1942), 139 Ohio St. 388, 390 (“Such complaints [filed under the former General Code provisions] may relate to the valuation of either the lands or improvements or both.”); *Leber v. Greene Cty. Bd. of Revision*, Greene App. No. 2007-CA-39, 2008-Ohio-613.

As appellant’s estimate of the land value does not assist this board in determining a total true value for the subject, we are obligated to view the property as a whole in determining a value. Based on the above, appellant has not presented the competent and probative evidence needed to prove her asserted value of \$775,000. *Columbus*, supra, *Cleveland Bd. of Ed. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55.

While appellant has not met her affirmative burden with regard to proving a value for the subject property, this board must, consistent with its duty pursuant to R.C. 5717.03, review the record to determine a value for the subject in accord with the existing information in the record. *Columbus* and *Black*, supra.

Initially, we review the values contained in the report prepared by Mr. Grauvogel, and the later values presented in his testimony before the BOR and subsequently affirmed by the BOR. As previously noted, the BOR relied upon the 2004 sale price of the subject in assigning a land value, and assigned a building value based on Mr. Grauvogel's testimony before the BOR. As noted above, several documents were submitted that reflect the cost of constructing appellant's new home. S.T., Ex. III.A. These documents reflect a cost of construction of approximately \$400,000. Id.

In analyzing Mr. Grauvogel's review, we first turn to his cost approach. The depreciated value of the improvement is listed as \$642,388, in addition to \$10,000 described as "[a]s-is' value of site improvement." This review was prepared approximately one month prior to the BOR hearing, where appellant produced documents that revealed approximately \$400,000 in construction costs. Based upon these documents, we find Mr. Grauvogel's cost approach in his review to be an unreliable indicator of value.

We next review Mr. Grauvogel's sales comparison approach. We initially note that no adjustments were made for site size, although comparables two and three have lots that are significantly larger than the subject's. Comparable two has a lot size of .826 acres, and comparable three has a lot that is .782 acres in size, while

the subject is .51 acres in size. As the BOR appears to be placing a high premium on land values based upon its assignment of the subject's 2004 sale price as the subject's land value, the lack of adjustments to these properties would likely have a significant impact in determining a value for the subject. Comparable two, which was built in 1966, does not seem to be a reliable indicator of value due to its age. Comparable three, aside from the lack of a site size adjustment, appears to most closely compare to the subject, as it was constructed in 2000 and has a sale date of November 16, 2004, less than two months from the subject's tax lien date. This property sold for \$941,300, with Mr. Grauvogel adding 8% in adjustments to reach an adjusted sales price of \$1,012,100. However, we reiterate there is no adjustment for this comparable's lot size, which is approximately .272 acres larger than the subject's. Without this adjustment, we cannot accurately compare this comparable's value to the subject. As such, we find Mr. Grauvogel's review, as a whole, to be unhelpful in determining a value for the subject.

A review of the record indicates that the cost to construct the new home upon the subject property was \$400,000. This is supported by the documents submitted by appellant before the BOR. S.T., Ex. III.A. Before the BOR, the county appellees' appraiser valued this improvement at only 75% of this amount, apparently because as of January 1, 2005, the property was not fully complete. This yielded a value of \$300,000. S.T., BOR Hearing Record at 7. However, the record contradicts this partial valuation, since appellant's counsel stated that "basically the house was pretty well finished on the valuation date of January 1[,] 2005." S.T., BOR Hearing Record at 3.

Consistent with this board's duty to find value based upon the existing record, we find the \$400,000 in recent, actual costs provided by appellant to be evidence of the subject's building value, based upon the cost approach to value. R.C. 5717.03, *Columbus* and *Black*, supra. With regard to the subject's land value, we turn to the only evidence in the record that assists this board in determining a value, i.e., the January 2, 2004 sale of the subject property for \$534,000 and the property record cards for the subject property.³ Here, the auditor's property record card for 2004 states that the subject's land value is \$195,600, but no corresponding improvement value is found, due to the auditor accounting for the razing of the home in 2004. For tax year 2003, which is also in the applicable interim period, the auditor assigned values of \$195,600 to land and \$82,000 to improvements. To determine a land value for tax year 2005, we calculate the land's percentage of the subject's total value for tax year 2003, and allocate such percentage to the January 2, 2004 sale of the subject property. This yields a value of \$373,800 for the subject's land for tax year 2005. R.C. 5717.03.

Therefore, it is the decision of the Board of Tax Appeals that the true and taxable value of the subject property, as of January 1, 2005, is as follows:

Permanent Parcel No. 023-0002-0222-00	TRUE VALUE	TAXABLE VALUE
LAND	\$ 373,800	\$130,830
BUILDINGS	\$ <u>400,000</u>	\$ <u>140,000</u>
TOTAL	\$ 773,800	\$270,830

³ Pursuant to an order of this board, dated November 12, 2008, the BOR supplemented the statutory transcript with property record cards for the subject for tax years 2002, 2003, 2004, and 2005.

We order the Auditor of Hamilton County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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