

**OHIO BOARD OF TAX APPEALS**

Mukeshbai K. Patel, )  
 )  
 Appellant, ) (CASE NO. 2006-V-1077  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) (DECISION AND ORDER  
 )  
 Franklin County Board of Revision, )  
 the Franklin County Auditor, and the )  
 Board of Education of the Groveport )  
 Madison Local Schools, )  
 )  
 Appellees. )

APPEARANCES:

- For the Appellant )  
Property Owner - Daniel K. Balaloski  
 ) Attorney at Law  
 ) 1188 South High Street  
 ) Columbus, OH 43206
  
- For the County )  
Appellees - Ron O'Brien  
 ) Franklin County Prosecuting Attorney  
 ) Paul Stickel  
 ) Assistant Prosecuting Attorney  
 ) 373 South High Street, 20<sup>th</sup> Fl.  
 ) Columbus, OH 43215
  
- For the Appellee )  
BOE - Rich, Crites & Dittmer, LLC  
 ) Jeffrey A. Rich  
 ) 300 East Broad Street  
 ) Suite 300  
 ) Columbus, OH 43215-3756

Entered January 27, 2009

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

This matter is before the Board of Tax Appeals as a result of a notice of appeal filed by appellant, Mukeshbai Patel. The appellant appeals the decision of the Franklin County Board of Revision (“BOR”) wherein the BOR increased the value of

the subject property for 2004 and 2005 based upon a complaint filed by the Board of Education of the Groveport Madison Local Schools (“BOE”).

This matter is considered by this board based upon the notice of appeal, the statutory transcript (“S.T.”) certified by the Franklin County Auditor, evidence received at hearing (“H.R.”) before this board, and the written briefs filed by the parties.

The subject property is improved with a gasoline station and retail convenience store. Before the BOR, the BOE filed a complaint against the 2004 valuation of two adjoining parcels of property.<sup>1</sup> The BOE alleged that Mr. Patel’s purchase of the subject parcels in an arm’s-length sale on April 30, 2004 for a total price of \$1,145,000 was the best evidence of value. S.T. at Ex.1. At hearing before the BOR, the BOE presented certified copies of the deed and conveyance fee statement evidencing the sale. Id. at Exs. 10(A) and (B).

The values of the subject parcels as assigned by the auditor for 2004 are as follows:

Parcel No. 153-178	TRUE VALUE	TAXABLE VALUE
LAND	\$ 30,100	\$10,540
BUILDINGS	\$ 0	\$ 0
TOTAL	\$ 30,100	\$10,540

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<sup>1</sup> It appears that three different counter complaints were filed by counsel previously retained on behalf of Mr. Patel. The first failed to identify any parcel and appears to be unsigned; the second only identifies one of the two subject parcels; and the third appears to have properly identified both of the subject parcels. All three counter complaints were filed within the time frame specified by R.C. 5715.19(B).

Parcel No. 153-239	TRUE VALUE	TAXABLE VALUE
LAND	\$ 82,300	\$28,810
BUILDINGS	\$164,400	\$57,540
TOTAL	\$246,700	\$86,350
GRAND TOTAL	\$276,800	\$96,890

The values of the subject parcels as assigned by the auditor for 2005 are as follows:

Parcel No. 153-178	TRUE VALUE	TAXABLE VALUE
LAND	\$ 32,600	\$ 11,410
BUILDINGS	\$ 0	\$ 0
TOTAL	\$ 32,600	\$ 11,410

Parcel No. 153-239	TRUE VALUE	TAXABLE VALUE
LAND	\$ 85,400	\$ 29,890
BUILDINGS	\$159,600	\$55,860
TOTAL	\$245,000	\$85,750
GRAND TOTAL	\$277,600	\$97,160

Appellant's counsel appeared before the BOR and presented the testimony of Mr. Kenny Patel. Mr. Kenny Patel operates the store and his wife is a 50% owner in the business along with the property owner Mr. Mukeshbai Patel. S.T. at 16. Mr. Kenny Patel claimed to have an intimate knowledge of the subject property. Over the objection of counsel for the BOE, Mr. Kenny Patel testified<sup>2</sup> that

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<sup>2</sup> Before the BOR, appellant's counsel originally asked for a continuance, explaining that he mistakenly understood that Kenny Patel was Mukeshbai Patel. Although counsel originally asked the BOR to continue the hearing because of this confusion, the BOR representatives encouraged appellant to proceed with his case in chief after concluding that Kenny Patel was intimately familiar with the subject property. S.T. at 16.

the \$1,145,000 sale price paid for the subject property is inconsistent with the auditor's valuation of similar gas stations in the subject's immediate area.

Counsel further advocated that the \$1,145,000 price paid for the property included items of personal property, e.g., coolers, gas pumps, electronic wiring, cash registers, and canopies. S.T. at Ex. 16. Counsel presented several documents, which included a settlement statement made at the time of closing, inventory lists, a balance sheet, an appraisal<sup>3</sup> created for financing purposes, various licenses and permits, a purchase contract, income tax returns for the business, and the bid package distributed by the former ownership. S.T. at Exs. G through T.

When asked by a representative of the BOR, appellant acknowledged that none of the documents presented allocates the value of the personal property involved in the sale. S.T. at 16. See, also, Appellant's brief at 3. Appellant's counsel further stated that he was unaware as to whether any personal property tax returns had been filed, which would separately list the items of personalty at the subject property. Id. The BOR's representative then permitted appellant two weeks so that appellant could provide copies of personal property tax returns and a complete listing of items sought to be excluded from the sale. Id.

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<sup>3</sup> The author of the December 2003 appraisal was not present to testify before the BOR. The appraiser's opinion of value is "as of" December 10, 2003. Although we ultimately find the sale price to be the best evidence of value in the instant appeal, the unauthenticated appraisal submitted by the appellant before the BOR would not be considered because it is not "as of" January 1, 2004 or January 1, 2005, and the appraiser did not testify at either the BOR or this board. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552.

Months later, the BOR reconvened the hearing and announced that appellant failed to provide any of the requested information regarding personal property tax returns or any listing of items sought to be removed from the sale. *Id.*

After considering the evidence before it, the BOR applied the April 2004 sale price of \$1,145,000 to the subject property for 2004 and 2005. *Id.* at 13.

Before this board, appellant presented the testimony and written report of an expert appraiser, E. Hale Whipkey, MAI, who opined to a value for the subject property, and the testimony of a real estate broker, James A. Simmons, who testified as to what price he might list the subject property for sale.

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.

We recognize that an owner of property is permitted to express an opinion regarding the value of his or her property even though not formally qualified as an expert. See, e.g., *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 29, 32. Indeed, this board is accorded considerable discretion in weighing the evidence presented. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405; *Zukowski v. Franklin Cty. Bd. of Revision* (1994), 70 Ohio St.3d 503, 504; *Cardinal Fed. S. & L. Assn.*, supra, paragraph two of the syllabus.

With regard to the sale presented to us, 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.”

The Supreme Court has repeatedly held that the best evidence of the true value of real property is its transfer in an actual, recent, arm’s-length sale. See, e.g., *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 543; *Pingue v. Franklin Cty. Bd.*

*of Revision* (1999), 87 Ohio St.3d 62; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059; *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-5203.

In the instant matter, appellant did not dispute the arm's-length nature of the sale or allege the April 30, 2004 sale was too remote for establishing value on January 1, 2004 or January 1, 2005, and we find nothing in the record that would lead us to conclude otherwise. See *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported (holding that evidence of a sale exhibited through a deed, or conveyance fee statement, not otherwise controverted, is considered competent and probative evidence of a property's value for tax purposes). See, also, *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. Thus, the appellee is left with the burden of demonstrating that, due to circumstances surrounding the sale, the price is not

indicative of true value. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov. 9, 2000), BTA No. 1999-M-150, unreported.

This board has found, for purposes of determining a property's value for ad valorem taxation, that the transfer of personal property may adjust the sale price. See, e.g., *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 10, 1995), BTA Nos. 1993-A-347, et seq., unreported, affirmed (1996), 75 Ohio St.3d 595; *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd. of Revision* (Feb. 18, 2000), BTA No. 1998-M-983, unreported, remanded (Sept. 1, 2000), Montgomery App. No. 18223, unreported (matter remanded to this board solely for the purpose of reducing sale price to reflect personalty alleged to have been included in the sale amount, an issue not previously raised); *Scarborough v. Washington Cty. Bd. of Revision* (Apr. 29, 2008), BTA No. 2006-B-1812, unreported. Compare *Little Silver, L.L.C. v. Rhodes*, Hamilton App. Nos. C-070715, et al., 2008-Ohio-3325, at ¶25 (“In a similar case [i.e., *Harvard Refuse, Inc. v. Cuyahoga Cty. Bd. of Revision* (Feb. 5, 1987), Cuyahoga App. Nos. 51634 through 51677, unreported], the Eighth Appellate District held that the value of property should not be adjusted when, inter alia, ‘the taxpayer’s conveyance fee statement to the auditor denied that the price included payment for any tangible or intangible personal property’ and ‘[t]here was no evidence from which any reasonable person could value the alleged non-realty aspects of the sales transaction.’”).

In both the proceedings before the BOR and this board, the appellant has failed to specifically identify the personalty at issue or to provide any evidence of how the personalty should be valued.

We find that the appellant has failed to provide any competent, probative evidence to support the allocation of value attributable to any personal property involved in the acquisition of the subject property.

Regarding any alleged goodwill component to the sale, in *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, claims were made concerning value attributable to “goodwill,” which were rejected by this board. The court held as follows:

“\*\*\* in the context of valuing property for tax purposes, such an allocation is not to be taken as indicative of the value of the real property at issue unless other indicia on the face of the contract, the circumstances attending the allocation, or some other independent evidence establishes the propriety of the allocation. It follows that neither the board of revision nor the Board of Tax Appeals was obligated to presume the validity of the allocation to goodwill.” *Id.* at ¶19.

See, also, *Rhodes*, *supra*; *Hidmi Enterprises, Inc. v. Montgomery Cty. Bd. of Revision* (Apr. 22, 2008), BTA No. 2006-M-2278, unreported.

Because we find nothing in the record to dispute that the sale in question was arm’s length in nature, this board finds that the best evidence of value of the subject property is its \$1,145,000 sale price paid on April 30, 2004. Accordingly, we need not consider any other evidence of value, including the property owner’s appraisal of the subject real property or the testimony from the real estate broker, Mr.

Simmons. Thus, with no competent or probative evidence in the record rebutting the presumption that the April 2004 sale of the subject property constituted an arm's-length transaction, we find such sale price is the best evidence of value of the subject parcel as of January 1, 2004 and January 1, 2005. 2005 was a reappraisal year in Franklin County, which resulted in slightly different values for 2004 and 2005. It appears that in adopting the sale price for both 2004 and 2005, the BOR retained the 2004 and reappraised 2005 land values for the subject property and allocated the increase in value to the building portions of the valuation. We agree with the BOR's allocations. Therefore, such value shall be allocated as follows:

2004 Parcel No. 153-178	TRUE VALUE	TAXABLE VALUE
LAND	\$ 30,100	\$10,540
BUILDINGS	\$ 0	\$ 0
TOTAL	\$ 30,100	\$10,540

2004 Parcel No. 153-239	TRUE VALUE	TAXABLE VALUE
LAND	\$ 82,300	\$28,810
BUILDINGS	\$1,032,600	\$361,410
TOTAL	\$1,114,900	\$390,220
GRAND TOTAL	\$1,145,000	\$400,760

2005 Parcel No. 153-178	TRUE VALUE	TAXABLE VALUE
LAND	\$ 32,600	\$ 11,410
BUILDINGS	\$ 0	\$ 0
TOTAL	\$ 32,600	\$ 11,410

2005 Parcel No. 153-239	TRUE VALUE	TAXABLE VALUE
LAND	\$ 85,400	\$ 29,890
BUILDINGS	\$1,027,000	\$359,450
TOTAL	\$1,112,400	\$389,340
GRAND TOTAL	\$1,145,000	\$400,750

We order the Auditor of Franklin 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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