

OHIO BOARD OF TAX APPEALS

Seyed A. Maki,)
)
 Appellant,) (CASE NO. 2007-M-548
) (REAL PROPERTY TAX)
 vs.)
) DECISION AND ORDER
)
 Montgomery County Board of Revision)
 and the Montgomery County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant-	Seyed A. Maki, pro se 123 Dell Park Avenue Dayton, Ohio 45419
For the County Appellees -	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura G. Mariani Assistant Prosecuting Attorney 301 West Third St. P.O. Box 972 Dayton, Ohio 45422

Entered May 12, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed on July 16, 2007. Appellant challenges a decision, mailed July 13, 2007, of the Montgomery County Board of Revision (“BOR”).

The subject property is located in the Oakwood taxing district of Montgomery County, Ohio, and further identified as parcel no. Q71 01105 0002. The

Montgomery County Auditor found the true and taxable values of the subject property for tax year 2006 to be as follows:

Parcel No. Q71 01105 0002

	True Value	Taxable Value
Land	\$ 46,020	\$ 16,110
Building	\$ 135,610	\$ 47,460
Total	\$ 181,630	\$ 63,570

Upon consideration of the complaint filed by the appellant, the BOR determined that the correct values for tax year 2006 were as follows:

Parcel No. Q71 01105 0002

	True Value	Taxable Value
Land	\$ 46,020	\$ 16,110
Building	\$ 126,370	\$ 44,230
Total	\$ 172,390	\$ 60,340

Through his notice of appeal, appellant has alleged that the correct values for the property for tax year 2006 are as follows:

Parcel No. Q71 01105 0002

	True Value	Taxable Value
Land	\$ 39,909	\$ 13,968
Building	\$ 109,591	\$ 38,357
Total	\$ 149,500	\$ 52,325

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Montgomery County Auditor, as secretary of the BOR, and the testimony and other evidence received at the hearing convened by this board. (“H.R.”) At that hearing,

Mr. Maki appeared and offered certain exhibits in support of his claim that his property remains overvalued despite the reduction granted by the BOR.

The subject property is Mr. Maki's home, a 1,200-square-foot bungalow constructed in the 1920s. Mr. Maki purchased the home January 31, 2007 for \$149,500 and presented a copy of his closing statement to this board, as well as to the BOR. The property was purchased from prior owners who both had left the Montgomery County area. According to Mr. Maki, the home had been on the market for about eight months and he learned of the offering through publications issued by the Dayton Area Board of Realtors. The property was listed in the area's "multiple listing service." H.R. at 10.

Mr. Maki testified that he had no relationship with the sellers other than as the purchaser of their former home. At the time, Mr. Maki held a realtor's license and acted as an agent in the purchase of the home. H.R. at 11. Mr. Maki was also very familiar with the neighborhood. He had completed a study on the architecture of the area. H.R. at 13. He also provided the board with two additional properties in his neighborhood that had recently sold. Appellant's Exs. C and D.

The BOR reduced the value of Mr. Maki's home, but not to the sale price. Mr. Maki challenged the BOR's determination as he believed the most appropriate value for his home is that for which it sold in January 2007. We agree.

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 the burden to prove

the right to the value asserted. *Cleveland Bd. of Edn. 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; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which 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 an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

“The auditor shall assess all the real estate situated in the county *** at its true value in money ***.”

Further, R.C. 5713.03 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 *** to be the true value for taxation purposes.”

In interpreting the meaning of “true value” as set forth above, the Supreme Court has consistently held that the best evidence of a property’s fair market value or “true value in money” for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443. This position was reinforced in *Berea City School Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, where the Ohio Supreme Court held that it is error to consider appraisal evidence when a property has been the subject of a recent, qualifying sale. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

An arm’s-length sale is comprised of three elements: 1) the sale is voluntary; 2) it generally takes place in an open market; and 3) the parties act in their own self interests. *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23. Mr. Maki’s testimony and evidence persuade this board that his sale was an arm’s-length transaction.

Mr. Maki provided additional evidence regarding sales within his neighborhood, but we find the most compelling evidence to be his sale. Therefore, and considering the competent and probative evidence contained herein, the board finds that the true and taxable values of the subject property for 2006 are as follows:

Parcel No. Q71 01105 0002

	True Value	Taxable Value
Land	\$ 46,020 ¹	\$ 16,110
Building	\$ 103,480	\$ 36,210
Total	\$ 149,500	\$ 52,320

It is the order of the Board of Tax Appeals that the Auditor of Montgomery County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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¹ We value the land in accordance with the auditor's value, which was unchanged by the BOR.