

OHIO BOARD OF TAX APPEALS

Joyce D. Mueller,)
)
 Appellant,) (CASE NO. 2007-M-585
) (REAL PROPERTY TAX)
 vs.)
) DECISION AND ORDER
)
 Ottawa County Board of Revision,)
 the Ottawa County Auditor, and the)
 Danbury Local School District)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant-	Joyce A. Mueller, pro se Thomas W. Mueller, pro se 850 Crosstree Lane Sandusky, Ohio 44780
For the County- Appellees	Mark Mulligan Ottawa County Prosecuting Attorney James Gorry Special Prosecuting Attorney Rich, Crites & Dittmer 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the Appellee- Bd. of Edn.	Britton Smith Peters & Kalail Co., L.P.A. Karrie M. Kalail 3 Summit Park Drive, Suite 400 Cleveland, Ohio 44131

Entered April 28, 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 July 20, 2007. Appellant, Joyce D. Mueller,

challenges the decision, mailed June 20, 2007,¹ of the Ottawa County Board of Revision (“BOR”).

The subject property is located in the Danbury Township taxing district of Ottawa County, Ohio, and further identified as parcel no. 014-02451-03716-00. The Ottawa County Auditor found the true and taxable values of the subject property for tax year 2006 to be as follows:

Parcel No. 014-02451-03716-000		
	True Value	Taxable Value
Land	\$ 202,400	\$ 70,840
Building	\$ 94,200	\$ 32,970
Total	\$ 296,600	\$ 103,810

Upon consideration of the complaint filed by appellant, the BOR determined that there should be no change in value.

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

Parcel No. 014-02451-03716-000		
	True Value	Taxable Value
Land	\$ 160,000	\$ 56,000
Building	\$ 70,000	\$ 24,500
Total	\$ 230,000	\$ 80,500

¹ The statutory transcript submitted by the Ottawa County Auditor under her duties as the secretary of the BOR indicates that a copy of the notice of appeal was not filed with that body until July 23, 2007. The statutory transcript does not provide the method of filing with that body. The notice of appeal was filed by certified mail with the Board of Tax Appeals. R.C. 5717.01 authorizes the date of mailing to be “deemed” the filing date when the notice of appeal is mailed by certified mail or certain authorized delivery services. As the manner in which the notice of appeal was filed was not included in the statutory transcript, we will assume that the notice of appeal was filed by certified mail and that the date identified in the statutory transcript is the actual date of receipt.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript certified by the Ottawa County Auditor, as secretary of the BOR. While a hearing was scheduled, the board was informed that both the appellant and the BOR wished to waive hearing. The BOE did not appear.

The owner and her husband both appeared before the BOR and provided the following testimony: The property was purchased by Mrs. Mueller in 2001 for \$160,000. Originally constructed in 1933, the property has undergone very little improvement since that time. The property is a seasonal property, located approximately three blocks from Lake Erie, and, according to the testimony presented at the BOR's hearing, has no foundation, no insulation, no central heating or air conditioning, with original knob wiring, galvanized water pipes, original windows, and original siding. The floor plan is original, except for an added half bathroom, and the screening of an original open porch. The auditor lists the property as having three bedrooms, but, according to Mr. Mueller's testimony, the area on the second floor used for sleeping is a porch and not properly considered a bedroom. S.T. Hearing Recording.

Mr. Mueller reviewed the auditor's valuations since Mrs. Mueller's ownership. When she purchased the property for \$160,000, the auditor's valuation was \$101,000. The valuation was increased in 2003 to 197,900. The valuation was challenged by Mrs. Mueller and a reduction was granted. In 2006, the valuation was

increased to \$296,600. Mr. Mueller argued that this increase was an increase of approximately 200 percent from 2003.

Mr. Mueller then compared the valuation of the subject property to some of the neighboring property. The first property, 323 Laurel, had a similar land valuation and a slightly higher overall valuation. However, Mr. Mueller claims, this property has a “current market value” of \$799,000. The property at 233 Laurel, with a current auditor’s valuation of \$390,360, sold in 2006 for \$715,000.

It is Mr. Mueller’s claim that Mrs. Mueller’s property should not be valued “in parity” with its market value. Mr. Mueller identified a few additional houses, the assessed values of which were very close to Mrs. Mueller’s property, yet, the properties were larger, updated and, in at least one instance, a year-round home.

The BOR members explained to Mr. and Mrs. Mueller that because of complaints regarding valuation in the subject property’s vicinity, the auditor’s office researched the listing prices of homes as they compared to the actual sales prices obtained. What the auditor’s office concluded was that while the sales were significantly less than the listing prices, the sales were still approximately 20 percent higher than the auditor’s valuations. H.R., Hearing Recording. The board member also stated that the data obtained supports a finding that sales prices were still increasing in 2006. Id. Mr. Mueller, however, again stated that a reduction is

warranted because Mrs. Mueller's property is not in the same condition as many of the neighboring homes.

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.

When a challenge is made to a finding of a board of revision, this board will review the evidence presented to the BOR to determine whether the BOR acted properly in amending or retaining the value of the subject property. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, where the court held, “[w]e find that the BTA in this case is required to meet the standard enunciated in

Black. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

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(B) reads in part:

“The auditor shall assess all the real estate situated in the county at its taxable value [and] *** shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate ***.”

In determining what constitutes “true value in money,” the Supreme Court has 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.

In the absence of data from a recent sale of a subject property, or concurrent with such data in some cases, Ohio Adm. Code 5703-25-07 provides that “true value in money” may be arrived at by considering any or all of the three recognized approaches to value: (1) the market data approach, in which recent sales of comparable properties are weighed; (2) the income approach, in which income attributed to a property is capitalized; and (3) the cost approach, which adds the depreciated cost of the improvements to the land to the value of the land itself.

In this case, the appellant has not presented any recognized appraisal evidence. Mr. Mueller's testimony did not compare the subject property to homes of comparable condition that had recently sold. Instead, Mr. Mueller presented tax valuations of neighboring properties, and, argued that the homes were not similar to his wife's, but were updated, or improved.

The board has previously held that tax valuations are not sales, and a comparative analysis of such valuations 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), BTA No. 1992-H-576, unreported; *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31 (“Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.”) In this case, Mr. Mueller himself admitted that the neighboring properties were not comparable to the subject. Therefore the assessments are not valid comparisons of value.

We would also note that the appellant provided some evidence that her property is not properly identified on the auditor's property record card. However, she did not provide sufficient evidence for this board to conclude to a different value for the sleeping porch (as opposed to the value assigned to a third bedroom). Additionally, the property record card included in the statutory transcript indicates that the property has only one bathroom, and not one and one-half baths. However,

the property record card does not list in detail the manner in which these items are valued. Therefore, this board cannot conclude to a different value.

The burden is placed upon the proponent of change to provide sufficient competent and probative evidence that the value assessed by the BOR is not correct. We find that the appellant's evidence is not sufficient for this board to conclude that the value of the property is other than that found by the BOR.

Therefore the board finds that the true and taxable values of the subject property for 2006 are as follows:

Parcel No.

014-02451-03716-000

	True Value	Taxable Value
Land	\$ 202,400	\$ 70,840
Building	\$ 94,200	\$ 32,970
Total	\$ 296,600	\$ 103,810

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

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