

## OHIO BOARD OF TAX APPEALS

William C. Behrens,	)	CASE NO. 2007-T-1366
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Cuyahoga County Board of Revision	)	
and Cuyahoga County Auditor,	)	
	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant -	William C. Behrens, pro se 3124 Bremerton Road Pepper Pike, Ohio 44124
---------------------	--

For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
-------------------------------	--

Entered January 13, 2009

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

William C. Behrens appeals from a decision of the Cuyahoga County Board of Revision, in which the BOR determined the true value of permanent parcel number 872-09-009 to be \$464,000 for tax year 2006. Mr. Behrens argues that the correct true value should be \$400,000.

The subject property consists of approximately 1.2 acres of land. The land is improved with a brick and frame residence that is approximately 4,341 square feet in size. The ranch-style home was built in 1962. It has five bedrooms and 4.5 baths.

Initially, we note that the parties have waived an opportunity to present additional evidence before this board. See *Streetsboro City School Dist. Bd. of Edn. v. Portage Cty. Bd. of Revision* (Interim Order, Oct. 6, 2006), BTA Nos. 2005-T-704, 705, unreported (approving hearing waiver and scheduling briefs.) 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.

For tax year 2006, the auditor valued the subject property at \$498,600. Mr. Behrens filed a complaint with the BOR, seeking a decrease in the value to \$400,000. On September 19, 2007, the BOR conducted a hearing on the complaint. Mr. Behrens appeared and testified that he believed the subject to be overvalued because homes in his neighborhood have not been selling, despite being listed for sale for an extended period of time. He further noted that there were some homes for sale that are standing vacant. In support, he presented the board information about three

properties located near the subject. Each had been listed for sale for more than one year. One of the homes was appraised by the county auditor at \$750,000; however, Mr. Behrens testified that the owner was seeking a \$350,000 sale price. As to the other two, Mr. Behrens had no information about the asking prices or the current appraised values. He testified that each owner was willing to sell at any offer simply to get rid of the property. Mr. Behrens admitted that none of the three listings was similar to the subject property. Nonetheless, he believed that the number of neighborhood homes listed for sale demonstrated that the current valuation was “not reasonable.” S.T. at BOR Hearing Record. Upon review, the BOR reduced the value of the subject to \$464,000, a reduction of \$34,600 from the auditor’s original value. The BOR did not state the reason for the decrease; however, we do note that someone has handwritten on the BOR’s decision worksheet the word “comp.” S.T. at A, page 2.

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.

Upon review, we must conclude that Mr. Behrens has failed to offer evidence sufficiently probative to prove his assertion of value. Mr. Behrens essentially argues that the number of homes listed for sale, combined with low asking prices, demonstrates that a reduction is warranted. Such generalized arguments are not probative evidence of the subject property's value, especially where, as here, the appellant admits that the properties upon which he relies are not comparable to the subject. Moreover, we have consistently held that the price at which property is listed is not necessarily indicative of market value, nor does it constitute the upper limit at which the property would sell. "The fact that the property has been listed but remains unsold at the asking price is not persuasive in determining a value for the property." *Jones v. Montgomery Cty. Bd. of Revision* (June 24, 2005), BTA No. 2004-J-804, unreported, at 4. See, also, *Soc. Natl. Bank v. Carroll Cty. Bd. of Revision* (Apr. 19, 1996), BTA No. 1994-M-454, unreported; *Matthews v. Hamilton Cty. Bd. of Revision* (Feb. 22, 2008), BTA No. 2006-V-820, unreported; *Taylor v. Pickaway Cty. Bd. of Revision* (Nov. 30, 2007), BTA No. 2006-V-815, unreported; *Grissom v. Noble Cty. Bd. of Revision* (July 20, 2007), BTA Nos. 2006-M-491, 741, unreported; *Meijer Stores L.P. v. Defiance Cty. Bd. of Revision* (Mar. 3, 2006), BTA No. 2003-T-2035, unreported; *Sandelman v. Licking Cty. Bd. of Revision* (Sept. 2, 2005), BTA No. 2003-

M-1508, unreported. Cf. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397 (holding that unaccepted offers to purchase do not constitute a “sale price” and so do not raise a presumption that they reflect the true value of the property, and that an owner’s testimony as to such offers is hearsay, to which the BTA is not required to assign any weight).<sup>1</sup>

Accordingly, in the absence of competent and probative evidence that conclusively establishes the value of the subject parcel, we are compelled to find that Mr. Behrens has not met his burden of supporting a decrease in the subject property’s value. *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. Therefore, upon consideration of the existing record and the applicable law, the Board of Tax Appeals determines that the true and taxable values of the subject property are as follows for tax year 2006:

Parcel 872-09-009	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 90,600	\$ 31,700
BUILDINGS	<u>\$373,400</u>	<u>\$130,700</u>
TOTAL	\$464,000	\$162,400

---

<sup>1</sup> In addition, Mr. Behrens testified as to the appraised value of one of the properties listed for sale. Although he did not rely upon the appraised value as evidence of the subject’s correct valuation, we note 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. *WJK 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.

We order the Auditor of Cuyahoga 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.

ohiosearchkeybta