

**OHIO BOARD OF TAX APPEALS**

Jeff Adams, )  
 )  
 Appellant, ) (CASE NO. 2007-V-980  
 ) (REAL PROPERTY TAX)  
 )  
 vs. ) DECISION AND ORDER  
 )  
 Montgomery County Board of Revision )  
 and Montgomery County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Jeff Adams, pro se  
102 Valleyview Drive  
Englewood, Ohio 45322

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Laura Mariani  
Assistant Prosecuting Attorney  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422

Entered April 28, 2009

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

Jeff Adams appeals from a decision of the Montgomery County Board of Revision, in which the BOR determined the 2006 true value for permanent parcel number R72-056-09-0045. The Montgomery County Auditor originally determined the true value to be \$64,010. After conducting a hearing, the Montgomery County Board of Revision (“BOR”) determined the true value to be \$54,960. Mr. Adams asserts that the correct true value for the parcel should be \$39,000.

The subject property is a duplex residential home, operated as two rental units with a detached garage that is also rented. The duplex was constructed in 1947.

Statutory Transcript (“S.T.”) at F. Mr. Adams argues that he purchased the subject in an arm’s-length transaction on January 6, 2006 for a total purchase price of \$39,000.

Before the BOR, Mr. Adams produced a copy of the settlement statement and purchase contract evidencing the January 6, 2006 purchase of the property for \$39,000. S.T. at A. Additionally, Mr. Adams provided information concerning comparable sales in the subject’s neighborhood. Id. The county auditor’s records confirm the January 2006 sale. Id. at F. Although noted within the auditor’s certification on DTE Form 3, the BOR failed to include a copy of its hearing transcript. Appraisal notes contained within the record describe that Mr. Adams’ purchase of the subject property for \$39,000 on January 6, 2006 was a “hand to hand sale,” “not on market,” and “[N]ot a sale on the open market. Owner knew the guy that rented the garage \*\*\*.” Id. at C.

Before this board, Mr. Adams testified that a friend informed him that the property was for sale. Hearing Record (“H.R.”) at 10. Mr. Adams was familiar with the property because he had worked on the premises years ago and was told that the owner had passed away and that the estate had the property for sale. Id. at 11. Although there was no “for sale” sign on the property, the property was listed for sale through a local realtor. Mr. Adams testified that because the neighborhood has a high crime rate, “for sale” signs are not used because they only attract vandals who will steal the copper from the home. Id. at 10. Mr. Adams testified that the property was listed for sale for \$45,000; he offered \$35,000, and after negotiations, he agreed to purchase it for \$39,000. Id. at 11-12. All the negotiations occurred through the realtor that had listed the property for sale. Id. at 12.

At the outset, we note the auditor in his certification indicates that the appellant's notice of appeal was received by the BOR on September 28, 2008. See S.T. at DTE Form 3. The last day to have filed the notice of appeal with this board and with the BOR fell on September 26, 2008. At hearing counsel for the county appellees acknowledged that there had been a change in personnel and a misunderstanding about the need to include a copy of the envelope received by the BOR to identify whether the notice of appeal was delivered by U.S. certified mail or authorized delivery service versus regular mail. See, generally, R.C. 5717.01. Mr. Adams testified that he recollected that he delivered both the notice of appeal and the copy of the notice of appeal to the BOR via U.S. certified mail. H.R. at 7. The notice of appeal filed with this board was sent U.S. certified mail, postmarked September 25, 2008. This board concludes that the BOR failed to properly deem the notice of appeal to be timely filed by its U.S. certified mail postmark. Counsel for the county appellees had no objection to this board's construing the postmarked filing date of the notice of appeal with the BOR as September 25, 2008 based upon Mr. Adams' testimony. Id. at 8.

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.

With regard to the sale now before 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.” 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; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *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*, 119 Ohio St.3d 563, 2008-Ohio-5203.

“[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*, 112 Ohio St.3d 309, 2007-Ohio-6, 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*, 2006-Ohio-5096.

Upon review, we find that all elements of an arm’s-length sale are present. Despite the BOR’s appraiser’s notes to the contrary, the property was listed for sale on the open market. Although the buyer has previously worked on the premises and was informed through a friend that the property was listed for sale, we find from the record that the buyer and seller each acted in their own best interests. There is no evidence of compulsion or duress. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported (holding that a sale price was at arm’s length despite the fact that the buyer had a fifteen-year business relationship with the seller-landlord; there was no evidence of any collusion between the parties, and it was apparent that both parties acted in their own self-interest). See, also, *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirmed (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported. Copies of the closing statement and purchase contract disclose nothing unusual about the terms of the sale. S.T at Ex. A. We also find that the sale (five days after tax lien date) was within a reasonable length of time to tax lien date and, therefore, constitutes a “proper measure of value.” *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, at 59.

Upon review, we conclude that Mr. Adams has satisfied his burden of persuasion and has come forward with competent and probative evidence of value for the subject parcels for tax year 2006. *Columbus*, supra. Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield* and *Mentor Exempted*, supra. Failure of an appellee to present rebuttal evidence may, upon our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra. See, also, *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value."). Here, the county appellees have elected to not provide us with any additional evidence of value. H.R. at 18.

Accordingly, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2006:

<b>Parcel R72-056-09-0045</b>	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$ 7,430	\$ 2,600
BUILDINGS	\$ <u>31,570</u>	\$ <u>11,050</u>
TOTAL	\$39,000	\$13,650

We order the Auditor of Montgomery 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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