

**OHIO BOARD OF TAX APPEALS**

Joe Smith, )  
 )  
 Appellant, ) CASE NO. 2004-A-1033  
 )  
 vs. ) (REAL PROPERTY TAX)  
 )  
 Montgomery County Board of Revision and ) DECISION AND ORDER  
 Montgomery County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Joe Smith, pro se  
813 Olympian Circle  
Dayton, Ohio 45427

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Laura G. Mariani  
Assistant Prosecuting Attorney  
301 West Third Street, 5<sup>th</sup> Floor  
P.O. Box 972  
Dayton, Ohio 45422

Entered June 24, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Montgomery County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2003.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, and the record of the hearing before this board.

The subject real property, appellant’s home containing approximately 1,800 square feet, is located in the Jefferson Township taxing district, Montgomery County, Ohio, and appears on the auditor’s records as parcel number R725-169-19-15. The value of the parcel, as determined by the auditor and by the board of revision,<sup>1</sup> is as follows:

	AUDITOR	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 20,000	\$ 7,000
Bldg	93,070	32,570
Total	\$113,070	\$ 39,570

	BOARD OF REVISION	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 20,000	\$ 7,000
Bldg	91,440	32,000
Total	\$111,440	\$ 39,000

In his notice of appeal to this board and through his testimony, appellant (“Mr. Smith”) contends that the auditor and board of revision have overvalued the subject property and he seeks a valuation for the subject of \$89,000.

Mr. Smith appeared before this board to testify and offer exhibits,

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<sup>1</sup> The original statutory transcript certified to this board by the Montgomery County Board of Revision indicates that a decrease was applied to the subject property’s valuation by the board of revision. However, as demonstrated by the amended statutory transcript cover sheet, the board of revision actually made no change to the auditor’s original valuation of the subject, i.e., \$93,070. Thereafter, due to a re-measure of the subject property by the auditor following the board of revision hearing, the auditor made a “clerical change” to the subject’s value, reducing it to \$91,440.

specifically photographs of the subject property depicting its condition. See Ex. A. It appears that Mr. Smith has based his opinion regarding the alleged overvaluation of the subject property on two issues. Mr. Smith contends that: 1) the subject property is overvalued based upon the tax values of adjacent properties and, 2) the subject property is overvalued due to the condition of the property.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

First, with regard to the contention that the tax valuations of nearby properties are more reflective of the subject than its current valuation, we must reiterate our past-stated position that evidence of the tax valuation of land neighboring that which is under consideration is not necessarily helpful. "Tax valuations are not sales, and a comparative analysis thereof 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. See, also, *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No. 1992-B-879,

unreported; *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported; *Davis v. Butler Cty. Bd. of Revision* (Apr. 29, 1994), BTA No. 1992-T-923, unreported. In addition, while Mr. Smith indicated that he had been inside the two comparable properties he cited, there is no evidence in the record to support his conclusions that these properties are, in fact, comparable to the subject. Thus, even if the tax valuation of a comparable neighboring home could be considered relevant to our determination, there is insufficient evidence before this board to establish the comparability of any of the cited properties. Further, when we consider that appellant added a room measuring approximately 400 square feet to the subject in 2000, coupled with the fact that there is no evidence in the record that there have been any significant additions/updates to the comparable properties, a reasonable inference can be drawn that the subject's market valuation could logically be higher than that of the comparables.

With regard to the condition of the subject, we note that “[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for repairs that is the important factor to be determined by the BTA.” *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227. Thus, we must be provided some kind of evidence to indicate the corresponding decrease in market value in the subject due to its deficiencies. Without appraisal or other evidence to correlate the subject's defects with a specific decrease in market value, this board is

unable, on its own, to quantify the impact the subject's condition has on its real property tax valuation.

We acknowledge that "Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property." *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. However, while Mr. Smith may be competent to offer an opinion as to the value of his own property, the testimony he offered must also be probative and credible as to market value. Mr. Smith is not an appraiser by trade, nor does he have a background or training in the appraisal of real property. We have indicated the problems with the analysis that was presented, and, without more, we find that appellant has not offered sufficient, probative evidence of the subject's value for the tax year in question.

It is this board's statutory duty to find taxable value herein. R.C. 5717.03. As such, one of our primary concerns relates to the market value of the subject property. Accordingly, with no other evidence of market value before us that we find to be probative and credible, we will utilize the county board of revision's valuation of the subject. As the Supreme Court stated in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, "[W]here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation \*\*\*." Thus, we adopt the valuation for the subject property, as established by the board of revision. Specifically, the value of the subject property, as of January 1, 2003, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 20,000	\$ 7,000
Bldg	91,440	32,000
Total	\$111,440	\$ 39,000

It is the decision and order of the Board of Tax Appeals that the Montgomery County Auditor shall list and assess the subject property in conformity with this decision.

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