

OHIO BOARD OF TAX APPEALS

Cheryl Hudak,)
)
 Appellant,) CASE NO. 2004-A-879
)
 vs.) (REAL PROPERTY TAX)
)
 Erie County Board of Revision and) DECISION AND ORDER
 Erie County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - NO APPEARANCE
Cheryl Hudak, pro se
515 Cedar Point Road
Sandusky, Ohio 44870

Notice of Appeal
Filed By - Thomas J. Stevens, pro se
515 Cedar Point Road
Sandusky, Ohio 44870

For the County
Appellees - Rich, Crites & Dittmer, LLC
James R. Gorry
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered June 10, 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 Erie 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.

Before we consider the merits of the instant appeal, we must first address a motion to dismiss made by counsel to the county appellees at the hearing before this board. Specifically, the notice of appeal was filed in appellant Cheryl Hudak's name, but was signed by Thomas J. Stevens, a friend, who is not married to Ms. Hudak, who is not an attorney, and who has no financial interest in the subject property. HR at 6-8. Counsel, in his motion, stated that:

“Based upon Mr. Stevens’ description of his relationship to the owner, Ms. Cheryl Hudak, and that he is not married to Ms. Hudak, he has no ownership interest in the property. According to the Notice of Appeal, he prepared and signed the Notice of Appeal on behalf of Ms. Hudak since he is – there’s no evidence that he’s an attorney authorized to practice law in the State of Ohio nor does he have an ownership interest in the property, nor was he a party below, he did [not have] the authority to file the Notice of Appeal on behalf of Ms. Hudak, and I would move to dismiss the Notice of Appeal based upon those reasons.”

At the outset, we find that the subject notice of appeal meets all of the requirements for such notice, as set forth in this board’s rules (Ohio Adm. Code 5717-1-04) and statute (R.C. 5717.01). As this board stated in *West Chester Village Mall v. Butler Cty. Bd. of Revision* (Interim Order, Mar. 26, 1999), BTA No. 1998-S-1102, unreported:

“[T]he Board of Tax Appeals, as a matter of long standing practice, has accepted jurisdiction of appeals where the notice of appeal was filed by a corporate taxpayer’s officer or other agent relying upon the decision in *Jemo*

Associates, Inc. v. Lindley (1980), 64 Ohio St.2d 365. In *Jemo*, the Board had initially dismissed a notice of appeal since it had been signed by an accountant, not a corporate officer or attorney as required by Ohio Adm. Code 5717-1-08(C) [Repealed.] Since the corporate accountant could not act in a representative capacity for the corporation, the notice of appeal was found jurisdictionally defective by the Board. The Supreme Court reversed the Board's decision, observing the Board is not vested with jurisdiction to define its jurisdiction by rule, and held an agent entitled to sign a notice of appeal need not be a corporate officer or an attorney to confer jurisdiction on this Board. The Court found nothing in R.C. §5717.02 which 'suggests that the General Assembly intended an appeal by a corporation be jurisdictionally sufficient only where an agent who signs its notice of appeal is either an officer thereof or an attorney.' *Id.*[.] page 367; see footnotes 2 and 3. The Court also evidenced its concern with a sanction short of dismissal to assure compliance without forfeiting the corporation's right of appeal. The Court also indicated some willingness to consider circumstances underlying such failure to have an officer or attorney sign the notice of appeal. *Id.* page 369." *Id.* at 2-3.

Arguably, the county made its motion based upon the Supreme Court's ruling in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, wherein the court held in its syllabus: "The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." But we have previously considered the court's ruling in *Sharon Village* in light of its previous ruling in *Jemo*. In *Tranor Co., Ltd. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Mar. 20, 1998), BTA No. 1997-N-712, unreported, we stated:

"The *Jemo* decision was also considered by the Supreme Court when rendering its decision in *Sharon Village*. We must presume from the Court's reference, that the question of unauthorized practice of law is not relevant to the filing of a notice of appeal with the Board where the notice was in all other respects sufficient to establish jurisdiction in

the Board. Suffice it to say, until the Court holds otherwise, we shall continue our reliance upon the ruling in *Jemo*, supra, and accept jurisdiction of notices of appeal filed by corporate officers.” Id. at 4-5.

We have found no case law to “implicitly or explicitly overrule its [the court’s] previous holding in *Jemo*. As we previously stated in *Tranor*, until the Court holds otherwise, we shall continue our reliance upon the ruling in *Jemo* and accept jurisdiction of notices of appeal filed on behalf of corporations by non-attorney representatives,” or, as in this matter, filed on behalf of the property owner by an agent. *West Chester* at 4. See, also, *Zalben v. Tracy* (May 11, 2001), BTA No. 1998-T-1303, unreported. Thus, based upon the foregoing, we find that the county’s motion is not well taken. Accordingly, said motion is denied and we will proceed to determine the merits of this appeal.

The subject real property, appellant’s 1,500 square foot home and 600 square foot garage, is located in the Sandusky city (55) taxing district, Erie County, Ohio, and appears on the auditor’s records as parcel number 55-00129.000. The value of the parcel, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$137,250	\$ 48,040
Bldg	223,180	78,110
Total	\$360,430	\$126,150

In her notice of appeal to this board and through the testimony of a witness who appeared on her behalf, Mr. Stevens, appellant (“Ms. Hudak”) contends that the auditor and board of revision have overvalued the subject property, not only

for the tax year in question, but also for tax years 1989-2004. Ms. Hudak seeks a valuation for the subject of \$265,000.¹

Mr. Stevens appeared before this board to testify and offer exhibits² containing information about the subject, as it compares to other homes in the area. See Exs. 1-3. Specifically, it appears that Ms. Hudak has based her opinion regarding the alleged overvaluation of the subject property on three issues. Ms. Hudak contends that: 1) the subject land value is too high based upon the sale of the lot adjacent to the subject for \$85,000, some 2-3 years ago; 2) the subject property is overvalued based upon sales of nearby homes within the last year (See Ex. 1); and 3) the subject property is overvalued based upon the tax values of adjacent properties (See Ex. 2).

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

¹ When asked, Mr. Stevens testified that Mrs. Hudak would probably sell the subject property for \$300,000. H.R. at 19, 21.

² Appellant, through her witness, offered Ex. 3, an appraisal report of the subject property for tax year 2003, completed at the request of the county. Such report, which opines to a value of \$490,000, is clearly not supportive of the appellant's position, and, as appellees' counsel pointed out in his objection to the use of such report by appellant, the author of such report was not present before this board to elaborate upon or support/defend the conclusions made therein. Accordingly, we will not rely upon the appraisal report in our valuation.

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 several 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, there is no testimony or evidence in the record to establish that Ms. Hudak or her witness was personally familiar with any of the “comparable” properties; arguably, appellant’s conclusions that these properties are somehow comparable to the subject can only be based upon the outside appearance of the homes and their similarity in style and square footage 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.

With regard to the sale of the lot adjoining the subject property some two years prior to the tax lien date under consideration, we are unable to rely upon the price

obtained for a variety of reasons. First, there is no evidence of the sale in the record, and, as such, we have no details about the sale, including when it occurred, the terms of the sale, and ultimately, the reliability of the sale as an indicator of value. In addition, we would have to investigate the market conditions, both at the time of the sale of the adjoining lot as well as at tax lien date, in order to determine whether the sale was too remote in time from the tax lien date to be deemed representative of the subject's value. See *Equity Strongsville II. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

Finally, with regard to the list of sales of nearby properties contained in appellant's Exhibit 1, we find that this listing would only impact upon the subject's valuation if the sales were of properties proven to be comparable to the subject. Thus, without further expert analysis of this data, i.e., from a licensed appraiser, we are unable to conclusively determine whether these sales are of truly comparable properties, based upon such characteristics as their age, size, condition, and location. Without same, we are unable to draw any conclusions from the data provided, especially considering that many of the sale properties that were provided appear to be vastly different from the subject, which would require significant adjustment to make them comparable to the subject.

Finally, on her notice of appeal, Ms. Hudak requested that this board consider the subject property's tax valuation for the years 1989-2004. However, a complaint before the board of revision cannot affect tax years prior to the current tax

year. See *Wortman v. Licking Cty. Bd. of Revision* (Aug. 13, 1993), BTA No. 1992-M-1040, unreported; *Big Walnut, Inc. v. Franklin Cty. Bd. of Revision* (Oct. 30, 1984), BTA No. 1982-A-1082, unreported. Therefore, the board of revision acted properly when it determined value only for tax year 2003, and, accordingly, this board's jurisdiction is limited to the tax year decided by the board of revision, and any appropriate carryover year(s). See R.C. 5715.11, 5715.19.

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 Ms. Hudak may be competent to offer an opinion as to the value of her own property, the testimony she offered through her witness must also be probative and credible as to market value. Neither Ms. Hudak nor her witness is an appraiser by trade, nor do they 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	\$137,250	\$ 48,040
Bldg	223,180	78,110
Total	\$360,430	\$126,150

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

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