

**OHIO BOARD OF TAX APPEALS**

Norval L. DePaul, )  
 )  
 Appellant, ) (REAL PROPERTY TAX)  
 )  
 vs. ) DECISION AND ORDER  
 )  
 Montgomery County Board of )  
 Revision and the Montgomery )  
 County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Norval L. DePaul, pro se  
3756 Reinwood Drive  
Dayton, Ohio 45414

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Douglas M. Trout  
Assistant Prosecuting Attorney  
301 West Third Street  
5<sup>th</sup> Floor; P. O. Box 972  
Dayton, Ohio 45402

Entered June 24, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant, Norval L. DePaul, from the final determination of the Montgomery County Board of Revision (“BOR”). The BOR determined the taxable value of the subject property for tax year 2003.

The subject real property is a residence located in the Butler Township/Vandalia Schools taxing district, Montgomery County, Ohio, and

appears on the Montgomery County Auditor's ("auditor") records as permanent parcel number A01-213-9-39.

The values of the subject, as determined by the auditor and the BOR for tax year 2003, are as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 30,250	\$ 10,590
Building	<u>88,140</u>	<u>30,850</u>
Total	\$ 118,390	\$ 41,440

In his notice of appeal, Mr. DePaul maintains that the auditor and BOR have overvalued the property and contends that the subject property values should be reduced to a total true value of \$110,000.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified by the BOR ("S.T."). Although notice of this board's evidentiary hearing was duly sent to the parties, no one appeared at this hearing.

The Ohio Supreme Court has held that where the only evidence is the record of the proceeding before the BOR, this board must examine the statutory transcript in order to perform our statutory duty of making a de novo finding of value. In this regard we acknowledge *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, wherein the court held:

"The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the

valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision's determination \*\*\*."

The Supreme Court again addressed the review standard this board must follow in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, wherein the court stated:

"We 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."

With the proper standard of review in mind, we shall examine the evidence submitted to the BOR.

At the BOR hearing, Mr. DePaul testified that he had talked to a realtor 4 or 5 years ago and was given an estimate of value for the subject property around \$105,000. He also testified "when I bought the house it was \$200 and same a half now over \$1100." He went on to discuss some older sales he remembered which he thought was about 4 to 6 years ago.

We begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its 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 rights 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 competent and probative evidence of value is presented by an appellant, other parties asserting a different value then have the corresponding burden to provide evidence which rebuts appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Upon review of the record, we find that there is no valuation evidence before us which would allow us to find a reduction in the value of the subject property. The only information presented by appellant is some very general vague statements about an old conversation with a realtor many years prior to the tax lien dates, and similar statements regarding old sales of properties about which we have no details or relevant information.

Based upon the foregoing, we find that the 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, “(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 BOR. Specifically, the value of the subject property, as of January 1, 2003, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 30,250	\$ 10,590
Building	<u>88,140</u>	<u>30,850</u>
Total	\$ 118,390	\$ 41,440

The Montgomery County Auditor is ordered to list and assess the subject property in conformity with this decision and order.

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