

OHIO BOARD OF TAX APPEALS

Hubbard Exempted Village School District)	
Board of Education,)	
)	CASE NO. 2003-R-1172
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Trumbull County Board of Revision,)	
Trumbull County Auditor, and)	
Lighting Products, Inc.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Board of Education	- Britton, Smith, Peters & Kalail Co., LPA David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, OH 44131
For the County Appellees	- Dennis Watkins Trumbull County Prosecuting Attorney Jason C. Earnhart Assistant Prosecuting Attorney 160 High Street 4 th Floor Administration Building Warren, OH 44481
For the Appellee Property Owner	- No Appearance Lighting Products, Inc. 101 North Eagle Street Geneva, OH 49041

Entered October 8, 2004

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by the Hubbard Exempted Village School District Board of Education (“BOE”). The

BOE appeals from a decision of the Trumbull County Board of Revision (“BOR”), in which it determined the taxable value of the subject property for tax year 2002.

The Trumbull County Auditor and the BOR determined the true and taxable values of the subject property for 2002 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$121,800	\$ 42,630
Building	<u>\$734,000</u>	<u>\$256,900</u>
Total	\$855,800	\$299,530

The BOE disagrees, and contends that the true and taxable values of the subject property for 2002 should be increased to:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 121,800	\$ 42,630
Building	<u>\$ 953,200</u>	<u>\$ 333,620</u>
Total	\$1,075,000	\$ 376,250

The subject property is located at 400 Myron Street, Hubbard, Ohio, in the city of Hubbard taxing district, Trumbull County, Ohio. It is identified on the county’s records as permanent parcel numbers 02-300049 and 02-300051. The subject property is improved with a commercial building, used as a light manufacturing and assembly plant.

The BOE filed a complaint, seeking an increase in value at the BOR. Lighting Products, Inc. did not file a counter-complaint. At the BOR hearing, a deed was presented by the BOE, showing that the subject property transferred on August 25, 2000 for a sales price of \$1,075,000. The conveyance fee statement was not presented at that

time because it could not be located in the county records.¹ The property owner did not appear at the BOR. After considering the record, the BOR retained the value as determined by the auditor for 2002. It is from that decision that the BOE now appeals.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR (“S.T.”), and the BOE’s brief. The BOE and BOR waived hearing in this matter, but the board was unable to contact the property owner by telephone. Therefore, a briefing schedule was assigned and sent to all the parties, but only the BOE filed a brief.

In an appeal from a board of revision valuation, this board must determine the true value of the subject property. R.C. 5717.03. Specifically, R.C. 5717.03 reads:

“In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of ***.”

While the action of a county board of revision is given a presumption that it was taken in good faith and reflects sound judgment, the decision of a county board of revision regarding the value of property is not to be accorded a presumption of correctness. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. The Board of Tax Appeals must make an independent de novo determination as to a property’s true value predicated upon the preponderance of the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122.

¹ Although not included in the statutory transcript, it appears as if the BOE sent a copy of the conveyance fee statement to the BOR subsequent to the hearing. See S.T., June 18, 2003 letter from David H. Seed to the Trumbull County Board of Revision.

A party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 335; *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. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers, Inc.*, supra, and *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we 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.

In the present appeal, the record establishes that there was a sale of the subject property on August 25, 2000, sixteen months before the tax lien date, January 1, 2002. It is long established that the "best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Further, R.C. 5713.03 provides.

“In determining the true value of any tract, lot or parcel of real estate under this section, if such 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 sales price of such tract, lot or parcel to be the true value for taxation purposes.”

Thus, where there is an actual sale of real property, which is both recent and arm’s length, the county auditor, as well as this board, must consider such a sale as evidence of the property’s true value. *Conalco* and *Park Investment*, supra.

While a sale may be the “best evidence” of value, it is not the only evidence. Consequently, the Supreme Court of Ohio has held that there exists a rebuttable presumption that a recent, arm’s-length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61. Where the inference is raised that the sale price does not reflect true value, we must at least review and consider other probative evidence of the subject property’s true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, 4. The burden rests with the opposing party, the owner in this instance, to present evidence to rebut the presumption that the sale price reflects the property’s true value. *Cincinnati Bd. of Edn.*, supra, 327.

In the present matter, the BOE presented evidence at the BOR of a recent arm’s-length sale of the subject property for \$1,075,000. Although sparse, there is nothing in the record to indicate that any of the parties contest that the sale was recent or arm’s length. However, the BOR questioned whether the sale may have included personal property, which should have been deducted from the sales price in order to determine the amount attributable to the real estate. Although the conveyance fee statement was not able

to be located within the county records before the hearing, the BOR acknowledged in all likelihood the conveyance fee statement would not have broken out the value of the personal property from the total sales price. Without further verification of the sale and an inquiry and determination of the amount of personal property involved, the BOR rejected the sales price.

Just as on appeal to this board from a BOR decision, a party challenging the value determined by the auditor at the BOR has the burden of establishing a different value by competent, reliable, and probative evidence. Once competent and probative evidence of true value has been presented by the complaining party, the other party has a corresponding burden of providing evidence to rebut the complainant's evidence. Lighting Products, Inc. was afforded the opportunity to present further evidence of value to the BOR at hearing as well as to this board, which it chose not to do.

Therefore, based upon the foregoing, the board finds that there was a recent, arm's-length sale of the subject property for \$1,075,000. Further, Lighting Products, Inc. failed to present sufficient competent, probative, and reliable evidence to rebut the presumption that the sale price reflects the property's true value. *Cincinnati Bd. of Edn.*, supra, 327.

Therefore, taking the record as a whole, we find that the value of the subject property as of January 1, 2002, shall be as follows:

PERMANENT PARCEL NUMBER 02-300049:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 84,000	\$ 29,400
Building	<u>\$ 951,400</u>	<u>\$ 332,990</u>
Total	\$1,035,400	\$362,390

PERMANENT PARCEL NUMBER 02-300051:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 37,800	\$ 13,230
Building	<u>\$ 1,800</u>	<u>\$ 630</u>
Total	\$ 39,600	\$ 13,860

Accordingly, the Trumbull County Auditor is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

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