

**OHIO BOARD OF TAX APPEALS**

Walter T. Podraski, )  
 )  
 Appellant, ) (CASE NO. 2004-B-536  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) DECISION AND ORDER  
 )  
 Erie County Board of Revision and )  
 Erie County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Richard R. Huber  
 Attorney at Law  
 P. O. Box 1350  
 Milan, Ohio 44846

For the County Appellees - James R. Gorry  
 Attorney at Law  
 300 East Broad Street  
 Suite 300  
 Columbus, Ohio 43215-3704

Entered June 17, 2005

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

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed herein by the above-named appellant from a decision of the Erie County Board of Revision (“BOR”), wherein said board determined the taxable value of the subject real property for tax year 2003.

The subject property is located in the Berlin Township (01) taxing district of Erie County, Ohio, and appears on the auditor’s records as parcel no.

01-00775.000. The subject property is improved with appellant's business, a local tavern.

The Erie County Auditor and BOR found the true and taxable values to be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 41,700	\$ 14,600
Building	<u>21,530</u>	<u>7,540</u>
Total	\$ 63,230	\$ 22,140

Appellant disagrees with the above-stated values and contends in his notice of appeal that the correct total true value should be \$45,000 for tax year 2003.

This matter is now considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the testimony and evidence presented at the hearing before that board. Appellant waived an evidentiary hearing before this board. The county appellees, although notified of the hearing before this board, did not appear.

At the outset, we acknowledge the affirmative burdens which exist in an appeal to this board from a decision of a county board of revision finding value. In its decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, the Supreme Court of Ohio made it clear that in an appeal filed pursuant to R.C. 5717.01, there exists no presumption that the values found by a board of revision are correct. Nevertheless, an appellant has the

burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319. While this board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, de novo determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon \*\*\*.”

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus

in *In Re Estate of Sears* [(1961)], 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” *Id.* at 412.

The Supreme Court of Ohio has specifically recognized that an owner of real property, by virtue of his/her interest in the property, is competent to testify regarding its market value. *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, paragraph two of the syllabus; *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. Nevertheless, the weight to be accorded such evidence is left to the sound discretion of this board. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs two and three of the syllabus.

Appellant’s evidence consists of Mr. Podraski’s testimony at the BOR hearing. Therein, he testified as follows regarding the subject property:

“Mr. Podraski: Well, like I mentioned, I didn’t do any improvement, matter of fact the property is run-down; matter of fact, it has violation from the health department.” BOR Hearing Record (“H.R.”)

He went on to state that the subject property is in a “depressed area, unemployment and everything.” H.R.

The impact of adverse conditions upon the true value of real property has been previously considered by this board. In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, we held that the mere existence of a condition does not itself mandate a reduction in value. “A recitation of defects in a taxpayer’s property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the diminuation (sic) in value caused by the defects, or some evidence of the value of the property as so diminished.” *Id.* at 7. *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227. Evidence must also be presented to show the extent to which the defects support appellant’s opinion of value.

In a review of the record, in this matter, we find that appellant has not provided any detail of the defects of the subject property. Nor are we given any information about how those defects may have affected the value of the property. We have no cost of repair figures before us and no basis upon which to determine value. We simply have two general statements from Mr. Podraski.

We determine that appellant has failed to meet his burden of presenting probative evidence in support of the value he has asserted.

When this board reviews a decision of a county board of revision, it is our duty to establish the taxable value of the property. *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13. Having thoroughly reviewed the existing record, we find the BOR’s value reasonable and reflective of the fair

market value of the property. We also find nothing in the record which would support a further reduction. When a taxpayer has failed to provide competent, probative evidence of a property's value, this board may affirm the value determined by the BOR. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 2003 was as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 41,700	\$ 14,600
Building	<u>21,530</u>	<u>7,540</u>
Total	\$ 63,230	\$ 22,140

It is ordered that the Auditor of Erie County shall list and assess the subject real property in conformity with this decision and order. It is further ordered that these values be carried forward in accordance with the law.

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