

## OHIO BOARD OF TAX APPEALS

|                                   |   |                     |
|-----------------------------------|---|---------------------|
| Jack L. and Marlene Pemberton,    | ) | CASE NO. 2004-B-807 |
|                                   | ) |                     |
| Appellants,                       | ) | (REAL PROPERTY TAX) |
|                                   | ) |                     |
| vs.                               | ) | DECISION AND ORDER  |
|                                   | ) |                     |
| Lawrence County Board of Revision | ) |                     |
| and Lawrence County Auditor,      | ) |                     |
|                                   | ) |                     |
| Appellees.                        | ) |                     |

APPEARANCES:

|                             |   |                                                                                                        |
|-----------------------------|---|--------------------------------------------------------------------------------------------------------|
| For the Appellants          | - | Marlene Pemberton, pro se<br>5511 State Route 141<br>Ironton, Ohio 45638                               |
| For the County<br>Appellees | - | J.B. Collier, Jr.<br>Lawrence County Prosecuting Attorney<br>#1 Veterans Square<br>Ironton, Ohio 45638 |

Entered July 15, 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 appellants from a decision of the Lawrence County Board of Revision (“BOR”). In said decision, the BOR determined the taxable value of the subject real 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. Although duly notified of the board’s hearing scheduled for March 23, 2005, no one appeared on behalf of the appellants or the county appellees.

The subject property is located in the Upper Twp-Rock Hill Local School District taxing district and is identified on the auditor's records as parcel number 27-033-0400.000. The value of the parcel, as determined by the county auditor and by the BOR, is as follows:

|          | TRUE VALUE | TAXABLE VALUE |
|----------|------------|---------------|
| Land     | \$ 7,280   | \$ 2,550      |
| Building | \$ 60,010  | \$ 21,000     |
| Total    | \$ 67,290  | \$ 23,550     |

Through their notice of appeal, appellants claim that the correct value for their parcel for tax year 2003 is as follows:

|          | TRUE VALUE | TAXABLE VALUE |
|----------|------------|---------------|
| Land     | \$ 2,500   | \$ 880        |
| Building | \$ 48,300  | \$ 16,900     |
| Total    | \$ 50,800  | \$ 17,780     |

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript certified by the Lawrence County Auditor as secretary of the BOR. As stated earlier, there was no appearance at this board's hearing by either appellants nor county appellees. Thus, the board will consider the matter under the standards enunciated in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. The Ohio Supreme Court held in that case that a common pleas court reviewing the action of a board of revision was not required to hold a de novo hearing, but was required to make a thorough and comprehensive review of the evidence before it and make an independent determination as to value. The court later held this board to the same standard in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13.

The evidence in the record shows that appellants researched their neighboring properties and determined that the assessed valuation on the subject property was higher than that of other properties located in the same vicinity. On this basis, the appellants sought a reduction from the BOR. To support their claim that their property was overvalued, appellants presented the tax valuations of other properties for comparison. The BOR denied any reduction.

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

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

“The auditor shall assess all the real estate situated in the county \*\*\* at its true value in money \*\*\*.”

In determining what constitutes “true value in money,” the Supreme Court has held that the best evidence of a property’s fair market value or “true value in money” for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443. In other words, for real estate tax purposes, property must be valued at what that property would sell for in an arm’s-length transaction. *Walters v. Knox County Board of Revision* (1989), 47 Ohio St.3d 23. However, not all property transfers within a period relevant to tax lien date. Thus, the county auditor, as real property assessor, contracts with a mass appraisal firm, which has the obligation to provide an opinion as to the value of each and every property within the county. Ohio Adm. Code 5703-25-08.

The appellants have provided to the BOR no evidence of the value of their property. They have only challenged the assessor’s opinion with evidence of the assessor’s opinion of other assessed properties. They provided no reason as to why this board should consider the assessor’s opinion correct on other properties but not correct on theirs. Tax valuations are not sales, but merely opinions of value that may or may not be equal to the market value of a particular property. *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported.

When the Board of Tax Appeals rejects evidence presented to it as not being competent, probative and credible, and there is no evidence from which the board can independently determine a value, it may approve the value determined by

the county board of revision even though it did not present any evidence. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Therefore, we must find, by a preponderance of competent and probative evidence found in the record, that the correct values of the subject property as of tax year 2003 are as follows:

|          | TRUE VALUE | TAXABLE VALUE |
|----------|------------|---------------|
| Land     | \$ 7,280   | \$ 2,550      |
| Building | \$ 60,010  | \$ 21,000     |
| Total    | \$ 67,290  | \$ 23,550     |

It is the order of the Board of Tax Appeals that the Auditor of Lawrence County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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