

The Delaware County Auditor and the BOR determined the taxable value of the subject property to be:

Parcel No. 25-319-444-05-044-002:

TAXABLE VALUE

Land	\$ 2,140
Building	\$ <u>0</u>
	\$ 2,140

The BOE contends that based upon the January 22, 1999 sale of the subject property, the Auditor and the BOR have undervalued the subject property and that the true and taxable values as of the tax lien date should be as follows:

Parcel No. 25-319-444-05-044-002:

TRUE VALUE

TAXABLE VALUE

Land	\$ 365,000	\$ 127,750
Building	\$ <u>0</u>	\$ <u>0</u>
Total	\$ 365,000	\$ 127,750

The subject property is a vacant lot, consisting of approximately 2.264 acres located at 1490 Manning Parkway Rear and further described as lot 3320 in Loch Lomond Park, in the Olentangy Local Schools taxing district of Delaware County, Ohio.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR (“ST.”), and the record of the evidentiary hearing (“R.”)¹. Post hearing briefs were waived by the Board.

¹ At the evidentiary hearing before this Board, the BOE was represented by counsel. The county appellees were represented by counsel and waived appearance at the hearing. No one appeared on behalf of the property owner despite written notice of the hearing from the Board.

I. JURISDICTION

Before the Board examines the merits of this appeal, we must first address the jurisdictional issue implicit in this appeal. On March 28, 2000 the BOE filed a complaint against the valuation of the subject for tax year 1999. The BOE sought an increase in the value of the subject property based upon the January 22, 1999 sale of the property for \$365,000. (ST. at Ex. 1.) The BOR below convened a hearing on this matter on August 30, 2000. (ST. Exh. 3.) The BOE was represented by counsel, but no one appeared on behalf of the property owner.

At the hearing, the BOR considered whether the complaint filed by the BOE on the recently transferred parcel was sufficient to invoke its jurisdiction. The BOR initially determined that the complaint was sufficient, then went on to conclude that the post-tax lien date sale was “akin to a zoning change or other intervening event that makes the subsequent sale not applicable this year.” (ST., Exh. 3, 3-5.) Thereafter, the BOR decided that the property values should not be changed. This decision affected a list of 79 BOR decisions including the instant appeal. Notice of the BOR’s decision was mailed by certified mail to the parties on September 12, 2000. (ST. Exh. 4 and 5.)²

Counsel for the BOE appealed the BOR’s determination in the instant case as well as roughly 32 other cases that involved sales or parcel splits that occurred after the January 1, 1999 tax lien date. The lead case before the Board of Tax Appeals was *Big Walnut City Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision* (Sept. 7, 2001), B.T.A. No. 00-R-1702, unreported. In that case, the BOR argued that the BOE was not a proper party to file the initial complaint with the BOR. As its basis, the BOR relied on R.C. 319.20 that grants authority to file a complaint against the values allocated to parcels following a split to “the transferee or remaining owner.” The BOR contended that this language did not include a board of education.

² Notice was directed to the property owner’s address as identified on the conveyance fee statement evidencing the transfer of the property. This notice was, however, returned to the BOR. After a similar experience by this Board, notice was subsequently remailed to the address set forth within the appearances of this decision.

In response, the BOE argued that R.C. 5715.19 and 5715.11 confer jurisdiction upon a BOR to hear complaints against the values of any parcel that is listed on the tax duplicate of the then current tax year. Upon review, this Board concluded that a board of education is a proper party to file a complaint against valuation whether or not the subject parcel is split-listed or transferred after the tax lien date in issue. This Board relied upon the statutory requirements of R.C. 319.20, 319.28, 5717.01, and 5715.19 through 5715.22 in reaching its conclusion. As noted in our decision in *Big Walnut City Schools, supra*, the plain language of R.C. 5715.19 authorizes a board of education to file a complaint against valuation for any property in its jurisdiction that appears on the tax list. It is uncontroverted from the existing record that the parcel that is the subject of the BOE's complaint in the instant case did, in fact, appear on the tax list and duplicate for 1999. Consequently, the BOE was entitled to file a complaint on the subject parcel pursuant to R.C. 5715.19. *Big Walnut City Schools, supra*.

II. MERITS

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

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 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. Thus, an appellant

challenging the decision of a board of revision must come forward and offer evidence that demonstrates its right to the value sought. *Cleveland Bd. of Edn.* and *Springfield Local Bd. of Edn., supra.* It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In other words, there is a burden of persuasion that rests with the BOE to convince this Board that it is entitled to the value that it seeks. *Cincinnati School 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 an 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, supra; 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. Where the Board of Tax Appeals either rejects the evidence before it as not being competent, or sufficient evidence has not been presented by the party appealing, the Board may approve the board of revision without further evidence. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47.

In the present appeal, the BOE relies upon a sale as support for its contention of the subject property's value. According to the deed and conveyance fee statement, the sale occurred on January 22, 1999, approximately three weeks after tax lien date. Further, the property's purchase price was \$365,000.

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 sale price of such tract, lot or parcel to be the true value for taxation purposes.” (Emphasis added.)

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 the best evidence of the property’s true value. *Conalco* and *Park Investment, supra*.

While the sale may be the “best evidence” of value, however, 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 consider and review other probative evidence of the subject property’s true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 98-S-155, unreported, at 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 true value. *Cincinnati Bd. of Edn., supra* at 327.

From the hearing record before the BOR, we note that the BOR stated that it was considering:

“[A] list of parcels that did not exist as of the tax lien date, 1999, against which the Board of Education filed complaints seeking higher value to be placed on subsequent sales later in the year. *** Recognizing what may be an issue, that you will go to the Board of Tax

Appeals, I nonetheless, after having carefully considered Mr. Gillis' position, would like to make this recommendation, for I believe that they are quite correct that they have the right to file these complaints. I think they are properly filed and properly before the Board. However, I believe the Board has the authority to make a decision based upon a policy that the subsequent split is akin to a zoning change or other intervening event that makes the subsequent sale not applicable this year." (ST., Exh. 3 at p. 4-5.)

The BOR went on to enter a no change in value decision for the subject parcel. Upon our review of the existing record, we conclude that the sale is recent for purposes of determining value. Additionally, the information contained in the record fails to establish any relationship between the buyer and seller or other circumstances that would lead us to conclude that the sale was not arm's-length in nature. Therefore, in this instance, we believe the recent, post-lien date sale is controlling. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, wherein the Supreme Court stated, "We emphasize that the BTA '* * * may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' * * * However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." (Citations omitted.)

Giving consideration to all the evidence before us, we conclude that the sale price is competent and probative evidence of the true value of the subject property for 1999. The property owner has not presented any evidence to rebut the validity of the sale price as the best evidence of the subject property's value. Therefore, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows as of January 1, 1999:

Parcel No. 25-319-444-05-044-002:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 365,000	\$ 127,750
Building	<u>\$ 0</u>	<u>\$ 0</u>
Total	\$ 365,000	\$ 127,750

Accordingly, the Delaware 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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