

OHIO BOARD OF TAX APPEALS

NAH & Sons, Inc.,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Butler County Board of Revision, the)
 Butler County Auditor, and the Lakota)
 Local School District Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant-	Nah Dixon Nah & Sons, Inc. 7950 Cincinnati Dayton Road West Chester, Ohio 45069
For the County- Appellees	Robin N. Piper Butler County Prosecuting Attorney 315 High Street, 11 th Floor P.O. Box 515 Hamilton, Ohio 45012
For the Bd. of Edn.-	Ennis Roberts Fischer Co., L.P.A. Gay T. Stedronsky 1714 West Galbraith Road Cincinnati, Ohio 45239

Entered April 28, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed August 15, 2007. Appellant challenges a decision, mailed July 19, 2007, of the Butler County Board of Revision (“BOR”), appellee.

The property which is the subject of this appeal is located in the Lakota Local School taxing district of Butler County, and is identified on the auditor's records as parcel number M5640-024-000-029.

The value of the property determined by the Butler County Auditor as of January 1, 2006 was as follows:

Parcel No. M5640-024-000-029		
	True Value	Taxable Value
Land	\$ 95,830	\$ 33,540
Building	\$ 42,340	\$ 14,820
Total	\$ 138,170	\$ 48,360

Upon consideration of a complaint filed by the Lakota Local School District Board of Education ("BOE"), the BOR determined the following values for tax year 2006:

Parcel No. M5640-024-000-029		
	True Value	Taxable Value
Land	\$ 95,830	\$ 33,540
Building	\$ 184,170	\$ 64,460
Total	\$ 280,000	\$ 98,000

Through its notice of appeal, appellant has alleged that the correct values for its property for tax year 2006 are as follows:

Parcel No.
M5640-024-000-029

	True Value	Taxable Value ¹
Land	\$ 95,830	\$ 33,540
Building	\$ 42,340	\$ 14,820
Total	\$ 138,170	\$ 48,360

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 Butler County Auditor as secretary of the BOR. While a hearing before this board was convened, neither the appellant nor the appellee BOR appeared. The board received notice from the representative of the BOE who informed the board that the BOE waived its right to appear.

What little information this board has concerning the subject property is gleaned from the statutory transcript. At the hearing held before the BOR, the BOE presented a conveyance fee statement evidencing a transfer of the subject property from Robert Stumpp Trustee of Cheri Rose Trust to NAH & Sons, Inc. The conveyance fee statement indicated that the subject property sold for a consideration of \$280,000 on or about October 13, 2006. S.T. Ex. 2.

The statutory transcript includes evidence that Nah Dixon received notice of the hearing held before that body. However, it does not appear that a representative of NAH & Sons, Inc. appeared before BOR. S.T., Ex. 7. The BOR's

¹ Appellant provided only a claimed market value. As its claimed market value is the same as that assessed by the Butler County Auditor, we conclude that the appellant seeks the auditor's assessed value as well.

minutes do reflect the introduction of the conveyance fee statement that appears in the statutory transcript. *Id.* The BOR found value in accordance with the sale evidence.

NAH & Sons, Inc. filed a notice of appeal with the board, but made no other appearance at hearing, despite notice of the time and place.

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 City 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 competent and probative evidence of true value has been presented by an appellant, 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*.

Therefore, the board is charged with the duty to examine the available record and determine value based upon the evidence before us. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded to the evidence

presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Accordingly, where there exists an actual sale of real property which is both recent and arm's length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property's true value. *Berea*, supra; *Conalco*, supra; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28. In the present matter, there is evidence of a sale exhibited through the conveyance fee statement. This document, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported.

As the appellant provided no other evidence, we find that the values previously determined by the BOR have not been rebutted. Considering the record before us and based upon a preponderance of competent evidence, this board finds that the correct values of the subject property for tax year 2006 are as follows:

Parcel No.		
M5640-024-000-029		
	True Value	Taxable Value
Land	\$ 95,830	\$ 33,540
Building	\$ 184,170	\$ 64,460
Total	\$ 280,000	\$ 98,000

It is the order of the Board of Tax Appeals that the Auditor of Butler 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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