

John E. Passmore, and	)	
Gloria A. Passmore,	)	
	)	Case No. 96-J-1098
Appellants,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	ORDER TO AUGMENT
Medina County Auditor, and	)	THE TRANSCRIPT,
Medina County Board of	)	R.C. 5717.01
Revision,	)	
	)	
Appellees.	)	

APPEARANCES:

- |                    |   |  |
|--------------------|---|--|
| For the Appellants | - | John E. Passmore,<br>Gloria A. Passmore,<br><u>Pro Se.</u><br>7206 Boneta Road<br>Wadsworth, Ohio 44281  |
| For the Applies    | - | Dean Holman, Esq.,<br>Prosecuting Attorney,<br>Medina Cty.,<br>Michael K. Lyons, Esq.,<br>Asst. Prosecuting Attorney<br>135 South Jefferson Street<br>Medina, Ohio 44256 |

Entered May 2, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

The board of tax appeals is considering this matter upon a notice of appeal filed by John E. Passmore, and Gloria A. Passmore. ("Appellants") Appellants appealed from a decision of the Medina County board of revision (BOR) which determined the value of real property for tax year 1995. The property is identified on the auditor's records as parcel 33-12C-21-036. The value determined by the Medina County auditor and BOR is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$12,340	\$4,320

Building	0	0
Total	\$12,340	\$4,320

In the notice of appeal, the appellants have alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$5,000	\$1,750
Building	0	0
Total	\$5,000	\$1,750

The matter has been submitted to the board of tax appeals upon the notice of appeal, the statutory transcript certified by the BOR, and the evidence and exhibits adduced by the appellants at the hearing. Prior to the date of the hearing, the county prosecutor advised the board that the county appellees waived hearing.

We note that while a determination of value of real property by a board of revision is entitled to consideration, such determination is not presumptively valid. Amsdell v. Bd. of Revision (1994), 69 Ohio St. 3d 572. On appeal a taxpayer may successfully challenge a determination of a board of revision where the taxpayer produces competent and probative evidence which establishes his right to a reduction in value. Rocco v. Cuyahoga Cty. Bd. of Revision (1994), 71 Ohio St. 3d 103.

A party who asserts a right to a decrease in the value of real property has the burden of proving his right to the value asserted. Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St. 3d 336. The appellant has the burden of coming forward with evidence which would establish the value claimed in

his appeal. If the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence which rebuts appellant's evidence of value. Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St. 3d 493.

We further note that the issue in an appeal from a board of revision is the true value of the subject property. Accordingly, this board will proceed to examine the available record and to determine value based upon the evidence before us. Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St. 3d 120. In doing so, we will 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.

Appellant's property consists of two adjoining parcels, a house originally constructed in 1889 on a .500 acre parcel, and the parcel at issue of .460 acre with no improvements. Appellants filed a complaint for the year 1995 with the BOR by which a decrease in value for both parcels was sought. The reason given was the discrepancies in value with an adjacent property, and the .460 acre parcel was bounded by a water way and flooded every time it rains.

At the outset, it is apparent to the board that this property although two parcels is one economic unit, improved with a residence and should be valued as such. The appellants point out that the local zoning regulation, which was passed after the appellants acquired the property, requires a minimum lot size of two acres. By their testimony, they also indicated that the BOR

noted the minimum lot size requirement does not negatively affect the appellants' property since the appellants would combine the subject parcel with the abutting property, should they ever plan to sell the property. It is apparent from the discussion that the BOR was looking at these parcels as one property for valuation purposes.

Appellants also testified that a neighbor purchased nearby property for \$10,000 an acre approximately thirteen or fourteen years prior to the tax lien date at issue herein. They testify that this was the value upon which their land had been taxed before the reappraisal. Such sale is of course remote to the tax lien date; but the value was apparently not inconsistent with per acre value of land prior to the sexennial reappraisal in 1995.

They also submitted the property record card for the subject parcel, and the property record card for a property located on the same street. Exhibit 2, consisting of three property records from the county auditor's office. The appellants' properties are described as a .46 acre parcel which has a land value of \$12,340, and the .5 acre parcel on which the house is situated, which has a land value of \$23,400. The property which the appellants offer as a comparable is a two acre parcel which has a land value of \$41,650, or approximately \$20,000. per acre. Although the appellants did not articulate the problem well, there is more than a facial inconsistency with the land value between the two properties. On the one hand, the appellants' property has been given a land value of \$35,750 per acre, and the comparable property is valued at \$20,000 per acre. This is a sufficient disparity to

require inquiry and explanation. County appellees declined to attend the hearing and we must then look to the record before the BOR to determine what support there is for the value placed upon the subject parcel by the county auditor.

The statutory transcript contains the complaint, the notice of appeal, and a transcription of the BOR hearing. There is no evidence supporting the value placed upon the subject parcel by the auditor; and the only evidence before us is the exhibit 2 which was offered by appellants. The transcript indicates that some consideration was given to the value of the parcel improved with the house; but no orders were included with the statutory transcript. The auditor stated that the two parcels had a value of \$78,980. and this number was later confirmed by both the treasurer and the county commissioner. Exhibit 2, the property record indicates a total value for both parcels of \$103,220. The implication from the record is that the valuation of both the land and improvement was changed in some way by the auditor or the BOR. The values discussed do not conform to the property records which are identified as Exhibit 2, and are not otherwise supported by the record in this matter.

R.C. 5717.01 requires that the BOR certify a transcript of the record of the proceedings pertaining to the original complaint, and all evidence offered in connection therewith.

By virtue of the deficiencies in the record as described, and in the absence of sufficient evidence to support the valuation of the subject parcels, it is ORDERED that the Board of Revision of Medina County augment the transcript heretofore

certified to this Board within twenty-one days from the date of this order, by including the proceedings had with respect to parcel No. 033-12C-21-035 and any order made with respect to such parcel upon which the appellants made their original complaint, copies of the property records for each of the parcels for the tax year 1995, and any other evidence considered by the BOR as provided by la

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