

Richard A. Duncan,	)	
	)	
Appellant,	)	CASE NO. 97-G-732
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Trumbull County Board of	)	
Revision and Trumbull County	)	DECISION AND ORDER
Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	-	Richard A. Duncan, <u>Pro se</u> 14827 N. State Avenue Middlefield, Ohio 44062
For the County Appellees	-	Dennis Watkins Trumbull County Prosecuting Attorney By: Paul E. Hetzel Assistant Prosecuting Attorney 3rd Floor Administration Bldg. 160 High Street N.W. Warren, Ohio 44481-1092

Entered: June 26, 1998

Mr. Johnson, Ms. Jackson and Mr. Manoranjan 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 County Board of Revision, wherein said Board of Revision determined the taxable value of the subject real property for tax year 1996.

The subject property is located in the Warren City - Warren Taxing District of Trumbull County, Ohio, and appears on the Auditor's records as Parcel No. 39-00895. The subject property is vacant land.

Originally, the Trumbull County Auditor found the true

and taxable value of the subject property for tax year 1996 to be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 1,700	\$ 600
Building	-0-	-0-
Total	<u>\$ 1,700</u>	<u>\$ 600</u>

However, upon consideration of the complaint filed by the appellant, the Trumbull County Board of Revision reduced the true and taxable values to arrive at the following valuation for tax year 1996:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 1,000	\$ 350
Building	-0-	-0-
Total	<u>\$ 1,000</u>	<u>\$ 350</u>

Appellant disagrees with the above-stated values and contends in his notice of appeal that the correct values for the subject property should be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 60	\$ 21
Building	-0-	-0-
Total	<u>\$ 60</u>	<u>\$ 21</u>

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 Board of Revision, and the briefs of the parties. Both parties waived the evidentiary hearing in this matter.

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 Ohio Supreme Court 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 Ohio Supreme Court has specifically recognized that an owner of real property, by virtue of his 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.

The record reflects that Mr. Duncan purchased the

property at an auditor's sale for \$60.00. Mr. Duncan claims that this selling price is the best evidence of true value for the property. He also stated at the Board of Revision hearing that it was a bad investment since the neighborhood was going through a transition period. For the following reasons we disagree that the selling price reflects the true value of the property.

R.C. 5713.04 reads, in pertinent part:

\*\*\*\* The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value \*\*\*\*."

The property at issue was initially the subject of a sheriff's sale for non-payment of taxes. This Board has consistently held that a sheriff's sale is not an arm's-length transaction. David G. Eversole v. Fairfield Cty. Bd. of Revision (Jul. 31, 1985), B.T.A. No. 82-G-506, unreported; Richard W. Plummer, Jr. v. Morrow Cty. Bd. of Revision (Apr. 1, 1988) B.T.A. No. 87-H-447, unreported; and Liberty-Lincoln Management Co., Inc. v. Cuyahoga Cty. Bd. of Revision (Jul. 22, 1988), B.T.A. No. 87-E-706, unreported. When the property was not purchased at the two sheriff's sales, it was then offered for sale by the Auditor. Property purchased at an Auditor's sale is likewise not an arm's-length transaction. Al Gammarino, Trustee v. Hamilton Cty. Bd. of Revision, et al. (Sept. 10, 1993), B.T.A. No. 91-B-1409, unreported.

Based on the evidence presented, the Board of Revision granted a \$700.00 reduction in the value of the land. It therefore

appears that the Board of Revision took into account whatever transition period was taking place. We find nothing in the record before us to warrant a further reduction in the value of the property. Mr. Duncan has not submitted any competent, probative evidence as to the fair market value of the property. The only evidence relied on by the appellant is a sale that we have determined was not an arm's-length transaction. Therefore, the appellant has failed to sustain his burden of proof of the value asserted. We further find that the record supports the Board of Revision's determination of value.

Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1996, was as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 1,000	\$ 350
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 1,000	\$ 350

It is ordered that the records of the Auditor of Trumbull County shall reflect the value as determined above.