

OHIO BOARD OF TAX APPEALS

Alfred L. Harris,)	
)	CASE NO. 98-N-748
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor and the)	
Cleveland Heights/University Heights)	
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Alfred L. Harris 1294 Cleveland Heights Boulevard Cleveland, Ohio 44121
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney By: Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Cleveland Heights/ University Heights Board Of Education	- Robert A. Brindza Kelley, McCann & Livingstone, LLP 3500 BP Tower 200 Public Square Cleveland, Ohio 44114

Entered June 23, 2000

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

This appeal is considered by the Board of Tax Appeals pursuant to a notice of appeal filed by Alfred L. Harris. The appeal is taken from a final decision of the Cuyahoga County Board of Revision determining the value of the subject real property for tax year 1997.

The subject property is identified on the auditor's records as parcel number 683-06-034. The Cuyahoga County Auditor determined the true and taxable value of the subject property for tax year 1997 to be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 22,000	\$ 7,700
Building	\$ 95,710	\$ 33,500
Total	\$ 117,710	\$ 41,200

Subsequently, a complaint was filed with the Cuyahoga County Board of Revision ("BOR") by the Cleveland Heights/University Heights Board of Education ("BOE"), contending the value of the property should be increased to reflect the April 15, 1997 sale price of \$140,000. The BOR determined the sale price accurately reflected the value of the property and increased the values for tax year 1997 as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 22,000	\$ 7,700
Building	\$ 118,000	\$ 41,300
Total	\$ 140,000	\$ 49,000

Mr. Harris contends the BOR improperly increased the valuation of the subject property, stating the true and taxable value of the subject property as of January 1, 1997 should be that originally assigned by the Auditor.

An evidentiary hearing was held in this matter. Mr. Harris appeared, testifying and presenting several exhibits. No appearance was made on behalf of the county appellees or the BOE. Therefore, this matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01, the record of the evidentiary hearing and the exhibits presented there.

Turning to the merits of this matter, we first note 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*.

Applying this rationale to the instant matter, it is clear the burden of persuasion is on Mr. Harris, as appellant; that is, Mr. Harris has the burden of providing competent and probative evidence demonstrating his right to the value sought. Further, in interpreting the meaning of "true value", the Supreme Court has traditionally held that the best evidence of a property's fair market value or "true value in money" for tax purposes is that 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 the later case of *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, the Court further expounded upon its view of the use of a sale to establish the fair market value of real property. In paragraph one of the syllabus, the Court stated:

"The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

The Court again stressed that the sale price represents the best indication of value in *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543. Therein, the Court stated:

"Nevertheless, we have always insisted that the sale price of an arm's length transaction occurring within a reasonable time of the tax lien date was the value of the property as of the tax lien date." (Citation omitted.)

See, also, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

As set forth above, the BOE filed the initial complaint in this matter, seeking an increase in the value of the property to reflect the price paid in the April 1997 sale of the subject property. At the hearing before the BOR, the BOE submitted a copy of the conveyance fee statement indicating the property transferred to Mr. Harris on April 15, 1997, for \$140,000. The BOR determined the sale price was the best indication of the true value of the subject property.

Once evidence is submitted that an arm's length sale of the subject property has occurred, a rebuttable presumption arises that the sale price reflects the true value of the subject property; and, consequently, a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once this presumption arises, the person contending that the value is other than the sale price is

required to rebut the presumption by submitting evidence that the sale was either not an arm's length transaction, or, due to other circumstances surrounding the sale, that the sale price is not indicative of the true value of the subject property as of the tax lien date.

Mr. Harris testified he purchased a building and tavern located on the first floor of the building for \$210,000. His son was to operate the tavern. Mr. Harris testified the purchase price was arbitrarily split 2/3 for the building, i.e., \$140,000, and 1/3 for the tavern, \$70,000. There was discussion of \$75,000 on the tavern and the remainder on the building, but the final number agreed to was \$140,000 for the building. (R. 18)

Mr. Harris also testified that he reported a loss on his taxes from the operation of the building. He included his 1040 schedule E for 1997, and an estimated schedule E for 1998. (Ex. B,C) Mr. Harris submits that the area surrounding his property "is much uglier now than it was when I purchased the property." (Ex. D) When asked his opinion of value for the property, Mr. Harris indicated he agreed with the auditor's valuation.

Here we have an arm's length transaction, negotiated between Mr. Harris and the seller. There is a rebuttable presumption that this sale price is the true value of the property. Mr. Harris has not come forward with any probative evidence of value for the property. While he asserts the valuation on the conveyance fee statement was arbitrary, it was agreed to by the parties after negotiation, and after other amounts were considered. When asked his opinion of value for the property, he indicated he agreed with the auditor's valuation, but gave no details as to why.

The record indicates the subject sale was an arm's length transaction. There is no probative evidence of any other valuation of the property in the record. Accordingly, we find the appellant has failed to meet his burden of establishing that the sale price paid in the April 1997 transfer of the subject property is not indicative of true value.

Based upon the foregoing, the Board finds from the preponderance of the evidence that the value determined by the BOR, i.e., the price paid in the April 1997 sale of the subject property, is the true value of the property. Accordingly, the true and taxable values of the subject property are as follows for the tax year 1997:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 22,000	\$ 7,700
Building	\$ 118,000	\$ 41,300
Total	\$ 140,000	\$ 49,000

It is hereby ordered that the Auditor of Cuyahoga County shall cause his records to reflect the values herein determined.