

**OHIO BOARD OF TAX APPEALS**

Raul Caraballo,	)	CASE NO. 2003-M-289
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Cuyahoga County Board of Revision,	)	
the Cuyahoga County Auditor, and the	)	
Board of Education for the Berea	)	
City School District,	)	
	)	
Appellees.	)	

**APPEARANCES:**

For the Appellant <sup>1</sup> -	Raul A. Caraballo, pro se 13921 Aspen Oval North Royalton, Ohio 44113
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Tim Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Bd. of Edn. -	Kadish, Hinkel & Weibel Rita Jarrett 1717 East Ninth Street, Suite 2112 Cleveland, Ohio 44114

Entered March 11, 2005

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

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<sup>1</sup>Paul Kray, Esq. P.O. Box 839, Brunswick, Ohio 44212 entered an appearance in this matter on July 6, 2004 and requested additional time to prepare a brief following hearing. It is also the board's understanding that Mr. Kray entered into a settlement with counsel for the BOE, but that the settlement was not ultimately accepted by appellant. Although the board has not received notice that Mr. Kray no longer represents appellant, we received final argument from Mr. Caraballo. While we have listed Mr. Caraballo as a pro se representative, a copy of this decision will be forwarded to Mr. Kray.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on February 28, 2003, from a decision,<sup>2</sup> dated February 3, 2003, of the Cuyahoga County Board of Revision ("BOR"), appellee.

The subject property is located in the Berea taxing district of Cuyahoga County, Ohio, and further identified as Parcel No. 342-08-080. The Cuyahoga County Auditor found the true and taxable values of the subject property for tax year 2000 to be as follows:

Parcel No. 342-08-080

	True Value	Taxable Value
Land	\$ 46,200	\$ 16,170
Building	\$ 238,910	\$ 83,620
Total	\$ 285,110	\$ 99,790

Complaints were filed by both the Board of Education for the Berea City School District ("BOE") and the property owners, David and Linda Mathoslah, vendors under land contract and Raul and Jacqueline Caraballo, vendees. Upon consideration of the complaints the BOR determined the true and taxable values of the subject property for the 2000 tax year to be as follows:

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<sup>2</sup> Two decision letters are included in the statutory transcript. The first mistakenly identified the taxable value found by the BOR to be the market value of the property. The second decision letter, dated the same day and denominated "Letter of Clarification" corrects the error and finds market value of the subject property to be \$350,000.

Parcel No. 342-08-080

	True Value	Taxable Value
Land	\$ 46,200	\$ 16,170
Building	\$ 303,710	\$106,300
Total	\$ 349,910	\$122,470

Through his notice of appeal, appellant claims that the correct value for the parcel for tax year 2000 is as follows:

Parcel No. 342-08-080

	True Value	Taxable Value
Land	\$ 46,200	\$ 16,170
Building	\$ 203,800	\$ 71,330
Total	\$ 250,000	\$ 87,500

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Cuyahoga County Auditor as secretary of the BOR and the testimony adduced at the hearing before this board. We also have legal argument submitted by both the appellant and the BOE.

The subject property is a ten-unit apartment building constructed in the 1940s and located in a community of similarly situated rental properties. The subject's townhomes rented on or about tax lien date for approximately \$450 to \$500 per unit.

Mr. Carabello testified before the board that he originally purchased the building on or about July 1999 through land contract from the previous owner. The original contract indicated a purchase price of \$405,000 and a downpayment of \$67,000. Mr. Caraballo, however, testified that the land contract was not accurate

because the downpayment was actually \$375,000.<sup>3</sup> Mr. Caraballo also presented an agreement executed by himself and the prior owner after the original land contract was filed. The new agreement allocated the sales price between land and building (\$250,000) and "goodwill" (\$125,000). At hearing, Mr. Caraballo explained that he learned of the concept of "goodwill" from his accountant after he had closed on the property and during the time he was challenging the valuation for tax purposes.<sup>4</sup>

Mr. Caraballo also presented a listing of the Cuyahoga County Auditor's assessments on the properties located on Glenway Drive (including his parcel) for the 2002 tax year. Mr. Caraballo testified that because his property is surrounded by rental properties with lower tax valuations, his rental units become less competitive, because his tax obligations require higher rental rates than the other identical rental units.

The BOE presented certain mortgages recorded as a lien against the subject property. Mr. Caraballo explained that he refinanced the property in 2003 by borrowing funds from Park View Federal Savings and used a portion of those funds to fulfill the land contract.

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<sup>3</sup> Before the BOR, Mr. Caraballo testified that it was always his intention to refinance the property, and the original land contract, with its inflated purchase price and overstated downpayment, was drawn in such a manner to reflect additional equity for refinance purposes.

<sup>4</sup> The BOE also filed a complaint challenging the value of the subject property for 1999 and supported its valuation claim with the sale currently in issue in this appeal. The BOR raised value to \$350,000, but, as 2000 was a new triennial for Cuyahoga County, the auditor's value for 2000 was less than the BOR's value for 1999. As a result, the BOE again filed for 2000, the first year of the triennial. Mr. Caraballo did not appeal the 1999 finding, but did challenge that finding through his complaint filed for tax year 2000.

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 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.

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 \*\*\* to be the true value for taxation purposes."

In interpreting the meaning of "true value" as set forth above, the Supreme Court has consistently held that the best evidence of a property's fair market value or "true value in money" for tax purposes is the 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 Re Estate of Sears* (1961), 172 Ohio St. 443. In the later case of *Conalco v. Monroe Cty. 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."

"An arm's-length sale is characterized by these elements: it is voluntary, i.e. without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 25.

Applying the preceding analysis to the facts in the present matter, we find that the appellant has brought forth no evidence which calls into question the arm's-length nature of his purchase. There is no indication of a relationship between the purchaser or seller, or any type of duress reflected in the transaction. It appears that both the purchaser and the seller acted so as to further self-interest.

Having concluded that the sale itself was arm's length, we proceed to find value. The appellant argues that the actual sales price was \$375,000 and not the \$405,000 reflected in the land contract. Further, the appellant argues, the \$375,000 should be allocated between real estate and non-real estate items.

The original land contract executed May 26, 1999 did reflect a purchase price of \$405,000 and a downpayment of \$67,500. However, the contract also

includes the following: "Vendor agrees to refund vendee Thirty Thousand Dollars to correct all violations." Appellant's Ex. 3, p. 3; S.T., Attachment 3 to Ex. C. A refund of the downpayment is tantamount to a reduction in the purchase price. *Dalton v. Franklin Cty. Bd. of Revision* (Mar. 31, 2000), BTA No. 1998-T-597, unreported; *Gaidar Partnership v. Hamilton Cty. Bd. of Revision* (July 15, 1994), 1993-J-663, unreported (finding that a "rebate" to buyer for reimbursement of closing costs and operating expenses was excludable from sale price for purposes of determining true value.) Therefore, we find that the true purchase price negotiated for the subject property was \$375,000.

We do not agree with the appellant's claim the value of the real estate components of the sale is \$250,000. We agree that, for ad valorem tax purposes, the auditor must assess real property. R.C. 5713.01; *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455. We also agree that, in the sale of an apartment building, items, such as personal property located within the units, may transfer in bulk with the realty and the value of such items may be separated from the value of the realty at the time of assessment. *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2000), Montgomery App. No. 18223, unreported. However, the appellant presented no personal property returns or other evidence supporting a value for personalty located in the rental units. Instead, appellant argues that he and the seller negotiated a value to "goodwill" which should be deducted from the value of the real property.

Goodwill is a concept generally used when valuing a business. The American Heritage Dictionary of the English Language, Fourth Edition, 2000 defines goodwill as "[a] good relationship, as of a business enterprise with its customers \*\*\*." This is an intangible that is unrelated to the valuation of the tangible realty subjected to ad valorem tax. While valuation using the income capitalization approach is an accepted method of valuing income-producing property, it is not the rental business that is evaluated, but the ability of the land and improvements to produce income. That ability is but one means by which to estimate value. In the present case, however, a finding of value has been made in reliance upon the sale of the property.

Had Mr. Caraballo purchased a business dependent upon room rental, such as a hotel or retirement community, then perhaps an argument could have been made that the realty could not be valued without separating the business located therein. See *Dublin Senior Community L.P.*, supra. However, Mr. Caraballo purchased rental property. Mr. Caraballo has not directed us to support, either tangible or theoretical, to separately value goodwill and reduce the sale price accordingly. Moreover, even were we to find that goodwill was an appropriate deduction, an agreement made by the purchaser and seller, after the fact and after a board of education seeks an increase in value based upon a sale of the property would carry little probative weight.

We also do not find appellant's claim that his property suffers because his valuation is higher than neighboring properties to be meritorious. The valuation of all properties in a neighborhood are not required to be perfectly uniform as long as

there is no systematic and intentional discrimination in the method of valuation. *Meyer v. Cuyahoga Cty. Bd. of Revision* (1979), 58 Ohio St.2d 328. No such evidence is present.

To the extent that Mr. Caraballo argues that neighboring tax valuations should be utilized to value his property, such a claim must also be rejected. First, Mr. Caraballo's own purchase is the most persuasive evidence upon which this board relies to find value. Second, tax valuations are generally not evidence this board finds reliable in valuing real property:

‘Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.’ *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. *Paul L. and M. Courtney Caron v. Hamilton Cty. Bd. of Revision* (August 27, 1993), BTA No. 1992-B-879, unreported.” *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported, at 6.

Therefore, considering the preponderance of competent and probative evidence found in the record, this board finds that the correct values of the subject property as of tax year 2000 are as follows:

Parcel No. 342-08-080

	True Value	Taxable Value
Land	\$ 46,200	\$ 16,170
Building	\$ 328,800	\$115,080
Total	\$ 375,000	\$131,250

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