

OHIO BOARD OF TAX APPEALS

Perry Local School District)	CASE NO. 2004-M-887
Board of Education,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Stark County Board of Revision, the)	
Stark County Auditor and)	
Bowlus Realty, Ltd.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Board of Education	Means, Bichimer, Burkholder & Baker Co., L.P.A. Robert M. Morrow 2006 Kenny Road Columbus, Ohio 43221
	Mary Jo Shannon Slick, Esq. Stark County Education Service Center 2100 - 38 th Street N.W. Canton, Ohio 44709
For the Appellee - Property Owner	Krugliak, Wilkens, Griffiths & Dougherty Co., L.P.A. Gregory D. Swope 4775 Munson Street, N.W. P.O. Box 36963 Canton, Ohio 44735
For the County Appellees -	John D. Ferrero, Jr. Stark County Prosecuting Attorney David M. Bridenstine Assistant Prosecuting Attorney 110 Central Plaza South, Suite 50 Canton, Ohio 44702

Entered August 26, 2005

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant, Perry Local School District Board of Education (“BOE”), on September 17, 2004 from a decision, mailed August 18, 2004, of the Stark County Board of Revision (“BOR”).

The subject property is located in the Perry Township, Perry Local School taxing district of Stark County, Ohio, and is further identified as Parcel No. 43-18705. The Stark County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. 43-18705

	True Value	Taxable Value
Land	\$ 235,000	\$ 82,250
Building	\$ 2,477,600	\$ 867,160
Total	\$ 2,712,600	\$ 949,410

Upon consideration of the complaint filed by the BOE and the testimony and other evidence presented at the hearing before that body, the BOR determined the true and taxable values of the subject property for tax year 2003 were correct and affirmed the values as assessed.

Through its notice of appeal, the BOE claims that the BOR’s values should be increased to reflect a sale of the subject property taking place on or about May 29, 2002, which would have the effect of increasing the value of the subject property from \$2,712,600 to the sale price of \$3,950,000.

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 Stark

County Auditor as secretary of the BOR, and the testimony and other evidence submitted at the hearing before this board. At that hearing, the BOE presented documents reflecting the transfer of the property, the general warranty deed and the real estate purchase agreement. The property owner presented the testimony of Mr. Michael L. Braun, the controller of Bowlus Realty, Ltd. (“Bowlus”) and Mr. Daniel L. Miller, a certified real estate appraiser employed by Landmark Real Estate Appraisal & Consulting, Inc., who provided an opinion of value for the subject property.

The subject property contains approximately 4.55 acres and fronts on Hopple Avenue in Stark County. There are two industrial buildings located on the subject. The front building contains approximately 16,200 square feet and includes 16 overhead truck doors. The building had previously been used as a truck service center, but that business had closed by the time the current property owner became interested in purchasing the location. The second building located on the subject property was constructed in 2001 and contains approximately 65,780 square feet. The building was built for the current owner and is used for tire warehousing.

The record establishes that Bowlus began looking for warehousing/tire replacement facilities because of a business opportunity. It first found the truck service property, which, as mentioned above, was an unused truck repair facility with office space. Bowlus contracted with the owner to purchase the building, then located on 2.18 acres of land, for \$525,000. Upon further reflection, however, Bowlus

concluded that its new business opportunity required even more space than the truck facility offered.

The property directly behind the truck facility was owned by a separate, unrelated entity. Bowlus approached that entity, Dressler Properties, Inc. (“Dressler”), and offered to purchase its property. However, Bowlus’ new business opportunity required a significant outlay of funds, and the decision-makers at Bowlus were concerned that the real property purchases would leave the company short of capital. Therefore, Bowlus approached Dressler and proposed that Dressler purchase the truck service center, consolidate the two parcels, and build a warehouse to Bowlus’ specifications. In return, Bowlus would lease both buildings. Dressler agreed to Bowlus’ plan. Dressler purchased the truck service center for \$525,000, the same price as had been accepted by Bowlus. Dressler then constructed a warehouse on the property it owned and leased both facilities to Bowlus for \$5.00 per square foot, or approximately \$33,500 a month, for a period of ten years.

The original lease agreement contained an option which allowed Bowlus to purchase the property during year two of the lease for \$3,950,000. However, almost immediately after moving into the property, Bowlus became interested in ownership. Its business was expanding rapidly and interest rates had fallen to the point that Bowlus believed that mortgage payments would be less than its lease payments. In fact, its controller testified, its lease payments were \$35,000 a month and its mortgage payments were approximately \$25,000 a month.

When it approached Dressler about purchasing the property, Dressler was not immediately interested. After repeated requests, Dressler agreed to sell the property for the option amount contained in the lease agreement. The sale was closed in May 2002.

The BOE claims that the subject property should be valued for tax purposes at the sales price. As the proponent of change, the BOE has the burden to prove the right to the value it asserts. *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. 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 rebuttal to the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

The BOE contended before the BOR, and remains steadfast in its position before this board, that the property was subject to a valid, recent arm's-length sale when Bowlus purchased the property in May 2002. As such, the BOE claims that the price received was the best evidence of the value of the subject property as of

January 1, 2003.

“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. Both before the BOR and before this board, Bowlus has brought forth testimony intending to support a finding that its purchase did not meet the elements that characterize an arm’s-length sale. Through the testimony of its witnesses, Bowlus essentially claims that the sale price was not indicative of value because the property was specially built to meet its needs and that it had little negotiating power, and thus the company was forced to purchase at whatever price was offered. However, Bowlus has not convinced this board that its purchase did not meet the elements of an arm’s-length sale.

In *Pingue v. Franklin County Bd. of Revision* (1999), 87 Ohio St. 3d 62, the Ohio Supreme Court held:

“R.C. 5713.03 requires that the auditor, when determining the true value of any tract, lot, or parcel of real estate, shall consider the sale price as the true value for taxation purposes if the property 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. Furthermore, this court has repeatedly held that an actual, recent sale of property in an arm’s-length transaction is the best evidence of its ‘true value in money.’ *Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd.* (1984), 9 Ohio St. 3d 218, 219, ***; *Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St. 2d 410, 414, *** *Conalco v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St. 2d

129, *** There is a rebuttable presumption that an arm's-length sale transaction reflects the true value of property. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325, 327, ***.

“It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St. 3d 59, ***. For example, in *Ratner*, the purchase price did not reflect true value due to abnormally low interest rates on two promissory notes that were well below the market rates. Leaseback arrangements have sometimes distorted the sale price so that it did not reflect true value. *S. Euclid/Lyndhurst Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St. 3d 314, ***; *Cleveland Hts./Univ. Hts. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1995), 72 Ohio St. 3d 189, ***; *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St. 3d 145, ***. Factors involving economic coercion may force a purchase at an excessive price. If so, the sale price is not the most probative evidence of the value of the property. *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St. 3d 540, ***. *Id.* at 64. (Parallel citations omitted.)

A reading of the above-captioned quote leads this board to conclude that when considering the value of a particular property for ad valorem tax purposes, the first determination to be made when the property has recently sold is whether the sale itself met the indicies of an arm's-length sale. We must further keep in mind that there is a presumption that a sale does meet these indicies. *Cincinnati School Dist. Bd. of Edn.*, *supra*.

Bowlus first argues that its purchase was one of a property specially designed to meet its needs and thus its purchase price was not indicative of value.

However, Bowlus' witness' actual testimony was that the size and ceiling height requirements needed by its business were not available in older properties then on the market. Bowlus has not provided prior case law supporting its position that the purchase price of a warehouse was somehow discounted because of size and ceiling height. The board does not find the size and ceiling height of the subject property to be so unique that the property would now be considered a limited-market or special purpose property as defined by *The Appraisal of Real Estate* (Twelfth Ed. 2001) at 25-26. Therefore, we do not conclude that the building was so specialized that its purchase price is somehow negated as indicia of value.

Bowlus next claims that it had no negotiating power in the exchange. However, this board has previously concluded that lack of negotiating power does not equate to an invalid sale for valuation purposes. In *Bd. of Edn. of the Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported, a property owner admittedly purchased a property that was not then on the market, after approaching the prior owner and accepting a non-negotiable selling price. The property owner argued that the property was not "on the open market" and thus its sale did not qualify as an arm's-length sale. This board concluded otherwise, opining that the lack of advertisement and exposure on the open market may have influenced the price paid for the subject property, but those circumstances do not necessitate a finding that the subject sale was not arm's length in nature. See, also, *Dublin City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995),

BTA No. 1993-T-1107, unreported, affirmed (Mar. 6, 1996), Franklin App. No. 95APH06-718, unreported.

Bowlus also approached a property owner whose property was not then for sale. Bowlus convinced that property owner not only to invest in additional real estate, but also to expend significant funds in constructing a warehouse for rent. Clearly, the parties were motivated for personal interests.

Bowlus next claims that it was forced to purchase the subject property for a price clearly not supported by market conditions. Bowlus claims that its need to expand without the investment of capital forced it to be at the mercy of Dressler in originally contracting for the specialized property. It then argues that when business conditions changed, its interest in lowering its outlay for property costs again forced it to be at the mercy of Dressler in paying whatever price Dressler sought for the property.

The record does not support Bowlus' claim that its negotiation position was so weak that the sale price was not indicative of value. As stated above, Bowlus was the initiator of the transaction here under consideration. Bowlus also agreed to the option price as a part of the original lease. The purchase price of \$3,950,000 does not appear unreasonably high, given the amount of money invested by Dressler in meeting its side of the bargain. The evidence just does not support Bowlus' claim that it was a forced participant in the project.

Bowlus presented the testimony of a certified real estate appraiser, who testified that it was his opinion that the subject property was worth \$1,900,000 as of both July 27, 2004 and January 1, 2003. As we have found that the sale presented constituted an arm's-length sale, we will not consider the appraisal testimony. *Pingue*, supra. Therefore, and upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 2003 was:

Parcel No. 43-18705

	True Value	Taxable Value
Land	\$ 235,000	\$ 82,250
Building	\$ 3,715,000	\$ 1,300,250
Total	\$ 3,950,000	\$ 1,382,500

It is the order of the Board of Tax Appeals that the Auditor of Stark 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.

ohiosearchkeybta