

## OHIO BOARD OF TAX APPEALS

Board of Education of the Olentangy Local Schools,	)	CASE NO. 2005-H-1205
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Delaware County Board of Revision, Delaware County Auditor, and Ohio Investment Dst.,	)	<b>Remanded Upon Settlement of Appeal</b>
	)	<b>January 16, 2009</b>
	)	<b>Supreme Court of Ohio</b>
Appellees.	)	<b>Case No. 2008-1178</b>

APPEARANCES:

For the Appellant Board of Education	-	Rich, Crites & Dittmer, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees	-	David Yost Delaware County Prosecuting Attorney 140 North Sandusky Street Delaware, Ohio 43015
For the Appellee Property Owner	-	Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 1370 West 6th Street, Suite 200 Cleveland, Ohio 44113

Entered May 20, 2008

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

The Board of Education of the Olentangy Local Schools (“BOE”) appeals from a decision of the Delaware County Board of Revision (“BOR”), in which the BOR determined the true value of permanent parcel number 318-321-02-016-003 to be \$1,190,000 for tax year 2004. The BOE argues that the correct true value should be \$1,986,050.

The contested parcel is improved with a branch bank building constructed in 2003. Statutory transcript (“S.T.”) at Ex. 8; Appellee’s Ex. 1 at 1. For tax year 2004, the auditor valued the subject property at \$1,190,000. The BOE subsequently filed a complaint with the BOR, seeking an increase in the subject property’s value to \$1,986,050. The property owner filed a counter-complaint to maintain the auditor’s value.

At the BOR hearing, the BOE presented a copy of a real property conveyance fee statement and a limited warranty deed, which show that the subject sold on January 29, 2004 for a total purchase price of \$1,986,050. S.T. at Ex. 1. The BOE argued that the sale price should be adopted as the true value of the subject. S.T. at Ex. 8. In response, the property owner’s counsel argued that the sale price does not represent the subject’s true value since the transfer was structured as a sale-leaseback transaction and included improvement of another branch bank building on an unrelated parcel. *Id.* On review, the BOR voted to retain the auditor’s value of \$1,190,000. The BOE now argues on appeal that the BOR erred in not accepting the sale price.

At the hearing before this board, the BOE relied on the record of the sale presented at the BOR to support its claimed value, while the property owner offered the testimony and appraisal report of Thomas R. Horner, MAI, a state-certified real estate appraiser in Ohio. Horner testified on direct examination that he arrived at a \$1,350,000 opinion of value for the subject as of the tax lien date. H.R. at 62. Horner also testified that he did not consider the subject’s January 29, 2004 \$1,986,050 sale price indicative of value since it “reflects the leased-fee estate in property, which

means it includes the real estate and the financial transaction beyond the real estate.” H.R. at 52. Horner stated on cross-examination that he was retained to conduct an appraisal of the subject in 2007 and was not involved with the 2004 transfer of the subject. H.R. at 6-7, 120-121.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, the record of the hearing (“H.R.”) before this board, and the briefs submitted by the parties.

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 that 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. Accordingly, this board must proceed to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151

Ohio St. 229. In doing so, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

The BOE presented copies of a real property conveyance fee statement and limited warranty deed evidencing the transfer of the subject property on January 29, 2004 for a total purchase price of \$1,986,050. S.T. at Ex. 1. The BOE contends that this sale constitutes a valid, recent, arm's-length sale, and, as such, the transfer price remains the best evidence of the value of the subject property as of January 1, 2004. We agree.

R.C. 5713.03 provides, in pertinent part, that:

“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.”

As the party asserting that the valuation determined by the BOR should be increased, the BOE bears the burden of proving that the value it alleges should be the true value. The BOE met that burden by introducing documents establishing that the property sold on January 29, 2004 for the amount of \$1,986,050. *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St. 3d 250, 252, 2005-Ohio-6434. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the

sale price of the property shall be the true value for taxation purposes.<sup>1</sup> *Rhodes v. Hamilton Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-1595; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-1588; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-1473; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 271-272, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Although the presumption exists that the sale price is the best evidence of true value, that presumption may be rebutted where the sale is not an arm's-length sale. *Bd. of Edn. of the Cleveland Municipal School Dist.*, supra, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. However, the property owner presented no competent or probative evidence challenging the arm's-length nature of the sale before either the BOR or this board to rebut the presumption that the sale price is the best evidence of value. Before the BOR, the property owner's counsel argued that the sale does not reflect value. However, statements of counsel are not evidence. *Corporate Exchange Bldgs. IV & V*,

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<sup>1</sup> We find the evidence of the sale of the subject less than one month after the tax lien date is sufficiently recent for tax valuation purposes. See R.C. 5713.03; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Bd. of Edn. for Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 17, 2002), BTA Nos. 2000-R-880, et seq., unreported; *Equity Strongsville II. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported.

*L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299; *State v. Green* (1998), 81 Ohio St. 3d 100, 104.

Before this board, the property owner's appraiser, Horner, testified that he did not view the subject's transfer as an arm's-length sale indicative of true value, opining that the transaction represents only a leased-fee estate rather than the fee simple interest in the property. H.R. at 52-53. However, that position has been repeatedly rejected in a series of Ohio Supreme Court cases. See *Rhodes*, supra; *Dublin City Schools Bd. of Edn.*, supra; *Cummins*, supra; *Berea*, supra. Moreover, Horner conceded that he was not involved with the 2004 transfer of the subject. Consequently, without evidence to controvert the validity of the arm's-length nature of the January 2004 sale, we must conclude that the best evidence of the property's true value for taxation purposes is the sale price.<sup>2</sup> *Id.*

Accordingly, based upon the preponderance of competent and probative evidence before this board, the value of the subject parcel as of January 1, 2004 shall be as follows:

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<sup>2</sup> Characterizing the subject's transfer as part of a lump-sum sale of two properties that requires an allocation of value, the property owner also argues that this board "cannot accept a purchase price paid for a combined sale of a group of assets." Brief at 24. However, a review of the record provides no evidence to support the property owner's argument that the subject's transfer amount is unreliable due to an allocated sale. Even assuming the subject property's grantor and grantee transferred another property on the same date as the subject, we find the transaction in this case is distinct and is not a combined sale of assets. See *Conalco*, supra; *Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St.2d 410, *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647; *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶14.

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 800,000	\$280,000
BUILDING	<u>1,186,050</u>	<u>415,120</u>
TOTAL	\$1,986,050	\$695,120

The Auditor of Delaware County is hereby ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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