



determined the true value of permanent parcel number 570-263250, owned by M&R Galloway Realty, LLC (“M&R Galloway”) to be \$913,600 for tax year 2003.<sup>1</sup> The BOE claims that the correct value should be \$4,398,000.

At the outset, we note that all parties waived their right to appear at hearing before this board. See Ohio Adm. Code 5717-1-15(F). The parties requested that we proceed to determine this appeal upon the statutory transcript (“S.T.”) certified to us by the BOR.

In this regard, we remind the parties that our duty is to conduct a de novo review of the record and to “determine the value of the property.” R.C. 5717.03. Where the parties present no additional evidence on appeal, we will independently review the record developed by the parties before the county board of revision and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (quoting *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 14, and holding that this board ““has a duty on appeal to independently weigh and evaluate all evidence properly before it.””).

The subject property consists of approximately 2.422 acres of land. As of January 1, 2003, the subject was being improved with a building, which, when completed, would be a discount retail store and pharmacy.

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<sup>1</sup> Pursuant to Ohio Adm. Code 5717-1-03(E), this board is to be notified, in writing, of a change in ownership. Counsel for M&R Galloway has provided written notice of a change in ownership to CRE Columbus Triple Net Holdings, LLC. Given this notice, the board will provide notice of its decision to the new ownership.

The subject was transferred on April 11, 2003 for a purchase price of \$4,389,000. Based upon this sale, the BOE filed an original complaint with the BOR, seeking an increase in the property's value to the purchase price. For tax year 2003, the auditor valued the subject property at \$913,600. From that value, the auditor valued the land at \$527,500 and the building at \$386,100. The building value represents the retail store which was being constructed and was incomplete as of tax lien date January 1, 2003. The auditor valued the building as being 50% complete.<sup>2</sup>

At the BOR hearing, the BOE presented copies of a deed and a conveyance fee statement, which showed that the subject sold on April 11, 2003 for a total purchase price of \$4,389,000. S.T. at Exs. 10(A) and (B). The BOE argued that the sale price should be adopted as the true value of the subject. Additionally, the BOE presented a deed and conveyance fee statement evidencing that before construction, the subject's land was previously purchased on September 20, 2002 for \$1,300,000.<sup>3</sup> Id. M&R Galloway presented an owner's opinion of value and the expert testimony of appraiser Curtis Hannah, who further presented his written "retroactive market rent study." S.T. at Exs. 14, 10(1) and (2).

Mr. Hannah testified that the April 2003 sale price was not the best indicator of the subject's market value, but rather the sale price reflected the leased fee

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<sup>2</sup> Specifically, the auditor's property record card states: "For 1/1/2003 LAND PRICED BLD 50% COMP CHECK 2004 FOR COMP AND PAVING 1-23-03." S.T. at Ex. 9.

<sup>3</sup> This September 2002 sale appears to be a split of the subject's 2.422 acres from a larger parcel. Both the deed and conveyance fee statement include handwritten notations that the subject was split from an existing parcel. Id. Additionally, the auditor's representative on the BOR remarked that the subject parcel was created on October 2, 2002. S.T. at 14.

interest in a 75-year lease with Walgreen's. In his written analysis, Mr. Hannah provided so-called "second generation" lease comparables for similar properties that were previously occupied by discount pharmacy stores and concluded that the market rental rate for the subject would be \$10 per square foot if exposed to the market. Id. Mr. Hannah further testified that the actual rental rate paid by Walgreen's is not consistent with market rental rates. Id.

The auditor's representative to the BOR commented that pursuant to the auditor's property record card, the property was 50% complete on January 1, 2003. S.T. at Ex. 14. No evidence was presented to suggest that the improvements were anything other than 50% complete on tax lien date.

Additionally, the BOR noted that line 14 of the complaint filed by the BOE checked a box indicating that a prior complaint had been filed within the same triennial; however, because the property had sold in an arm's-length sale in the interim period,<sup>4</sup> the BOE had standing to file a second complaint within the same triennial. See R.C. 5715.19(A)(2) (which prohibits a second filing within a triennium period unless one of four specific circumstances applies). However, upon investigation by the auditor's representative during the hearing, he concluded that the subject parcel was created in October of 2002 and that there was no prior filing on the subject parcel that would have triggered the prohibition contained within R.C. 5715.19(A)(2).

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<sup>4</sup> The relevant triennial period for Franklin County was 2002, 2003 and 2004.

We begin our review of this matter by noting that “[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In determining value, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

With regard to the sales now before us, R.C. 5713.03 provides that if “a 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 construing R.C. 5713.03, the Ohio Supreme Court has specified, “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106

Ohio St.3d 269, 2005-Ohio-4979, at ¶ 13. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

We have previously held that evidence of a sale exhibited through a deed or conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. We find the September 20, 2002 and the April 11, 2003 sales of the subject property to be arm's length.

M&R Galloway argues that the April 11, 2003 sale price should not be considered the value of the subject property as of January 1, 2003 because the improvements were not complete. M&R Galloway points to the testimony of Mr. Hannah that the subject's certificate of occupancy was not issued until February 28, 2003 and that the property was not opened for business until April 25, 2003. S.T. at Ex. 14. M&R Galloway argues that because Walgreen's did not accept the improvements (pursuant to the lease agreement) until after January 1, 2003, that the April sale price does not reflect the partially complete improvements on January 1, 2003. Rather, M&R Galloway argues that the BOE has failed to offer evidence as to the value of the partially complete structure and land given what was sold on April 11, 2003 was substantially different.

R.C. 5713.01(B) provides that the auditor "shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31

and 5715.01 of the Revised Code and with the rules and methods applicable to his county adopted, prescribed, and promulgated by the tax commissioner.” Similarly, R.C. 5713.03 provides:

“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* and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner.” (Emphasis added.)

Pursuant to his authority, the Tax Commissioner promulgated Ohio Adm. Code 5703-25-06. With regard to valuing new construction, Ohio Adm. Code 5703-25-06(G) provides:

“The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first.”<sup>5</sup>

This board has previously held that improvements under construction be valued based upon value as of tax lien date. *Westlake Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 21, 2008), BTA No. 2006-T-1185, unreported; *Duffy v. Erie Cty. Bd. of Revision* (June 11, 2004), BTA No. 2003-T-864, unreported. Although M&R

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<sup>5</sup> R.C. 5713.17 provides that to “enable the county auditor to determine the value and location of buildings and other improvements,” any person who constructs a building or other improvement on a parcel of real property must give the auditor written notice of the action within sixty days after construction of the building or improvement has commenced.

has not provided any evidence regarding an appropriate discount to the value of the partially completed improvements, the Ohio Supreme Court has previously considered evidence which supports discounting the value of the partial construction to reflect the inherent risk associated with the completion of such improvements. *Webb/Henne Montgomery Luxury Apartments v. Hamilton Cty. Bd. of Revision* (1995), 73 Ohio St.3d 739.

Although we concur with M&R Galloway that the full purchase price should not be considered as the value of the partially complete property as of January 1, 2003, we find the September 2002 and the April 2003 sale prices provide the best indication of value.

We have before us a recent, arm's-length sale of the subject property, as completed, for \$4,389,000. Further, we have another recent arm's-length sale of the subject's land for \$1,300,000. See *Berea*, supra. We further have before us unrefuted evidence establishing that the subject's improvements were 50 percent complete as of January 1, 2003. We adopt the September 2002 land sale (\$1,300,000) as the amount to be allocated to the underlying land in the April 2003 sale. Subtracting the land value from the purchase price yields a value for the improvements ( $\$4,389,000 - \$1,300,00 = \$3,089,000$ ). Applying the percentage of completion to the amount of the sale price allocated to the improvements ( $\$3,089,000 \times .5 = 1,544,500$ ), we find that the record establishes a value for the subject property of \$2,844,500. Accordingly, the Board of Tax Appeals finds, upon a preponderance of the evidence, the true and taxable values of the subject property are as follows for tax year 2003:

Parcel 570-236250	TRUE VALUE	TAXABLE VALUE
LAND	\$1,300,000	\$455,000
BUILDINGS	<u>\$1,544,500</u>	<u>\$540,580*</u>
TOTAL	\$2,844,500	\$995,580*

(\* rounded)

We order the Auditor of Franklin County to list and assess the subject property in conformity with this decision and order.<sup>6</sup>

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<sup>6</sup> Today's decision and order is limited to tax year 2003. This board previously remanded the 2004 portion of the original appeal to the BOR. *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision* (Interim Order, Sept. 28, 2007), BTA No. 2005-V-332, unreported.