



This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Montgomery County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel to the appellant and appellee property owner.

Situated on approximately eleven acres, the subject real property, a 122-unit apartment complex built in 1965 is comprised of 15 2-story buildings containing approximately 121,040 rentable square feet. Specifically the complex consists of 30 1-bedroom units, 60 2-bedroom units, and 32 three-bedroom units. Located in the city of Huber Heights taxing district, the subject consists of two parcels, # P70-40-3-15 and #P70-40-3-145. The value of the parcels, as determined by the auditor and by the board of revision, for tax year 2005, is as follows:

PARCEL #P70-40-3-15		
AUDITOR		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 144,000	\$ 50,400
Building	989,120	346,190
Total	\$ 1,133,120	\$ 396,590

BOARD OF REVISION		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 144,000	\$ 50,400
Building	1,242,840	435,000
Total	\$ 1,386,840	\$ 485,400

PARCEL #P70-40-3-145

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$ 405,000	\$ 141,750
Building	2,303,850	806,350
Total	\$ 2,708,850	\$ 948,100

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$ 405,000	\$ 141,750
Building	2,291,200	801,920
Total	\$ 2,696,200	\$ 943,670

Appellant contends that the auditor and the board of revision have undervalued the property in question by not assessing it based upon the \$4,775,000 price obtained in the sale of the subject in January 2005. The property owner contends that the sale of the subject did not constitute an arm's-length transaction, and, as such, the sale price should not be utilized in the determination of value for the subject.

First, in reviewing how this case came to us, we note that in March 2006, relying upon the price obtained in a sale of the subject property on January 26, 2005, the Board of Education of the Huber Heights City Schools filed an original complaint against the valuation of real property with the Montgomery County Board of Revision seeking an increase in the subject's total true value to \$4,775,000 for tax year 2005. Thereafter, in April 2006, the property owner, Batim One, LLC, filed a counter-complaint. S.T., Ex. A. At the BOR hearing, the school board pointed to the copy of the conveyance fee statement and limited warranty deed from the aforementioned sale of the property, as previously attached to its original complaint, as evidence of the subject's value. S.T., Audio Tape. On October 19, 2006, the BOR issued its decision

for tax year 2005, increasing the overall value assigned by the auditor for the subject property to a total market value of \$4,083,040. Thereafter, the appellant board of education appealed the BOR's determination to us.

We begin our analysis 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.

As we consider the board of education's position in this matter, we note the copy of the conveyance fee statement<sup>1</sup> and deed in the record which provides support for the BOE's position that the January 2005 sale of the subject is the best evidence of its value for tax year 2005. The sale documents indicate that the subject

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<sup>1</sup> We note that the conveyance fee statement reflects a January 25, 2004 date of execution, however all other indications from that document and the associated limited warranty deed indicate that the transaction occurred in January 2005 and the date of execution listed on the conveyance fee statement was actually a typographical error. S.T., Ex. A.

was transferred on January 26, 2005, to Batim One, LLC for the amount of \$4,775,000. This board has previously held that a copy of a real property conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. See, e.g., *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Princeton City School Dist. v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported (holding that once a deed or conveyance fee statement is introduced into evidence, the opposing party must introduce sufficient evidence to overcome the presumption that arises that the sales price is the true value of the property). Counsel for the board of education contends that this sale constitutes a valid, recent,<sup>2</sup> arm's-length sale, and, as such, the transfer price should be considered the best evidence of the value of the subject property as of January 1, 2005. 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.”

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<sup>2</sup> In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. In this instance, the sale occurred within one month of the tax lien date in question, and, therefore, constitutes a “recent” sale.

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “that 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.’ R.C. 5713.03.” *Berea*, at 5. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that “encompasses bidding and negotiation in the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under coercion.” In short, the court found an arm's-length sale to be 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.” *Id.* at 25.

The property owner contends, through counsel, that the sale price cannot be appropriately utilized in the valuation of the subject because the sale in question was not arm's length. Specifically, Batim One, LLC, the property owner, is jointly held between a husband and wife, Mr. and Mrs. Teitelbaum. H.R. at 11. It is the Teitelbaum's position that because the condition of the subject property was actually far worse than they had realized and because the previous owner had not accurately

described the subject's occupancy levels and the quality of the subject's tenants, as a result, the transaction did not occur in an open market and Batim One did not act in its own best interests. H.R. at 18-20, 23-23. Apparently, the Teitelbaums had no experience purchasing properties larger than 12 units. H.R. at 12. Mrs. Teitelbaum walked through the property about two weeks prior to taking title and Mr. Teitelbaum saw the property once. H.R. at 14. The Teitelbaums estimated the property would need approximately \$500,000 of upgrades upon purchase, which they figured into their offer, which was also based upon their interpretation of the value of the rent roll. H.R. at 15-16. The bank appraised the subject at \$5,400,000. H.R. at 17.

As we review the parties' positions herein, in light of the aforementioned elements of an arm's-length sale, we find that the sale clearly meets all of the stated requirements for an arm's-length transaction. First, the sale was voluntary and took place in the open market. Batim One did not act out of compulsion or duress. Mrs. Teitelbaum, in describing why they chose to purchase the subject property, testified that she and her husband "wanted to make an investment \*\*\* to use the cash that we had, and we started looking around in New York \*\*\* first." H.R. at 13. After finding nothing in New York to meet their needs for a long-term investment, Mrs. Teitelbaum testified that they "got a broker, maybe even more than one broker. \*\*\* They started looking for us. First we went to Connecticut and then we went to Pennsylvania. Finally somebody suggested this. One of the brokers suggested this. It looked doable, so we decided to try." H.R. at 13. She went on to indicate that the property was listed on the open market, that their broker located the property for them, and that there was

no “pressing reason” why she wanted to purchase the subject, only that she “just wanted to do something with \*\*\* [her] cash.” She “wanted to do an investment.” H.R. at 42-43. She further testified that the seller was represented by a broker and the purchase price was negotiated down from the original asking price of over five million to the \$4,775,000 actually paid. H.R. at 14, 16.

The property owner claims that:

“the transaction between Batim One and the previous owner did not occur in an untainted and open market. It is obvious that material defects to a property drastically impact the value of that property on the open market. It is equally obvious that if those defects are hidden from the market, the market fails to consider those defects when ascribing a value to that property and cannot, therefore, be declared ‘open.’” Brief at 5-6.

The property owner elaborated on this position with regard to the facts that had not been disclosed to Batim prior to the purchase, stating that:

[such detrimental] “facts, all of which were unknown to Batim One prior to purchasing the property, combined to destroy any notion that this transaction was the product of a truly ‘open market.’ The seller knew things the buyer did not know, and of which the buyer was unaware prior to the closing of the transaction. This is undisputed.” Brief at 7.

We disagree with the property owner’s representation that the defects in the property and/or state of the rent roll were not disclosed, insinuating a deliberate act on the part of the previous owner. There is nothing in the record to confirm that the previous owner deliberately concealed problems from Batim. The record is clear, however, that Batim simply failed to exercise due diligence in investigating the subject property for purchase. Batim chose not to get an independent appraisal of the subject,

not to have an inspection of the subject property, not to review the leases that were in effect at the time of purchase, and not to speak to any of the current residents of the property and to rely on unverified information provided by the seller and blind assumptions about the property as a basis for their purchase. In consideration of all of the foregoing, we find that the sale was voluntary and took place on the open market.

With regard to whether the sale qualifies as arm's length based upon the parties acting in their own self interest, the property owner argues that "[i]t goes without saying that a purchaser who fails to conduct even the most basic due diligence, such as the hiring of a professional inspector or the review of current lease agreements, certainly must exemplify one who has failed to act in one's own best interest." Brief at 7-8. Thus, the appellant is arguing that because the buyer did not take, arguably, common sense, precautionary measures to assure that the subject property was, in fact, a quality property with quality tenants, the buyer, in turn, paid too much for the subject property and therefore, the sale price does not reflect the actual market value of the property. However, the record in this matter evidences a transaction in which neither party was compelled to purchase or to sell; each party took action and negotiated based upon their own financial needs and personal standards. A bad investment decision does not equate to failure to act in one's own self interest. As we stated in *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." Batim One acted in its own self interest.

This board has consistently rejected the argument that a sale should not be considered arm's length simply because the buyer arguably paid too much for a property due to a lack of understanding about the property, including, e.g., its condition, its viability, its history. See, e.g., *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2006), BTA No. 2004-A-1210, unreported; *Veard Kettering Limited Partnership v. Montgomery Cty. Bd. of Revision* (Jan. 7, 2005), BTA Nos. 2002-R-1393, 1394, unreported, value stipulated on remand 9/15/2005 Case Announcements, 2005-Ohio-4803; *Granville Village Apartments, Inc. v. Franklin Cty. Bd. of Revision* (Mar. 12, 2004), BTA No. 2002-V-1972, unreported; *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Feb. 22, 2002), BTA No. 1999-R-2049, unreported. Further, although this board has held, on occasion, that material, undisclosed defects, not necessarily discoverable by a prospective purchaser exercising due diligence, could justify disregarding a sale price in determining a property's value, see, e.g., *Hts. Med. Bldg. LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 2004), BTA No. 2002-T-1260, unreported, in this instance, the record demonstrates that the defects in question would have been discovered had any amount of due diligence been performed, e.g., problems with the HVAC, windows, plumbing, vacancy rate. Finally, we also must note that Batim could have opted not to purchase the subject, after the extended inspection periods, if it believed the price ultimately negotiated was too high based upon revealed defects. However, even when presented with problems exposed through the bank's inspection of the subject, Batim chose to renegotiate a lower price for the property based upon the defects, rather than

to terminate the agreement to purchase. H.R. at 35-39; S.T., Ex. A, Purchase and Sale Agreement.

Thus, because we find nothing in the record to dispute that the sale in question was arm's length in nature, this board finds that the best evidence of value of the subject property is its \$4,775,000 sale price paid on January 26, 2005. Accordingly, we need not consider any other evidence of value, including the property owner's appraisal. S.T. Thus, with no competent or probative evidence in the record rebutting the presumption that the sale price is the best evidence of value, the value<sup>3</sup> of the subject parcels as of January 1, 2005 shall be as follows:

PARCEL #P70-40-3-15		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 144,000	\$ 50,400
Building	1,479,500	517,820
Total	\$ 1,623,500	\$ 568,220

PARCEL #P70-40-3-145		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 405,000	\$ 141,750
Building	2,746,500	961,280
Total	\$ 3,151,500	\$1,103,030

The Auditor of Montgomery County is hereby ordered to cause the county 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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<sup>3</sup> Because the auditor and board of revision agreed upon the value to be attributed to the land, we have utilized the same value. The valuation of the subject buildings has been determined using the same ratios that the BOR used, considering the total percentage of value attributed to each parcel in conjunction with the previously determined land values.