

OHIO BOARD OF TAX APPEALS

CCleveland OH Realty I, LLC and)	
CCleveland OH Realty II, LLC,)	
)	CASE NOS. 2006-A-331,
Appellants/Appellees,)	2006-A-333, 2006-A-345
)	
and)	
)	(REAL PROPERTY TAX)
Board of Education of the Cleveland)	
Municipal School District,)	
)	DECISION AND ORDER
Appellee/Appellant,)	
)	
vs.)	
)	
)	Affirmed on Appeal Feb. 25, 2009
Cuyahoga County Board of Revision)	Ohio Supreme Court No. 2008-0636
and Cuyahoga County Auditor,)	
)	
Appellees.)	2009-Ohio-757

APPEARANCES:

For the Property
Owners

- Sleggs, Danzinger & Gill Co., LPA
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For the Board of
Education

- Brindza, McIntyre & Seed LLP
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For the County
Appellees

- William D. Mason
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Entered March 7, 2008

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

This cause and matter came on to be considered by the Board of Tax Appeals upon three notices of appeal filed herein by the above-named parties from a decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2004.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing of this board at which evidence¹ and testimony was presented, and the briefs filed by counsel to the property owners and counsel to the board of education.

The subject, a drugstore situated on approximately 1.75 acres, is located in the Cleveland taxing district and is identified on the auditor's records as parcel number 017-09-002. The value of the parcel, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 874,800	\$ 306,200
Building	1,165,200	407,800
Total	\$2,040,000	\$ 714,000

¹ At the hearing before the BTA, the hearing examiner reserved ruling on whether Exhibit 2, a deed from the sale of another drugstore in Columbus, Ohio, as offered by the property owners, could be received into evidence. H.R. at 62-63. Pursuant to R.C. 5715.19(G), the BOE's counsel objected to receiving such document, since it was not presented at the BOR. The document purportedly reflects a sale that was part of a multi-property portfolio transaction that also included the sale of the subject. Ex. 7. As such document relates to the appraiser's statement within his report regarding the history of the ownership of the subject, and as such report was not in existence at the BOR hearing, we will receive such document into evidence. We note, however, that there was limited testimony regarding such document, simply an identification of it. H.R. at 63.

In their notices of appeal, the property owners allege that the correct true value for the subject parcel is \$2,000,000,² while, in its appeal, the board of education alleges that the subject's true value is reflected by its recent sale price, i.e., \$4,084,750.

This matter began in March 2005 when the board of education filed a complaint against the valuation of real property with the Cuyahoga County Board of Revision seeking an increase in the subject's true value to \$4,084,750, citing the subject's sale on June 26, 2004, as the basis for such value. S.T. at Ex. A. In May 2005, a counter-complaint was filed by the property owners, claiming that the subject's true value as of January 1, 2004, was \$2,000,000. The property owners argued that the recent sale was not reflective of true value because it was a leased fee sale. S.T. at Ex. B.

At the board of revision hearing, legal representatives for both the property owners and board of education appeared. The property owners' counsel described the recent history of the property, indicating as he did to this board that "[t]here are several transfers, going back to November 1999, involving the property when it was acquired by CVS from Rite Aid and then redeveloped as a CVS retail location. And then, subsequently, it was the subject of a sale lease-back transaction. The transaction then serves as the basis for the Board of Education's increase complaint that gave rise to this litigation, which was the sale of the leased fee interest of the property. And that took place on June [July] 20th of 2004." H.R. at 8. The board of revision was provided with copies of the conveyance fee statement for the

² At the hearing before us, the property owners amended their suggested valuation to reflect the value opined by their appraiser, i.e., \$865,000. H.R. at 9.

November 15, 1999 sale of the property, the limited warranty deed dated October 12, 2000, the sale contract, the construction service report, and the conveyance fee statement of November 11, 2000, as well as the conveyance fee statement and deed for the July 26, 2004 sale of the subject. S.T. at Ex. G.; Ex. 2. On February 15, 2006, the BOR issued its decision, maintaining the auditor's valuation for the subject. Thereafter, both the property owners and the board of education appealed the BOR's determination to us.

Before this board, the property owners presented the report and testimony of Richard Racek, Jr., MAI, a state-certified general real estate appraiser. Ex. 1. Mr. Racek, using market information under the three accepted approaches to valuation, opined to a value for the subject of \$865,000. Ex. 1 at 53. He indicated he did not rely upon the recent sale of the subject, considering it a sale of a leased fee interest in the property. H.R. at 103. Neither the board of education nor the county appellees presented any evidence or testimony to this board. We must emphasize that before both the BOR and this board, no testimony was received from any witness who was involved in the sale of the property or aware of the specific details of the sale of the property.

As we proceed to determine value herein, we acknowledge 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), 37 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 first consider the board of education's position, we note the copy of the conveyance fee statement and deed offered by the board of education to the BOR as support for its argument that the July 2004 sale of the subject is the best evidence of its value for tax year 2004. The documents indicate that the subject was transferred on July 26, 2004, to CCleveland OH Realty I LLC and CCleveland OH Realty II LLC for a \$4,084,752 sale price. Counsel for the board of education contends that this sale constitutes a valid, recent,³ 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, 2004. We agree.

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

³ 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 several 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 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.”

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, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059; *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.

It is the property owners’ position that the recent sale of the subject property constitutes the sale of a leased fee, and, as such, it cannot be relied upon to determine the fee simple value of the subject for real property tax valuation purposes. To support their contentions, and seeking what they termed to be “uniformity in taxation,” the property owners offered the appraisal of the subject, as well as evidence of the valuation of another drugstore in the area which they deemed to be comparable to the subject and that was valued significantly lower than the subject for the tax year

in question. Ex. 1, 3; Property Owners' Reply Brief. However, after *Berea*, supra, this board has had occasion to review the valuation of several freestanding drugstores. On most occasions, the board has concluded that the sale price of the property controls value for ad valorem tax purposes. The board has made this determination, despite testimony contained in each record from an appraiser or other individual that the sale price is predicated upon the manner in which the property is used, i.e., the leased fee interest. See *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 18, 2007), BTA Nos. 2005-R-329, et seq., unreported, appeal pending Sup. Ct. No. 2007-1086; *Hon. Dusty Rhodes v. Hamilton County Bd. of Revision* (Mar. 9, 2007), BTA No. 2005-M-1098, unreported, appeal pending Sup. Ct. No. 2007-615; *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 30, 2006), BTA No. 2005-A-381, unreported, dismissed, 114 Ohio St.3d 1224, 2007-Ohio-4007; *Dayton School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Jan. 6, 2006), BTA No. 2004-V-73, unreported. See, also, *AEI Net Lease Income and Growth Fund v. Erie Cty. Bd. of Revision* (Oct. 12, 2007), BTA No. 2005-T-902, unreported, appeal pending Sup. Ct. No. 2007-2101; *Cincinnati School District Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (June 8, 2007), BTA No. 2005-M-1069, unreported, appeal pending Sup. Ct. No. 2007-1217. The value of another freestanding drugstore was considered in *RX Bedford Investors, LLC vs. Cuyahoga Cty. Bd. of Revision* (Feb. 3, 2006), BTA No. 2002-R-2509, unreported, vacated upon remand for implementation of settlement, Sup. Ct. No. 06-448. In that case, the record contained testimony from persons related to the parties involved in a sale of a drugstore location.

This board, after fully reviewing the record, including the circumstances surrounding the sale, concluded that the costs of construction, as found by the board of revision, indicated the best evidence of the property's value. It is the testimony of persons knowledgeable of the transaction involved that allowed this board to determine that the sale was not the best evidence of value, and not an appraiser's hypothesis that all sales of successful retail locations should be disregarded.

“Given the earlier decisions of this board, we are unable to conclude, as a matter of law, that a sale of a property encumbered with a long-term lease entered into by a developer and a user can never be considered indication of the fair market value of a property. Properties encumbered by leases are purchased and sold regularly in the real estate market.” *Bd. of Edn. of the Columbus City Schools*, supra, at 11. In addition, even if this board were to disregard the recent sale price, we find it difficult to believe that the subject can only be worth \$865,000, when a prior owner paid approximately \$2.9 million in land and construction costs for the subject in 1999 and 2000. H.R. at 10.

In the present matter, the property owners did not come forth with evidence rebutting the presumption that the sale of the subject meets the indices of an arm's-length transaction. Thus, with no competent or probative evidence in the record rebutting the presumption that the sale price is the best evidence of value, the board finds that the record supports a valuation⁴ determination as of January 1, 2004, as follows:

⁴ The newly determined land and building values have been assigned in the same proportion as that which the auditor utilized in the subject's valuation for tax year 2004.

	TRUE VALUE	TAXABLE VALUE
Land	\$ 1,756,440	\$ 614,750
Building	2,328,310	814,910
Total	\$ 4,084,750	\$ 1,429,660

The Auditor of Cuyahoga 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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