

**OHIO BOARD OF TAX APPEALS**

Bedford Board of Education, )  
 )  
 )  
 Appellant, ) (REAL PROPERTY TAX)  
 )  
 vs. )  
 ) DECISION AND ORDER  
 Cuyahoga County Board of Revision, )  
 Cuyahoga County Auditor, and )  
 Omega Realty, LLC, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Kolick & Kondzer  
Bd. of Edn. Thomas A. Kondzer  
John P. Desimone  
24500 Center Ridge Road, Suite 175  
Westlake, Ohio 44145-5697

For the County - William D. Mason  
Appellees Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
Courts Tower, Ninth Floor  
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For the Appellee - Calfee Halter & Griswold LLP  
Property Owner David K. Hales  
1400 Keybank Center  
800 Superior Avenue  
Cleveland, Ohio 44114

Entered February 6, 2009

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

The Bedford Board of Education (“BOE”) appeals from a decision of the Cuyahoga County Board of Revision, in which the BOR determined the true value of

permanent parcel number 791-23-009 to be \$1,104,700 for tax year 2005. The appellant argues that the correct true value should be \$1,567,000.

The subject property is improved with a commercial building that is approximately 19,734 square feet in size and is located in the Bedford Heights taxing district. S.T., Ex. E. For tax year 2005, the auditor valued the subject property at \$1,104,700. The BOE filed a complaint with the BOR, seeking an increase in the subject property's value. In support, the BOE presented a copy of a conveyance fee statement and a limited warranty deed, which showed that the subject sold on February 10, 2005 for a total purchase price of \$1,567,000. S.T., Exs. C-D. The BOE argued that the sale price should be adopted as the true value of the subject. The property owner, Omega Realty, LLC ("Omega"), presented the testimony of its LLC member, Armond Waxman, and a consultant, John Peters, at the BOR hearing. Upon review, the BOR voted to retain the auditor's value of \$1,104,700. The BOE now argues on appeal that the BOR erred in not accepting the sale price.

At the outset, we note that the parties waived their right to appear at a hearing before this board. See Ohio Adm. Code 5717-1-15(F). However, briefs were filed by the BOE and Omega.

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 sale 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. The conveyance fee statement and warranty deed before us list the February 10, 2005 sale as an arm's-length transaction. S.T., Ex. C. The conveyance fee statement and the deed disclose no association or condition that would impact the validity of the sale.

In the instant matter, Omega argues that the sale was not arm's length. It points out that the buyer and seller were related entities and that the transaction was for the purpose of transferring cash from one entity to another. Omega also notes that the property was not listed on the open market and no broker was involved. Omega's Brief at 2.

In reviewing challenges to sale prices, we note the court's holding in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, in which it stated, "Under *Berea*, \*\*\* a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the sale was sufficiently recent and genuinely at arm's length between a willing buyer and a willing seller." Id. at ¶8. See, also, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 008-Ohio-1473, at ¶13 ("a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale").

"[A]n 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, at the syllabus. The absence of a single one of these factors is sufficient to demonstrate that a transaction was not conducted at arm’s length. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, at ¶13, citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145. See, also, *RLG Properties, LLC v. Franklin Cty. Bd. of Revision*, 2006-Ohio-5096.

In the instant matter, we conclude that the sale was not made at arm’s length. The subject was not listed on the open market. The parties were both “owned” by Armond Waxman and it is uncontroverted that the transaction was made for the purpose of transferring cash from one entity to another. S.T., Audio Tape. Thus, we are compelled to conclude that the sale relied upon by the BOE fails to constitute an arm’s-length transaction in that the transaction was between related parties and did not take place in an open market. See *Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty Bd. of Revision* (2000), 89 Ohio St.3d 450. Cf. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1988), 82 Ohio St.3d 193. Both the buyer and seller had the same shareholders/members. It is also undisputed that the sale did not take place on the open market. S.T., Audio Tape. See *Cuyahoga Falls Downtown Dev. Corp. v. Summit Cty. Bd. of Revision* (Mar. 10, 1995), BTA No. 1993-T-1015, unreported (property offered for sale only in a very limited, restricted manner, was not transferred in an arm’s-length sale). In short, the subject property was offered

exclusively to one entity, an entity that was directly related to the seller through a common ownership and common representation.

Having found the sale in question to not be arm's length in nature, the sale price is not deemed to be the value of the subject property. *Berea, Dublin, and Cummins*, supra.

Accordingly, in the absence of competent and probative evidence that conclusively establishes the value of the subject property, we are compelled to find that the BOE has not met its burden of supporting an increase in the subject property's value. *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.

In the absence of competent and probative evidence supporting a more appropriate value, we find no basis upon which to alter the auditor's and BOR's value determinations. See *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

Accordingly, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of January 1, 2005, are as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 211,000	\$ 73,850
BUILDINGS	<u>\$ 893,700</u>	<u>\$ 312,800</u>
TOTAL	\$1,104,700	\$386,650

We order the Auditor of Cuyahoga County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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