

**OHIO BOARD OF TAX APPEALS**

Board of Education of the ) CASE NO. 2006-H-1361  
Olentangy Local Schools, )  
 ) (REAL PROPERTY TAX)  
Appellant, )  
 ) DECISION AND ORDER  
vs. )  
 ) **Appeal Filed Feb. 12, 2009**  
 ) **Ohio Supreme Court No. 09-320**  
Delaware County Board of Revision, )  
Delaware County Auditor, and )  
Knickerbocker Properties, Inc. XLII, )  
 )  
Appellees. )

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
Board of Education Mark H. Gillis  
300 East Broad Street, Suite 300  
Columbus, Ohio 43215

For the County Appellees - David Yost  
Delaware County Prosecuting Attorney  
Christopher D. Betts  
Assistant Prosecuting Attorney  
140 North Sandusky Street  
Delaware, Ohio 43015

For the Appellee - Sleggs, Danzinger & Gill Co., LPA  
Property Owner Todd W. Sleggs  
820 W. Superior Avenue, Suite 400  
Cleveland, Ohio 44113

Entered January 13, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Board of Education of the Olentangy Local Schools (“BOE”) from a decision of appellee, Delaware County Board of Revision (“BOR”). In addition to the notice of appeal, the matter is submitted based on the statutory transcript (“S.T.”) certified to this board by the BOR,

the evidentiary hearing (“H.R.”) before this board, and briefs filed by the parties in support of their arguments.

This appeal involves the taxable value of real property located in the city of Columbus, Olentangy local schools taxing district and further identified as parcel numbers 318-433-01-014-001 and 318-434-01-013-001. The contested parcels, totaling 25 acres, are situated in Delaware County and have been improved with a 300-unit apartment complex. S.T., Ex. 4 at 8. The subject was purchased on December 29, 2003 by Knickerbocker Properties, Inc. XLII (“property owner”) for the amount of \$27,605,000. Appellant’s Ex. A.

The total true value of the subject parcels for 2005, as originally assigned by the Delaware County Auditor (“auditor”), is \$27,058,900. The property owner filed a complaint with the BOR on March 29, 2006, asserting that the total true value for tax year 2005 should be decreased to \$19,000,000 due to declining occupancy and income at the property. S.T. at Ex. 1. The BOE filed a counter-complaint seeking to retain the auditor’s values. Id. at Ex. 2. At the hearing before the BOR, the property owner presented the appraisal report and testimony of Samuel D. Koon, who testified that the December 2003 sale should not be viewed as evidence of the property’s value because the “property has not performed up to the buyer’s anticipation at the time of purchase.” S.T., Ex. 4 at 9. Koon’s opinion of the subject’s value for the 2005 tax lien date was \$24,300,000. Id. at 14. At the conclusion of the BOR hearing, the BOR decided to decrease the auditor’s values and found value consistent with the property owner’s evidence.

The BOE now appeals the BOR's determination of value and contends that the December 2003 sale constitutes a valid, recent, arm's-length sale, and, as such, the \$27,605,000 transfer price provides the best evidence of the value of the subject property as of January 1, 2005. Appellant's Ex. A. See, also, deed in S.T., Ex. 8 at Addendum. At the hearing before this board, the property owner again presented its appraiser Koon, who testified the December 2003 transfer was at arm's length. H.R. at 47. However, Koon further testified that he believed market conditions changed in the intervening year from the sale date to January 1, 2005. Specifically, Koon testified that during 2004 "both nationally and in the Columbus market, \*\*\* there were significant numbers of tenants leaving apartment and rental communities to buy houses. \*\*\* [I]t had a significant downward impact on the occupancy rates of apartment communities." H.R. at 32-33, 40-41, 44. Anita Breslin, the director of the company managing the subject property, echoed Koon's testimony, stating the subject did not perform as expected during 2004 due to a large number of tenants that moved out, which she attributed to declining mortgage interest rates that made home ownership more accessible.<sup>1</sup> H.R. at 72-74. Breslin testified she did not participate in negotiations with the seller that resulted in the subject's December 2003 transfer. H.R. at 86-87. However, prior to making the purchase offer, Breslin testified that in August 2003 she began "looking at the property" and conducting due diligence, which

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<sup>1</sup> Breslin has been the managing director of Sentinel Real Estate Corporation since 2001. Prior to that, she oversaw Sentinel's accounting department and was involved in its real estate acquisitions. H.R. at 62-64. Sentinel created Knickerbocker Properties Inc., XLII as a separate entity to hold title to the subject property on behalf of a pension fund. H.R. at 68, 88.

included reviewing the property's past and current financial statements. H.R. at 118-119. Breslin testified that during 2003, she believed mortgage interest rates were dropping. H.R. at 120-121.

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.

As we review the record, we again note the BOE presented a copy of a real property conveyance fee statement evidencing the transfer of the subject property on December 29, 2003 for the amount of \$27,605,000.<sup>2</sup> Appellant's Ex. A.

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 a document establishing that the property sold on December 29, 2003 for the amount of \$27,605,000. *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. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516,

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<sup>2</sup> We find evidence of the subject's sale within 13 months of the 2005 tax lien date is sufficiently recent for tax valuation purposes. See R.C. 5713.03; *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.

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 a recent arm's-length sale. *Cleveland Municipal School Dist. Bd. of Edn.*, supra, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. The property owner does not dispute the arm's-length nature of the sale. H.R. at 47, 86-87. Instead, citing alleged changes in market conditions, the property owner argues that the sale taking place in December 2003 was not "recent" for ad valorem tax purposes. In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36 (overruled on other grounds), the court held:

"The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case. R.C. 5713.03 provides that if there has been '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.' \*\*\*. One of the factors that must be considered in determining what is 'a reasonable length of time' is a *consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or changing very slowly.*" *Id.* at 44 (emphasis added).

Thus, we must determine whether sufficient evidence exists to conclude the market was changing so rapidly during 2004 that the transfer price thirteen months prior to the

tax lien date no longer carries evidentiary weight. Given the record before this board, we are unable to conclude the market experienced such a rapid change.

Koon testified that his report did not contain any examples of “paired sales.” H.R. at 48. A paired-sales analysis would typically compare sales of certain relevant properties that sold both in 2003 and 2005 to demonstrate change in the market. Thus, without this type of specific evidence to support his conclusory statements, we find Koon’s testimony unpersuasive. Further, in his appraisal report, Koon writes that the market experienced record-breaking nationwide sales of apartment properties from 2003 to 2005. “Sales volume amounted to \$48.1 billion for 2004, an astounding 163.2% above the total volume recorded in 2003 (\$29.4 billion).” S.T., Ex. 8 at III-1. By contrast, when asked to summarize his appraisal report’s findings as to the Columbus rental market, Koon testified generally as to “\*\*\* significant numbers of tenants leaving apartment and rental communities to buy houses. \*\*\* [I]t had a significant downward impact on the occupancy rates of apartment communities.” H.R. at 32-33. Even with this alleged significant decrease in occupancy rates, Koon’s report characterizes the Columbus apartment market as “somewhat soft, with only moderate growth in units, and rental rates steady in some markets and declining in others. Reported occupancy rates have historically been reported around 90%.” S.T., Ex. 8 at III-5. Yet, Koon also writes that any tenant losses were offset by continued population growth in the Columbus area. *Id.* From this, we are unable to conclude that the Columbus rental market was changing so

rapidly during 2004 to find the sale insufficiently recent. *New Winchester Gardens, Ltd.*, supra.

We also find the testimony of the property owner's representative unpersuasive. Breslin testified that she conducted her due diligence starting in August 2003 to determine whether an offer should be made to purchase the subject. Breslin further testified she believed mortgage interest rates were dropping during that same period in 2003. Consequently, we must conclude that any alleged change in the 2004 market was simply a continuation of the same conditions occurring in 2003, and this trend would have been taken into account during a due diligence analysis. While the subject may have experienced increased vacancies during 2004, the information before us is inadequate to tie any occupancy rate to a change in the market, since other factors, such as management practices, may also impact a vacancy rate. Consequently, we are unable to conclude from Breslin's testimony that the market experienced such a rapid change in 2004 so as to render the sale insufficiently recent.

Consequently, without sufficient evidence to controvert the validity of the December 2003 sale, we must conclude that the best evidence of the property's true value for taxation purposes is the sale price. *Berea*, supra. Accordingly, based upon the preponderance of competent and probative evidence before this board, the true value of the subject parcels as of January 1, 2005 shall be \$27,605,000, allocated as follows:

Parcel number 318-433-01-014-001

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,038,600	\$363,510
BUILDING	<u>\$0</u>	<u>\$0</u>
TOTAL	\$1,038,600	\$363,510

Parcel number 318-434-01-013-001

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,711,400	\$ 598,990
BUILDING	<u>\$24,855,000</u>	<u>\$8,699,250</u>
TOTAL	\$26,566,400	\$9,298,240

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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