

This appeal involves the taxable value of real property located in the Worthington City Schools taxing district and further identified as parcel number 610-263603. The contested 4-acre parcel is situated in Franklin County and has been improved with a retail shopping plaza, consisting of two 7,500-square-foot buildings. Construction of the subject's improvements was completed at or about the time the subject was purchased on May 14, 2003 by Bob-O-Link Golf Course, Ltd. ("property owner") for the amount of \$4,175,000.¹ Statutory transcript ("S.T.") at Ex. 12.

The value of the subject parcel for 2004 and 2005, as originally assigned by the Franklin County Auditor ("auditor"), is \$2,680,000. The BOE filed a complaint with the BOR on February 18, 2005, asserting that value for tax year 2004 should be increased to equal the transfer price of \$4,175,000. At the February 22, 2006 hearing before the BOR, the property owner's agents testified that the sale should not be viewed as evidence of the property's value because the sale was arranged for 1031-exchange tax purposes, the purchase was made based on full tenant occupancy that never materialized, and the buyer was not knowledgeable about the local property market. S.T. at Ex. 12. The property owner's agents also testified that an attempt to resell the subject for \$3.9 million failed when the prospective buyer's September 2005 appraisal valued the property at \$3.2 million. Id.; S.T. at Ex. 8. Following the hearing before the BOR and its consideration of the evidence presented on behalf of the BOE and the property owner, the BOR decided to maintain the auditor's values. In rejecting the May 2003 sale price, the BOR specifically cited the property owner's lack of

¹ The property owner's name apparently changed to Weber Sister Enterprises, Ltd. on March 9, 2005.

knowledge of the local market, the failed 2005 resale attempt, and the subject's loss of tenants after the 2003 purchase. S.T. at Ex. 12.

The BOE appeals the BOR's determination of value and contends that the May 2003 sale constitutes a valid, recent, arm's-length sale, and, as such, the \$4,175,000 transfer price provides the best evidence of the value of the subject property as of January 1, 2004 and January 1, 2005. For the reasons that follow, we agree.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the evidentiary hearing before this board.² The parties also filed briefs in support of their arguments.

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*

² Although notified of this board's July 11, 2007 hearing, the property owner was not present. We subsequently granted the property owner's motion for reconsideration and vacated our November 21, 2007 decision and order. *Bd. of Edn. of the Worthington City Schools v. Franklin Cty. Bd. of Revision* (Interim Order, Dec. 10, 2006), BTA No. 2006-H-381, unreported. Through a May 20, 2008 interim order, we then set a new hearing to allow the property owner the opportunity to present evidence. However, the property owner's counsel waived that hearing.

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 statutory transcript certified to this board by the BOR, we note the BOE presented copies of a real property conveyance fee statement and limited warranty deed evidencing the transfer of the subject property on May 14, 2003 for the amount of \$4,175,000.³ S.T. at Ex. 8.

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.”

³ We find evidence of the subject's sale within eight months of the 2004 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.

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 documents establishing that the property sold on May 14, 2003 for the amount of \$4,175,000. *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, 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 an 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. However, the property owner presented no competent or probative evidence challenging the arm's-length nature of the May 2003 sale before either the BOR or this board to rebut the presumption that the sale price is the best evidence of value. While

the property owner’s attorney argued before the BOR that the sale was made for tax purposes, no evidence was presented regarding how the alleged 1031 like-kind exchange affected the arm’s-length nature of the transaction. *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23. Likewise, we do not find the property owner’s evidence submitted before the BOR to be probative. The property owner’s agents testified as to their lack of knowledge of the local market, their inability to resell the subject based on a September 2005 appraised value, and the subject’s loss of tenants after the 2003 purchase. However, this testimony does not rebut the arm’s-length nature of the sale. *Id.* Consequently, without evidence to controvert the validity of the arm’s-length nature of the May 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 parcel as of January 1, 2004 and January 1, 2005 shall be as follows:

| | <u>TRUE VALUE</u> | <u>TAXABLE VALUE</u> |
|----------|--------------------|----------------------|
| LAND | \$1,745,900 | \$ 611,065 |
| BUILDING | <u>\$2,429,100</u> | <u>\$ 850,185</u> |
| TOTAL | <u>\$4,175,000</u> | <u>\$1,461,250</u> |

The Auditor of Franklin 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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