

OHIO BOARD OF TAX APPEALS

Board of Education of the)
Hilliard City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor, and)
Margulies, Margulies & Margulies, an)
Ohio General Partnership,)
)
Appellees.)

CASE NO. 2006-T-1804
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, L.L.C.
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Columbus, Ohio 43215-3704

For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
William Stehle
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio 43215-6310

For the Appellee Property Owner - Greg Margulies, Managing Partner
2392 East Main Street
Columbus, Ohio 43209

Entered January 13, 2009

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

The Board of Education of the Hilliard City Schools (“Hilliard”) appeals from a decision of the Franklin County Board of Revision, in which the BOR

determined the total true value of permanent parcel numbers 050-000864, 050-002094, and 050-000157 to be \$852,000 for tax year 2005. Hilliard argues that the correct true value should be \$975,000.

The subject property consists of approximately 5.429 acres of land. The land is improved with three buildings leased for retail purposes. The buildings were erected between 1948 and 1962. The subject is also improved with grain silos, which are currently not in use.

For tax year 2005, the auditor valued the subject property at \$852,000. Hilliard filed a complaint with the BOR, seeking an increase in the subject property's value to \$975,000 based upon the current owner's purchase of the property on April 3, 2003. The owner, Margulies, Margulies & Margulies ("Margulies"), filed a counter-complaint, in which it argued that the value should be reduced to \$712,610. At the BOR hearing, Hilliard introduced a copy of the general warranty deed, showing the transfer of the property to Margulies and the payment of a conveyance fee tax based upon the \$975,000 purchase price. S.T. at Ex. 7-A. Hilliard also submitted a copy of the conveyance fee statement for the transaction, which reflected a total consideration paid for the property of \$975,000. S.T. at Ex. 7-B. In support of its counter-complaint, Margulies was represented by its managing partner, Greg Margulies. Mr. Margulies testified that the sale price should not be relied upon because the transfer was part of a "1031 exchange." He further offered into evidence copies of the subject's rent rolls, income and expense statements, photographs, and a "summary report." S.T. at Ex. 7-1 through Ex. 7-4. He relied upon this financial information to create a pro forma

valuation for the subject using the income approach. Relying upon actual income and expenses, and applying a capitalization rate of 10%, Mr. Margulies testified to a value for the subject of \$712,610. Upon review, the BOR made no comment about the applicability of the sale price. In its oral decision, the BOR stated that, based upon the subject's rent rolls, and based upon an "income analysis" done by the auditor's office, it would retain the auditor's value of \$852,000. S.T. at Ex. 11. Hilliard now argues on appeal that the BOR erred in not accepting the sale price.

At hearing before this board, Hilliard again relied upon the deed and conveyance fee statement as evidence of an arm's-length sale. Greg Margulies appeared on behalf of the property owner. As he did before the BOR, Mr. Margulies raised two grounds for rejecting the sale price as the subject property's value. First, Mr. Margulies testified that the acquisition of the subject property was part of a "1031 exchange." He admitted that the sale was made at arm's-length to the extent that he and the owner had no relationship to each other. He further testified that the subject had been offered for sale through a realtor for at least two years prior to Margulies' purchase. The original asking price was for over one million dollars. Nevertheless, Mr. Margulies testified that he believed the need to reinvest his funds through a 1031 exchange within a specified time indicated that the sale was not a proper indication of market rent.

Margulies next argues that the subject property was not worth what was paid for it at the time of sale. Mr. Margulies admitted that the subject property

remained tenanted during the period and was, overall, stable.¹ However, referring to the financial information submitted to the BOR, Mr. Margulies opined that the actual income for the property as of January 1, 2005 did not support the purchase price. Mr. Margulies testified that, at the time the partnership acquired the property, it did so with the hope that the property, if properly developed, would be worth the purchase price at some point in the future.

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*

¹ Mr., Margulies also testified that the property had since has an increase in its vacancy rate and that new tenants are leasing space at a rate that is less than previously achieved. He admitted in his testimony however, that these changes would not impact the value as of January 1, 2005. The record does not specify whether Margulies has filed a decrease complaint on a subsequent tax year, during which these changes may be a factor.

(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; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203.

“[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*, supra, 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.

Upon review, we find that all elements of an arm's-length sale are present. The buyer and seller were unrelated parties who acted in their own best interests. The record supports a finding that the parties were free to negotiate, as the original asking price was over \$1,000,000. There is no evidence of compulsion or duress. Moreover, the subject property was listed for sale for at least two years prior to Margulies' acquisition. The deed and conveyance fee statement provided to us disclose nothing unusual about the terms of the sale. S.T at Ex. 7-A and 7-B. See *Poley v. Montgomery Cty. Bd. of Revision* (Sep. 24, 2004), BTA No. 2003-M-1784, unreported, *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported, and *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported (holding 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).

Margulies nonetheless challenges the validity of the sale because it was made as part of a 1031 exchange. A 1031 exchange, also known as a "like-kind exchange" or a "tax deferred exchange," refers to USC Title 26 § 1031, which provides: "No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment." The exchange must occur within 180 days of the

selling of the original property. The concept behind a 1031 exchange is that, when a property owner sells a property and reinvests its proceeds into another property, any economic gain has not been realized in a way that generates funds to pay any tax. In short, the taxpayer's investment is still the same, only the form has changed. Any gain is in essence deferred until the replacement property is itself sold (if not also subject to a qualifying like-kind exchange).

Nevertheless, the process of selling one property and then buying another property is practically identical to any other real estate transaction, the tax benefits notwithstanding. The transaction still generally takes place in the open market between a willing buyer and a willing seller. Thus, a 1031 exchange will not, in and of itself, prevent the application of a sale price as the value of the property in issue. Here, there is no evidence of any collusion between the buyer and seller, and the record shows nothing but the purchase of a fee interest in real property for a stated amount. *Berea, Rhodes and AEI Net Lease*, supra.

In addition to being made at arm's-length, a sale must also be within a reasonable length of time to tax lien date. *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57. Margulies has come forward with nothing to suggest that the market has changed between the sale and the tax lien dates. Moreover, the record indicates that the property was fairly stable during this period. Thus, we find that the sale constitutes a "proper measure of value." Id. at 59.

While both Margulies and the BOR relied upon an income analysis to find value for the subject, this method, a direct capitalization approach to value, is not

applicable in situations where there is a recent, arm's length sale. *Berea*, supra, at ¶15. (holding that appraisals based upon factors other than sales price are appropriate for use in determining value for real estate tax purposes only when no arm's-length sale has taken place).

In conclusion, we have before us an arm's-length sale. We must therefore accept the \$975,000 price as the value of the property. *Berea*, *Lakota*, *Cummins*, and *Rhodes*, supra. The Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2005:²

| | | |
|--------------------------|-------------------|----------------------|
| Parcel 050-000864 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$1,600 | \$560 |
| BUILDINGS | \$ <u>-0-</u> | \$ <u>-0-</u> |
| TOTAL | \$1,600 | \$560 |
| Parcel 050-002094 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$ 57,900 | \$ 20,270 |
| BUILDINGS | \$ <u>267,700</u> | \$ <u>93,690</u> |
| TOTAL | \$325,600 | \$113,960 |
| Parcel 050-000157 | TRUE VALUE | TAXABLE VALUE |
| LAND | \$176,400 | \$ 61,740 |
| BUILDINGS | \$ <u>471,400</u> | \$ <u>164,990</u> |
| TOTAL | \$647,800 | \$226,730 |

² We are mindful of the Ohio Supreme's Court's recent decision in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d. 330, 2008-Ohio-2454, in which the court found that this board failed to support its finding regarding land value, as distinct from improvement value. The court specified, "The allocation of value between land and improvements does not constitute an arbitrary exercise; it relates to the basic method by which county auditors determine value." *Id.* at ¶17. In the instant matter, the appellant has advanced its opinion of allocation through its notice of appeal. In the absence of any evidence to the contrary, we shall adopt the same.

We order the Auditor of Franklin 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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