

## OHIO BOARD OF TAX APPEALS

Board of Education of the Columbus City Schools,	)	CASE NO. 2006-Z-1623
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Franklin County Board of Revision, Franklin County Auditor, and W Ltd.,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant		- Rich, Crites & Dittmer, LLC Joseph E. Schmansky 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees		- Ron O'Brien Franklin County Prosecuting Attorney William Stehle Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215
For the Property Owner		- Lagos & Lagos, P.L.L. Thomas H. Lagos 1 South Limestone Street, Suite 1000 Springfield, Ohio 45502

Entered April 14, 2009

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

This cause and matter now comes on to be considered by the Board of  
Tax Appeals upon the notice of appeal filed herein by the above-named appellant from

a decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2005.

The subject commercial property is located in the city of Columbus and the Columbus City Schools taxing district and is identified on the Franklin County Auditor's records as permanent parcel number 010-145126. The value of the parcel, as determined by the county auditor and retained by the board of revision, as of January 1, 2005, is as follows:

PARCEL NUMBER 010-145126		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 462,000	\$ 161,700
Building	538,000	188,300
Total	\$1,000,000	\$ 350,000

In its notice of appeal, the board of education alleges that the correct total true value for the subject parcel is \$1,925,000, with a corresponding taxable value of \$673,750, based upon a sale of the subject in October 2005.

In reviewing how this case came to us, we note that in March 2006, relying upon the price obtained in a sale of the subject property on October 31, 2005, the board of education filed a complaint against the valuation of real property with the county board of revision seeking an increase in the subject's total true value to \$1,925,000. S.T. at Ex. A. In addition, the board of education provided a copy of the conveyance fee statement and general warranty deed from such sale. S.T. at Ex. 7. The property owner then filed a counter-complaint with the county board of revision seeking to have the auditor's assessed value of the subject property retained. S.T. at Ex. 3.

During the hearing before the board of revision, counsel for the board of education argued that the property had been the subject of a recent arm's-length sale and as such, the total true value of the subject property should be increased to said sale price. S.T. at Audiodisc. In support of its argument, counsel for the board of education reviewed the general warranty deed and the conveyance fee statement for the October 2005 sale. Id.

A representative of the property owner, Dr. Robert Day Griffin, provided testimony during the hearing before the board of revision. Id. Dr. Griffin testified about the subject property and the October 2005 sale. Id. Dr. Griffin stated that the subject property had been listed on the open market for approximately two to three years and that a "for sale" sign had been displayed on the property. Id. Dr. Griffin also indicated that Mr. Weaver, who is a member of the property owner, had leased portions of the subject property prior to purchasing it in October 2005 and that Mr. Weaver and the seller of the property had been friends for approximately 20 years. Id. Dr. Griffin testified that approximately \$900,000 of the \$1,925,000 sale price was financed through a federal tax credit program called "New Market [sic] Tax Credits." Id. Dr. Griffin further testified that the remaining portion of the sale price was financed through conventional means from a bank and that such bank was unwilling to provide such financing without the "New Market [sic] Tax Credits." Id.

The board of revision concluded that the October 2005 sale was not arm's length and therefore, retained the value of the subject property as assessed by the county auditor. Id.; S.T. at Ex. 5. Thereafter, the board of education appealed the board of revision's determination to us.

Before this board, the parties waived their right to a hearing<sup>1</sup> and requested that the matter be submitted to us based upon the existing record and written briefs. Accordingly, this matter was submitted to this board upon the notice of appeal, the statutory transcript certified to this board by the county auditor, the briefs filed by counsel to the appellant board of education, and the brief filed by counsel to the appellee property owner.

We must begin 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 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.

---

<sup>1</sup> The parties appeared before this board on June 11, 2008 for a previously scheduled merit hearing. Prior to the commencement of the merit hearing, counsel for the appellee property owner moved this board for a continuance of said merit hearing citing ongoing settlement discussions. The motion for a continuance was granted and a merit hearing was rescheduled for June 24, 2008. On June 23, 2008, prior to the rescheduled merit hearing, the parties provided this board with written notification of their desire to waive their right to a hearing and submit written briefs. See Ohio Adm. Code 5717-1-15(F).

As we consider the board of education's position in this matter, we note the copies of the deed and conveyance fee statement offered by the board of education to the board of revision as support for its position that the October 2005 sale of the subject is the best evidence of its value for tax year 2005. The general warranty deed as well as the conveyance fee statement included in the statutory transcript (S.T. at Ex. 7) reflect that the subject was transferred to the appellee property owner on October 31, 2005 for \$1,925,000. Counsel for the board of education contends that this sale constitutes a valid and recent<sup>2</sup> 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, 2005. We agree.

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.”

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

---

<sup>2</sup> In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Ohio Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs 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.

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, *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.

Recently, the Ohio Supreme Court has issued a series of decisions related to the arm's-length sale of property and whether such sale price is the best evidence of value notwithstanding the existence of an encumbrance. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-473 (referencing *Berea*, supra, the court concluded that the sale price was controlling notwithstanding the existence of a deed restriction on use of the property and held that a deed restriction could be imposed as part of an arm's-length sale); *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595 (concluding that neither the encumbrance of property by a long-term lease nor the argument that the sale price includes not only the value of realty but the value of business operated thereon warrant rejection of the principle announced in *Berea*, supra, i.e., that a recent, arm's-length sale is the best evidence of true value); *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203 (holding that the sale of a property, albeit "encumbered" by a long-term lease and involving a sale-leaseback situation, constitutes the best evidence of value).

In the instant matter, the property owner argues that *Berea*, supra, is not dispositive because the sale at issue herein did not constitute an arm's-length sale. The

property owner argues that the instant sale was not arm's length due to the 20-year relationship between the buyer and the seller and the existence of the tax credits.

“An 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. Since the parties did not appear before this board to offer any evidence or testimony about the sale in question, we can only review the evidence as set forth in the statutory transcript from the board of revision's proceedings. Specifically, Dr. Griffin testified before the board of revision that the subject property was listed on the open market and there was a “for sale” sign on the subject property. S.T. at Audiodisc. Accordingly, there is not sufficient, competent and probative evidence before us which could support a finding that the subject property was not sold on the open market.

With respect to the requirement that the sale must be voluntary and without compulsion or duress, there is nothing in the record to indicate that the seller and the buyer-property owner were acting in an involuntary manner or were under some sort of compulsion or duress. The fact that the buyer and the seller were friends does not preclude the sale from being arm's length. See *Cleveland Municipal School Dist. v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2001), BTA No. 2000-M-684, unreported, where this board rejected a claim that the sale was not arm's length because the buyer purchased the property from the son of a friend after his death. Moreover, the fact that the buyer and the seller had a landlord-tenant relationship does not preclude the sale from being arm's length. In *Dublin City School District Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 7, 1996), Franklin App. No. 95APH06-

718, unreported, the Franklin County Court of Appeals agreed with this board that the sale was arm's length even though the buyer and seller "had a long-term business relationship and were landlord and tenant at the time of the sale." *Id.* at 4. The court also agreed with this board that "while such factors may influence price, their presence does not necessitate a conclusion that a given sale is not arm's length in nature." *Id.* In further support of its finding that the sale was arm's length, the court noted that there was no evidence of any collusion between the buyer and the seller. *Id.* In the record before us, there is not sufficient, competent and probative evidence to support a finding that the parties were not acting voluntarily or were not acting in their own self-interests.

With respect to the property owner's argument that the sale at issue herein did not constitute an arm's-length sale due to the existence of the tax credits, we initially note that the New Markets Tax Credit Program permits qualified investors/taxpayers to receive a credit against federal income taxes in return for making qualified investments in low-income communities. The tax credit provided to the investor/taxpayer may be claimed over a seven-year period. The purpose of the New Markets Tax Credit Program is to attract private-sector capital investment into the nation's urban and rural low-income areas so as to help stimulate economic growth and create jobs.

The record before us includes the brief testimony from Dr. Griffin before the board of revision regarding the New Markets Tax Credit Program. It is not clear from the record, however, whether Dr. Griffin is an officer of the property owner or what his relationship is to the property owner. Further, the record does not reveal any

documentation that was submitted regarding the New Markets Tax Credit Program and the impact that said program had on the value of the subject property. The property owner did not present any evidence regarding the New Markets Tax Credit Program to this board.

We find that the evidence before us regarding the tax credits and their effect on the value of the subject property is not sufficient, competent or probative. We also find that the mere existence of tax credits, without more, is insufficient to render the sale price unrepresentative of the value of the subject property. See *Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd.* (1984), 9 Ohio St.3d 218 (the fact that the property owners received favorable financing does not alone render the sale price unrepresentative of true value). See, also, *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported; *Bd. of Edn. of the Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (July 23, 1999), BTA No. 1996-S-1793, unreported. The fact that the tax credits exist, in and of itself, does not require this board to reject the sale price as indicative of the value of the property. Rather, this board must consider all of the evidence to determine whether the sale price is reflective of value.

Based upon the foregoing, we find that the subject sale had all of the indicia of an arm's-length transaction and that the property owner has failed to meet its burden of establishing that the sale price paid in the October 31, 2005 transfer of the subject property is not indicative of true value. Without sufficient, competent and probative evidence in the record rebutting the presumption that the sale price is the best evidence of value, this board finds that the best evidence of value of the subject

property is its \$1,925,000 sale price paid on October 31, 2005. Therefore, based upon the totality of the evidence before us, the value<sup>3</sup> of the subject parcel as of January 1, 2005, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 889,350	\$ 311,270
Building	1,035,650	362,480
Total	\$1,925,000	\$ 673,750

The Auditor of Franklin County is hereby ordered to cause the tax records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

ohiosearchkeybta

---

<sup>3</sup> The \$1,925,000 value shall be allocated between the land and building using the same percentages as employed by the auditor in the original valuation of the subject.