

OHIO BOARD OF TAX APPEALS

Board of Education of the Heath City)
Schools,)
)
Appellant,)
)
vs.)
)
Licking County Board of Revision,)
Licking County Auditor, and American)
Ear & Audiology Center, LLC,)
)
Appellees.)

CASE NO. 2007-A-427
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich & Gillis Law Group, LLC
Allison J. Crites
300 East Broad Street, Suite 300
Columbus, Ohio 43215

For the County Appellees - Kenneth W. Oswalt
Licking County Prosecuting Attorney
Dennis E. Dove
Assistant Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

For the Appellee Property Owner - American Ear & Audiology Center, LLC
905 21st Street
Newark, Ohio 43055

Entered April 28, 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 Licking County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2006.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board at which only the counsel to the appellant and the county appellees appeared, and the briefs filed by counsel to the appellant board of education and the county appellees. Although duly notified, no one appeared on behalf of the subject property owner at this board's hearing. H.R. at 6.

The subject property, a condominium residential unit, is located in the Heath city schools taxing district and is identified on the auditor's records as parcel number 030-088392-00.053. The value of the parcel, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 35,000	\$ 12,250
Building	106,700	37,345
Total	\$141,700	\$ 49,595

In its notice of appeal, the board of education alleges that the correct total true value for the subject parcel is \$154,000, with a corresponding taxable value of \$53,900, based upon a sale of the subject in August 2006.

First, in reviewing how this case came to us, we note that in February 2007, relying upon the price obtained in a sale of the subject property on August 1, 2006, the board of education filed a complaint against the valuation of real property

with the Licking County Board of Revision seeking an increase in the subject's total true value to \$154,000. S.T. at Ex. A. Copies of the conveyance fee statement and the general warranty deed from the aforementioned sale of the property were also attached to said complaint. No counter-complaint was filed, although a representative of the property owner, the office manager, appeared at the hearing before the BOR. On June 13, 2007, the BOR issued its decision, retaining the values for the subject property as determined by the auditor. Thereafter, the board of education appealed the BOR's determination to us.

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.

As we consider the board of education's position in this matter, we note the copies of the conveyance fee statement and deed included in the record which provide support for the BOE's position that the August 2006 sale of the subject is the best evidence of its value for tax year 2006. The documents indicate that the subject was transferred on August 1, 2006, to American Ear & Audiology Center, LLC for the amount of \$154,000. Counsel for the board of education contends that this sale constitutes a valid, recent,¹ 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, 2006. 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 subject of a recent arm's-length sale between a willing seller and a willing buyer, the

¹ In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the 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.

sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea*, at 5. 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; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588.

Since the property owner did not appear before this board and its representative before the BOR could not offer any evidence or testimony about the sale in question or the subject property, S.T., Ex. D at 4-6, and because there is nothing in the record to dispute that the sale in question was arm’s length in nature, this board finds that the best evidence of value of the subject property is its \$154,000 sale price paid on August 1, 2006.

In defense of the county’s position that the subject’s valuation should not be raised to its sale price some seven months after the tax lien date in question, the county appellees’ counsel stated that “what is at issue here is a matter of fundamental fairness. *** [W]hen a property sells, the sale price is considered by the Auditor but it’s in some cases slightly tempered due to other certain circumstances.” H.R. at 7. An employee from the auditor’s office elaborated through her testimony, indicating that when a sale occurs within a triennial period, the property’s value must be “adjusted back to the tax lien date” for the years within the triennial so as “[t]o keep it uniform with the rest of the properties in the area.” H.R. at 24. She went on to state that she believed that uniformity was more important than following the pronouncements of the

Supreme Court. H.R. at 26. In their brief, the county appellees stated that “[t]he main issue herein is whether an auditor retains any discretion to value a property in a manner somewhat different from a sale price, or whether the sale price is an absolute mandate to the auditor, requiring the auditor to ignore all other factors and principles in his blind adoption of that sale price as the true valuation of a property. The main thrust of County Appellees’ position is that notwithstanding some pronouncements apparently to the contrary, there nevertheless remains some discretion to the auditor, based upon statutory enabling language and in accordance with constitutional principles stated and upheld by the courts throughout much of the state’s history.” Brief at 1.

At the outset, we note that the arguments advanced by the county appellees in this matter are similar to those advanced by the Licking County Auditor several years ago and rejected by not only this board, but also the Supreme Court, on numerous occasions. See, e.g., *Licking Hts. Bd. of Edn. v. Licking Cty. Bd. of Revision* (Apr. 5, 1996), BTA No. 1995-K-875, unreported. See, also, *Reynoldsburg Bd. of Edn. v. Bd. of Revision of Licking Cty.* (1997), 78 Ohio St.3d 543. Further, we find that the county’s position runs contrary to the most recent pronouncements of the Supreme Court, by which this board is bound. See *Berea*, supra. We acknowledge that when a property is sold, there is a rebuttable presumption that the sale price reflects the true value of such property; the presumption extends to all of the requirements which characterize true value, i.e., whether the sale is recent, voluntary, i.e., without compulsion or duress, generally takes place in an open market, and the parties act in their own self-interest. See *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio

St.3d 23. However, as the court stated when it upheld a sale price as the value of a property, “[u]nder *Berea*, such 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.” *Cummins*, supra at ¶13. Thus, in the instant matter, absent a demonstration that the sale in question constituted something other than an arm’s-length transaction, or was not recent in relation to the tax lien date in question, this board is constrained to consider the sale price the best evidence of the subject’s value.

Accordingly, with no competent or probative evidence in the record rebutting the presumption that the sale price is the best evidence of value, the value² of the subject parcel as of January 1, 2006, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 38,500	\$ 13,480
Building	115,500	40,420
Total	\$154,000	\$ 53,900

The Auditor of Licking 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.

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² The land and building values are derived using the same proportions between land and building and total that the county auditor utilized in assigning values. Further, pursuant to board practice, all values have been rounded to the nearest ten dollar amount.