

OHIO BOARD OF TAX APPEALS

Greg Anglin/Precision Builders)
Acquisition #110, LLC)
)
Appellants,)
)
vs.)
)
Franklin County Board of Revision)
and Franklin County Auditor,)
)
Appellees.)

CASE NO. 2007-A-848
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Greg Anglin, pro se
979 High Street
Worthington, Ohio 43085

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

Copy to - Victor Investments, Ltd.¹
929 North 4th Street
Columbus, Ohio 43201

Entered May 19, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellants from a

¹ Although an entry of appearance has not been entered on behalf of the referenced property owner, based upon a review of the existing record, it appears that title to the subject property may have transferred following the filing of the original complaint and therefore, notice is being provided accordingly. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 114 Ohio St.3d 1224, 2007-Ohio-4007.

decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject 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, and the record of the hearing before this board. Although duly notified of this board's hearing, the appellants did not appear or otherwise notify this board that they would not make an appearance.

The subject real property, a commercial building containing a tavern with two abandoned apartments located above the tavern, is located in the city of Columbus-Columbus city school district taxing district, Franklin County, Ohio. The value of the parcel, #010-045669, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 35,000	\$ 12,250
Bldg	65,000	22,750
Total	\$ 100,000	\$ 35,000

Through their notice of appeal, the property owners contend that the board of revision has overvalued the parcel in question by not relying upon the sale of the subject on July 26, 2005 from Brian Artz to appellant Gregory M. Anglin for \$72,650, as an indicator of its value.

Since the appellants did not appear before this board to offer any evidence or testimony, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v.*

Bd. of Revision (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. We note that in January 2007, the appellant property owner filed a complaint against the valuation of real property with the Franklin County Board of Revision seeking a decrease in the subject's true value to \$72,650. Appellant based his request on the sale of the subject property with an adjacent parcel of vacant land for a total of \$81,250 on July 26, 2005. The adjacent lot had been valued at \$8,600 by the county auditor and appellants attributed the difference between that value and the sale price to the subject. Appellants also sought a reduction based upon the fact that the subject is leased at below market rates of approximately \$300 per month through 2018. S.T., Ex. 1. Appellants provided the BOR with copies of several sale-related documents including the conveyance fee statement, the settlement/closing² statement, the purchase agreement, and the lease agreement. S.T., Ex. 5.

No counter-complaint was filed. The board of revision held a hearing at which Mr. Anglin appeared. Based upon the evidence and testimony presented, the BOR believed that the sale of the subject property under consideration did not constitute an arm's-length transaction, and, as such, did not rely upon the sale to value the subject. The BOR maintained the auditor's valuation of the subject and thereafter, the appellants appealed the BOR's determination to us.

As stated earlier, the appellants did not appear before this board. Counsel to the county appellees appeared and offered several certified documents into

² We note that the settlement statement appears to indicate that the buyer, in addition to paying the \$81,250 sale price, also paid \$13,125 into escrow for repairs. See S.T., Ex. 5 - offer/counteroffer. However, without any evidence from the buyer about the basis for such escrow and its operation, we will not consider such payment in our evaluation of the sale price.

evidence regarding the subject sale. Exs. A-E. Specifically, the county offered the affidavit of the successor trustee³ who ultimately sold the subject property to appellant Gregory Anglin (Ex. A), the deed transferring the subject property from Brian Artz to Gregory Anglin on July 26, 2005 (Ex. B), the deed transferring the subject property from Gregory Anglin to Precision Builders, Acquisition #110, LLC on July 26, 2005 (Ex. C), the deed transferring the subject property from Precision Builders, Acquisition #110, LLC to Victor Investments, Ltd. on December 31, 2007 (Ex. D), and an executor deed-fiduciary deed transferring the subject property from the estate of Todd Anglin to Victor Investments, Ltd. on December 31, 2007 (Ex. E).

A closer review of the sale documents indicates that the subject property was owned by a trust, created by Edward V. Tomsic, dated August 2, 1993. Todd Anglin, trustee of said trust and brother of appellant Greg Anglin, served as trustee until his death on April 11, 2002. Thereafter, pursuant to the terms of the trust, the trustees of the Eagle Foundation⁴ appointed a successor trustee, namely Brian S. Artz. Ex. A. On July 26, 2005, Mr. Artz sold the subject property to Gregory M. Anglin, who immediately deeded the property to Precision Builders, Acquisition #110, a limited liability company in which he was the sole member. Exs. B, C. Finally, on December 31, 2007, the subject property was transferred again from Precision Builders, Acquisition #110, LLC to Victor Investments, Ltd. Exs. D, E.

At the outset, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local*

³ The previous trustee was Todd Anglin, brother of appellant Gregory Anglin, who died on April 11, 2002.

⁴ There is no information in the record about the Eagle Foundation.

Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

As we consider the valuation question before us, we acknowledge that 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 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. 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 County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's-length to counter such presumption. However, the burden of persuasion does not change, as it is still on the appealing party to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

We have reviewed the evidence of the sale of the subject, including the deed and conveyance fee statement, the purchase agreement and associated lease, and the closing statement, as well as the testimony before the BOR. Initially, we must note that none of the documents make an allocation of the purchase price of \$81,250 between the two parcels that were purchased. Only Mr. Anglin makes the argument on his complaint and before the BOR that the subject should be valued at \$72,650 because the second parcel had previously been valued by the auditor at \$8,600, and apparently he believed that valuation was correct.

We also note that the subject sale was seller financed; however this fact, in and of itself, does not require this board to reject the sale price as indicative of the value of the property. Even if we were to find that favorable financing was involved, this board has held that this factor does not necessarily make a sale price unreliable for tax purposes. See *Bd. of Edn. of the Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (July 23, 1999), BTA No. 1996-S-1793, unreported; *Reynoldsburg City Schools v. Franklin Cty. Bd. of Revision* (Nov. 12, 1993), BTA No. 1991-K-1262, unreported, affirmed (July 26, 1994), Franklin App. No. 93APH12-1682, unreported; *Luxor Investments Co. v. Lorain Cty. Bd. of Revision* (Oct. 2, 1992), BTA Nos. 1990-M-899, et seq., unreported. A review of the limited information in the record regarding the financing of the subject sale reveals an agreement based in what appears to be market rates. Accordingly, based upon the record before us, we cannot conclude that the seller financing of the subject sale impacted the overall price obtained.

With regard to whether the subject sale took place in an open market, Mr. Anglin testified that he had learned of the availability of the subject through his late brother's estate. While there is no specific testimony in the record as to whether the property was actually listed for sale on the market, we are mindful that the Supreme Court, in *Walters*, supra, when considering what constitutes an arm's-length sale, indicated that arm's-length transactions "generally" take place in an open market, thus not necessarily "always." This board has repeatedly held that just because a sale was not advertised to the general public, it is not necessarily rendered non arm's length. *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-

262, 263, unreported. In *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported, we rejected the notion that sales must *always* occur in such a manner in order to constitute the best evidence of a property's value:

“The county appellees assert that this sale was not an arm's-length transaction because the property was not offered for sale on the open market. We disagree. While the lack of advertisement on the open market may have influenced the price paid for the subject property, it does not necessitate a finding that the subject sale was not arm's length in nature.” *Id.* at 10.

See, also, *Willoughby-Eastlake City School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (May 20, 2005), BTA No. 2003-B-1654, unreported; *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirm'd (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported; *MACQ, Inc. v. Marion Cty. Bd. of Revision* (Sept. 11, 1998), BTA No. 1996-K-1457, unreported; *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported.

Further, Mr. Anglin clearly testified before the BOR that he had negotiated the subject sale price starting with an opening offer of \$62,500 and ultimately agreeing to the final price of \$81,250. Thus, there is no indication in the record that the resultant sale price was based on non-market-driven forces.

Finally, 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. Clearly, the instant sale, which occurred approximately 5 months before the tax lien date under consideration,⁵ constitutes a recent sale.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. Accordingly, we find that the price paid by the property owners for the subject property represents the true value of the property for tax year 2006. The county did not rebut the presumption that the sale was arm's length, and, as such, the value of the subject for tax year 2006 shall be \$72,650,⁶ based upon the sale price of the subject property, specifically:

⁵ We acknowledge that the subject property also sold in December 2007; however, generally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St. 3d 575; *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA No. 2006-H-2152, unreported; *Williams v. Columbiana Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 (“[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. *** This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here.”). See, also, *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported. Thus, pursuant to this board's prior holdings, the sale closest to tax lien date, the July 2005 sale when the property sold for \$81,250, shall be the sale under consideration as part of this board's valuation determination for tax year 2006.

⁶ We have allocated the subject sale price between the two parcels involved in the sale based upon the property owners' suggested valuation for the second parcel, which was represented to be the auditor's value for the parcel. As such representation of the auditor's valuation was not disputed or contested by the county, we find that the uncontroverted evidence in the record supports such allocation. Further, the values for the subject land and building have been adjusted to reflect the same ratios previously adopted by the county auditor and board of revision.

	TRUE VALUE	TAXABLE VALUE
Land	\$ 25,430	\$ 8,900
Bldg	47,220	16,530
Total	\$ 72,650	\$ 25,430

See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473.

Thus, it is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision.

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