

**OHIO BOARD OF TAX APPEALS**

Kim R. Knoppe, )  
 )  
 ) CASE NO. 2007-B-1039  
 )  
 Appellant, ) (REAL PROPERTY TAX)  
 )  
 vs. ) DECISION AND ORDER  
 )  
 )  
 Montgomery County Board of Revision )  
 and Montgomery County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - Kim R. Knoppe, pro se  
634 Bear Run Lane  
Lewis Center, Ohio 43035

Appeal filed by - Brian Knoppe, Manager  
634 Bear Run Lane  
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For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Nolan Thomas  
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For the Appellee Bd. of Edn. - David C. DiMuzio, Inc.  
David C. DiMuzio, Esq.  
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Entered April 14, 2009

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

Kim R. Knoppe appeals from a decision of the Montgomery County Board of Revision (“BOR”), in which the BOR determined the true value of

permanent parcel number I391-007-01-0014 to be \$2,094,540 for tax year 2006. Ms. Knoppe argues that the correct true value should be \$855,320.

The Board of Tax Appeals conducted an evidentiary hearing on December 17, 2008. The county appellees waived hearing. There was no appearance at this hearing by the appellant. The Dayton School District Board of Education (“BOE”) appeared by and through counsel but presented no new evidence at hearing.

In this regard, we remind the parties that our duty is to conduct a de novo review of the record and to “determine the value of the property.” R.C. 5717.03. Where the parties present no additional evidence on appeal, we will independently review the record developed by the parties before the county board of revision and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (quoting *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 14, and holding that this board ““has a duty on appeal to independently weigh and evaluate all evidence properly before it.””).

While the statutory transcript contains limited information about the subject property, it appears that the subject property is zoned commercial and the land appears to be improved with a mobile home park. For tax year 2006, the auditor valued the subject property at \$855,320. S.T. The BOE subsequently filed a complaint with the BOR, seeking an increase in the subject property’s value to \$2,100,000. S.T., Ex. A. The property owner did not file a counter-complaint and

did not participate at the BOR hearing.<sup>1</sup> S.T., Ex. B. At the BOR hearing, the BOE presented a copy of a conveyance fee statement revealing that the subject sold on September 18, 2006 for a total purchase price of \$2,100,000. S.T., Ex. A. The BOE argued that the sale price should be adopted as the true value of the subject. Upon review, the BOR voted to raise the subject property's value to \$2,094,540. Appellant now argues on appeal that the auditor's original valuation should be retained.

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;

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<sup>1</sup> However, Ms. Knoppe stated in an affidavit attached to her notice of appeal that “[t]he 9-5-07 Revaluation Notice [sic] was addressed to Hiatt John at 500 N. Maitland Ave. Suite 312, Maitland FL, 32751 [sic] and not to Kim Knoppe who has owned the property since February 23, 2007.” This raises the question of whether Ms. Knoppe received due notice of the July 16, 2007 BOR hearing. However, this question is not before us as Ms. Knoppe did not appear at this board's evidentiary hearing. We would also note that this board has repeatedly held that, in the absence of an agreement of the parties that such information may be submitted in lieu of testimony at hearing, affidavits (and other materials) attached to

*Hibschman v. Bd. of Tax Appeals* (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.

We have previously held 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. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. The conveyance fee statement states that the subject property transferred from the grantee, John Hiatt, to GS Holdings, Ltd. for \$2,100,000 on

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pleadings do not rise to the level of evidence upon which this board will rely in resolving the merits of an appeal. *Dave Dennis Dodge, Inc. v. Wilkins* (Oct. 27, 2006), BTA Nos. 2005-K-857, 858, unreported.

September 18, 2006. S.T., Ex. A. The statement does not disclose an association or condition that would impact the validity of the sale. Id. The property record card reflects the September 18, 2006 sale as an arm's-length transaction.<sup>2</sup> S.T., Ex. F. We also note that the appellant did not appear at the BTA hearing to present evidence. Thus, there is no evidence before us which would invalidate the arm's-length nature of the sale.

In addition to being arm's length, R.C. 5713.03 requires that the sale take place within a reasonable period of time, either before or after the tax lien date. In the instant appeal, the sale occurred on September 18, 2006, less than nine months after the tax lien date of January 1, 2006. There is nothing in the record before us that would lead us to conclude that the sale was remote for purposes of determining the subject's 2006 value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36 (overruled on other grounds); *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, at 59.

In conclusion, we have before us an arm's-length sale. We must therefore accept the \$2,100,000 price as the value of the property. *Berea* and *Lakota*, supra. Accordingly, the Board of Tax Appeals finds, based upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2006:

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<sup>2</sup> The property record card also notes a later February 2007 sale. However, the purchase price and buyer and seller are not listed. Further, the property record card states that this was not a valid (arm's-length)

	TRUE VALUE	TAXABLE VALUE
Land	\$ 178,150	\$ 62,350
Building	\$1,921,850	\$672,650
Total	\$2,100,000	\$735,000

We order the Auditor of Montgomery 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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