

OHIO BOARD OF TAX APPEALS

Mount Vernon City School District)	CASE NO. 2007-H-476
Board of Education,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Knox County Board of Revision,)	
Knox County Auditor, and)	
Boondock Properties,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Board of Edn.	-	Rich & Gillis Law Group, LLC Mark H. Gillis Allison J. Crites 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees	-	Critchfield, Critchfield & Johnston, LTD. Kim M. Rose 225 North Market Street P.O. Box 599 Wooster, Ohio 44691
For the Appellee Property Owner	-	Jennifer Farmer Boondock Properties, Ltd. 1 Stevens Street Mount Vernon, Ohio 43050

Entered June 16, 2009

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

This cause and matter is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Mount Vernon City School District Board of Education (“BOE”) from a decision of appellee Knox County Board of Revision (“BOR”). In its decision, the BOR determined the taxable value of the subject property for tax year 2006.

The contested property, which is improved with a 1,850-square-foot residential structure that has been converted for use as commercial office space, is located in the Mt. Vernon city schools taxing district and is further identified as parcel number 66-02459. Statutory transcript (“S.T.”), Exs. A, I at 8. The true value of the subject property, as originally assigned by the Knox County Auditor (“auditor”), is \$209,450.

Appellee Boondock Properties (“property owner”) filed a complaint with the BOR, asserting that the value for tax year 2006 should be decreased to equal the property’s 2005 transfer price. S.T. at Ex. A. Attached to the complaint was a copy of the auditor’s property record card evidencing the transfer of the subject property on December 29, 2005 to the property owner for the amount of \$161,000. Id. At the hearing before the BOR, the property owner’s representative Jennifer Farmer testified that she successfully bid on the subject through an advertised auction sale, that she did not have any relationship to the seller, and that no special financing was involved with the purchase. S.T., Ex. I at 11. Upon consideration of the evidence presented and its own appraiser’s recommendation, the BOR reduced the auditor’s value to \$176,710. S.T. at Ex. F.

The BOE now appeals the BOR’s determination of value, alleging the subject should be valued at \$209,450. For the reasons that follow, we find that the 2005 transfer price provides the best evidence of the subject property’s 2006 value.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and briefs filed by

the BOE and county appellees. Although accorded an opportunity to present additional evidence at a hearing before this board, the BOE stated that it would rely on the evidence found in the statutory transcript and the property owner and county appellees did not attend.

We begin our review of this matter 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 that 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. Accordingly, this board must proceed to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S.& L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

As we review the statutory transcript certified to this board by the BOR, we note the auditor's property record card evidencing the transfer of the subject property on December 29, 2005 to the property owner for the amount of \$161,000.

S.T. at Ex. A.

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.”

As the party asserting that the valuation determined by the BOR should be increased, the BOE bears the burden of proving that the value it alleges should be the true value. We find no evidence to support the BOE's alleged value. The record establishes that the property sold on December 29, 2005 for the amount of \$161,000. *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 250, 252, 2005-Ohio-6434. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes.¹ *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-

¹ We find the sale of the subject within several days of the tax lien date to be sufficiently recent for tax valuation purposes. See R.C. 5713.03; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Bd. of Edn. for Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 17, 2002), BTA Nos. 2000-R-880, et seq., unreported; *Equity Strongsville II. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported.

1595; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 271-272, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Although the presumption exists that the sale price is the best evidence of true value, that presumption may be rebutted where the sale is not an arm's-length sale. *Bd. of Edn. of the Cleveland Mun. School Dist.*, *supra*, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, syllabus, the court held that "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." The BOE argues the transfer was not an arm's-length sale since the sale occurred at auction. However, the BOE presented no evidence that calls into question the validity of the auction sale. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327 (holding that a rebuttable presumption exists that a sale meets all the requirements that characterize true value). In *Walters*, *supra*, the court held that the sale prices of parcels sold at auction were nevertheless the best evidence of value when all of the elements of an arm's-length sale are present. The court reasoned the auction sales were valid given there was no evidence to show that there was any forcible inducement in what was a voluntary sale. *Id.* at 25-26. See, also, *Kozak v. Summit*

Cty. Bd. of Revision (Dec. 20, 1996), BTA No. 1995-M-211, unreported (holding not all sales of real property at an auction constitute “forced sales”); *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 15, 1999), BTA No. 1997-J-1385, unreported (auction sale not automatically rejected when determining property’s value for tax purposes); and *KE&G Enterprises, LLC v. Lorain Cty. Bd. of Revision* (Mar. 11, 2005), BTA Nos. 2003-V-1459, et al., unreported (discussing *Kozak*, supra, in context of sale of property at auction).

In this case, we find no evidence that the auction was a forced sale. Farmer testified before the BOR that she successfully bid on the subject through an advertised auction sale, that she did not have any relationship to the seller, and that no special financing was involved with the purchase. Thus, we find the transfer to be an arm’s-length sale.

While the BOR declined to decrease the auditor’s value to the sale price, the record before us does not allow us to make the same finding. Accordingly, this board finds that the best evidence of value of the subject property is its December 2005 sale price.

Therefore, based upon the preponderance of competent and probative evidence before this board, the value of the subject parcel as of January 1, 2006 shall be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 51,520	\$18,030
BUILDING	<u>109,480</u>	<u>38,320</u>
TOTAL	\$161,000	\$56,350

The Auditor of Knox County is hereby ordered to cause the tax records to reflect the values determined herein for the subject real property and to assess the same in accordance therewith as provided by law.²

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² Rounded values are derived from the proportions utilized by the auditor.