

OHIO BOARD OF TAX APPEALS

Love Investments of Wichita LLC,)
an Iowa Limited Liability Company)
as of 1/1/06 Greystone Group-Salem Ltd.,)
an Ohio Limited Liability Company,)
Appellant,)
vs.)
Columbiana County Board of Revision,)
Columbiana County Auditor, and the)
Board of Education for the Salem)
City School District,)
Appellees.)

CASE NO. 2007-H-847
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., L.P.A.
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For the County Appellees - Robert L. Herron
Columbiana County Prosecuting Attorney
Andrew A. Beech
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For the Appellee - Britton, Smith, Peters & Kalail Co., L.P.A.
Board of Education Karrie M. Kalail
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Entered April 21, 2009

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Love Investments of Wichita LLC (“property owner”) from a decision of appellee Columbiana County Board of Revision

(“BOR”). In its decision, the BOR determined the taxable value of the subject property for tax year 2006.

The contested parcel, which is improved with a Walgreens store, is located in the Salem city schools taxing district and is further identified as parcel number 51-04994.000. The 2006 value of the subject property, as originally assigned by the Columbiana County Auditor (“auditor”), is \$1,856,280. The Board of Education for the Salem City School District (“BOE”) filed a complaint with the BOR seeking an increase to the subject’s January 2006 transfer price. The property owner filed a counter-complaint to maintain the auditor’s value.

At the BOR’s hearing, the BOE presented a copy of a conveyance fee statement and a limited warranty deed evidencing the transfer of the subject on January 12, 2006 for a purchase price of \$5,827,000. S.T. at Ex. A. The BOE argued that the sale price should be adopted as the true value of the subject. S.T. at Ex. D. In response, the property owner’s counsel argued that the sale price does not represent the subject’s true value since the transfer was structured as a sale-leaseback transaction. The property owner presented the BOR with a copy of the lease agreement. Id.

The property owner also moved the BOR to dismiss the BOE’s complaint, arguing the BOR had no jurisdiction under R.C. 5715.19(A)(2) to consider the tax year 2006 complaint filed by the BOE since it was the second complaint filed within the same triennium by the BOE.¹ Among the documents offered in support of its motion, the property owner attached a copy of a complaint the BOE filed with the BOR regarding the subject property for tax year 2005. Id. The BOE’s 2005 and 2006

¹ We take notice that the relevant interim period for Columbiana County includes 2004, 2005, and 2006.

initiating complaints both reference the January 12, 2006 sale price of \$5,827,000 as the basis for challenging value. Also attached in support of its motion was a copy of the BOR's determination letter regarding the subject's 2005 value, in which the BOR increased the auditor's \$769,900 assessed value to \$1,620,000. Id. On review, the BOR did not dismiss the complaint and ultimately voted to set 2006 value at \$5,827,000.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the BOR, and briefs filed by all the parties. The parties agreed to waive the evidentiary hearing scheduled before this board and rest on the statutory transcript of the BOR proceeding. This board will, therefore, conduct a de novo review of the record established before the board of revision, consistent with the Supreme Court's standard enunciated in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 13-14, and *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15.

The property owner now argues on appeal that the BOR erred in not dismissing the BOE's complaint on jurisdictional grounds. The property owner contends that if the complaint were to be dismissed, the correct 2006 value would be the auditor's \$1,856,280 value, without consideration of the subject's January 2006 transfer price of \$5,827,000. For the reasons that follow, we disagree with the property owner's contention and find value consistent with that determined by the BOR.

We note 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.

We first address the property owner's jurisdictional argument to remand this matter to the BOR for dismissal. The record indicates that for 2005, the auditor's \$769,900 assigned value was increased by the BOR to \$1,620,000, apparently based on a November 2004 sale of multiple properties that were combined to create the subject parcel. S.T. at C. In 2006, the auditor then increased the subject's adjusted 2005 value to \$1,856,280. The parties do not dispute that the BOE filed two complaints within the same triennium that challenge these separate auditor values.

The property owner argues that, pursuant to R.C. 5715.19(A)(2), a second filing based on the January 2006 sale is prohibited since the BOR already considered that same sale when making its 2005 determination of value. Appellant's brief. The BOE and BOR argue, however, that the second filing was warranted due to the auditor changing the subject property's value between the 2005 and 2006 tax lien dates to reflect various stages of development. Appellees' briefs; S.T. at C. The appellees argue the auditor's assignment of a new value for 2006 vested the BOR with jurisdiction to hear the complaint challenging that new value and rendered R.C. 5715.19(A)(2) inapplicable.

Based on the record before us, we find the auditor increased the subject property's value for 2006 from the value for 2005 and that both years fall within the same triennium. Consequently, we further find the BOR did have jurisdiction to consider the BOE's second complaint filed within that same interim period, irrespective of R.C. 5715.19(A)(2), since the complaint challenged the auditor's changed value for 2006. See R.C. 5713.01; *Bd. of Edn. of the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 14, 1996), BTA Nos. 1994-G-1343, et seq., unreported (holding that where parcel numbers were changed and existing parcels were increased or decreased in size, resulting in a change in value being assigned the property by the county auditor, the bar to second complaint within the same triennial set forth in R.C. 5715.19(A)(2) is inapplicable); *Meijer, Inc. v. Clermont Cty. Bd. of Revision* (Interim Order, June 4, 1999), BTA No. 1998-M-671, unreported (holding that where a county auditor changes value during an interim period, the prohibition against a second filing does not apply); *Bd. of Edn. of the*

Columbus City Schools v. Franklin Cty. Bd. of Revision (May 30, 2003), BTA No. 2002-A-2251, unreported. Whether the BOR considered the 2006 sale when determining 2005 value is immaterial given that R.C. 5715.19(A)(2) was not triggered by the 2006 filing. Accordingly, we find the property owner's jurisdictional argument to remand this matter to the BOR for dismissal unpersuasive.

As noted above, the record indicates the BOE presented the BOR with copies of a real property conveyance fee statement and limited warranty deed evidencing the transfer of the subject property on January 12, 2006 for a purchase price of \$5,827,000. S.T. at Ex. A. The BOE contends that this transfer constitutes a valid, recent, arm's-length sale, and, as such, is 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.”

As the party asserting that the valuation determined by the BOR should be decreased, the property owner bears the burden of proving that the value it alleges should be the true value. The property owner's evidence does not meet that burden. The record establishes that the property owner purchased the subject on January 12, 2006 for \$5,827,000. The Ohio Supreme Court has consistently held 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.² *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-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. *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St. 3d 250, 253, 2005-Ohio-6434, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. However, the property owner presented no competent or probative evidence challenging the arm's-length nature of the January 2006 sale to rebut the presumption that the sale price is the best evidence of value. Before the BOR, the property owner's counsel argued the subject's arm's-length transfer was not indicative of true value since the property is subject to a build-to-suit lease agreement. S.T. at D. That position has been rejected in a series of Ohio Supreme Court cases. See *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203; *Rhodes*, supra; *Dublin City Schools Bd. of Edn.*, supra; *Cummins*, supra; *Berea*, supra. Consequently, without

² We find evidence of the subject's sale within two weeks of the tax lien date sufficiently recent for tax valuation purposes. See R.C. 5713.03; *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.

evidence to controvert the validity of the arm's-length nature of the sale, we must conclude that the best evidence of the property's true value for taxation purposes is the sale price. Id.

Accordingly, 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 as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 391,500	\$ 137,020
BUILDING	<u>5,435,500</u>	<u>1,902,430</u>
TOTAL	\$5,827,000	\$2,039,450

The Auditor of Columbiana County is hereby ordered to cause his 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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