

OHIO BOARD OF TAX APPEALS

Board of Education of the Vandalia- Butler City Schools,)	CASE NO. 2007-M-1109
)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
)	
Montgomery County Board of Revision, the Montgomery County Auditor and R.H. Oaks Farms, LLC,)	
)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Rich, Crites & Dittmer, LLC Alison Crites 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees -	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Nolan Thomas Assistant Prosecuting Attorney 301 West Third St. P.O. Box 972 Dayton, Ohio 45422
For the Appellee Property Owner -	R.H. Oaks Farms, LLC Richard Oaks 2611 N. Montgomery County Line Road East Tipp City, Ohio 45371

Entered May 19, 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 on October 11, 2007, from a

decision, mailed September 25, 2007, of the Montgomery County Board of Revision (“BOR”),¹ appellee herein.

The subject property is located in the Butler Township taxing district of Montgomery County, Ohio, and further identified as Parcel No. A01-002-05-0005.

The Montgomery County Auditor found the true and taxable values of the subject property for tax year 2006 to be as follows:

Parcel No. A01-002-05-0005		
	True Value	Taxable Value
Land	\$ 162,060	\$ 56,720
Building	\$ 2,400	\$ 840
Total	\$ 164,460	\$ 57,560

Upon consideration of the complaint filed by the Board of Education of the Vandalia-Butler City School District (“BOE”), the BOR determined that the auditor’s values were correct.

Through its notice of appeal, the appellant has alleged that the correct value for the parcel for tax year 2006 is as follows:

Parcel No. A01-002-05-0005		
	True Value	Taxable Value
Land	\$ 375,700	\$ 131,500
Building	\$ 2,400	\$ 840
Total	\$ 378,100	\$ 132,340

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the

¹ The statutory transcript certified by the Montgomery County Auditor as a part of his duties as secretary of the BOR indicates that the notice of appeal was filed with the BOR on October 29, 2007. That date would be outside the filing period prescribed by R.C. 5717.01. However, the statutory transcript contains a copy of the notice of appeal filed with the BOR, which carries a date stamp of October 17, 2007, which is within the 30-day time frame prescribed by law.

Montgomery County Auditor as secretary of the BOR, and the legal argument submitted by the appellant. The BOE attended the hearing convened by the board and presented a copy of a real estate purchase agreement between Ruth L. Bair and Judy W. Snell and R.H. Oaks Farms, LLC. The BOE also presented a “Disbursement Request and Authorization,” reflecting a loan between R. H. Oaks Farms, LLC and Greenville National Bank. Appellant’s Ex. 1. The property owner did not appear at the board’s hearing.

The subject property is a 75.619-acre plat of land located in Tipp City. The property is currently farmland and enrolled in the current agricultural use valuation (“CAUV”) program. The property was sold on or about July 12, 2006 for a sale price of \$378,095. Copies of the warranty deed and conveyance fee statement appear as part of the statutory transcript.

Based upon the above-noted sale, the BOE filed a complaint with the BOR and presented supporting sale documents at the BOR’s hearing. Mr. Richard Oaks appeared on behalf of the property owner and provided testimony concerning the sale. He also presented a written letter to the Montgomery County Auditor, in which he stated that the price paid for the property was not representative of the fair market value because the sale was a private transaction and not an “open market” transaction. Mr. Oaks also indicated that the value of the subject property should not be raised because it would encourage farm owners to sell acreage to developers. S.T., letter from Richard L. Oaks.

Mr. Oaks provided similar testimony to the BOR. The notes from the BOR's hearing indicate that Mr. Oaks testified that the property was not advertised on the open market. The notes also indicate that Mr. Oaks owns adjoining acreage and "paid a premium just to have adjoining property." S.T. BOR hearing notes. Based upon the record, the BOR declined to change value. The BOE's appeal followed.

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 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*.

Therefore, the board is charged with the duty to examine the available record and determine value based upon the evidence before us. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we 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.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. 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. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Accordingly, where there exists an actual sale of real property which is both recent and arm's length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property's true value. *Berea*, supra; *Conalco*, supra; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St.2d 28. It is also well established that when a sale occurs, there is a rebuttable presumption that 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 the sale is other than arm's length to meet such a presumption.

In the present appeal, we have before us sale evidence. Both the warranty deed and the conveyance fee statement indicate that the property transferred

for a price of \$378,095. We have previously held that evidence of a sale exhibited through a 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. Therefore, without evidence controverting the validity of the sale as evidence of true value, the board must conclude that the evidence supports a finding that the subject property is worth \$378,095.

The testimony of Mr. Oaks at the BOR persuaded that body that the property was more accurately valued at the auditor's value. To make that determination, the BOR (and this board) must conclude that the price received through the sale was not the best evidence of value. To draw such a conclusion, the record must include evidence that the sale was not arm's length or otherwise an indicator of value.

It was Mr. Oaks' position that the sale of the subject property was not a valid indicator of value because the sale transaction took place without exposure to the open market. Indeed, market exposure is a factor to be considered when a determination of "fair market value" is made. *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23 (An arm's-length sale is comprised of three elements: 1) the sale is voluntary; 2) it generally takes place in an open market; and 3) the parties act in their own self interests.).

As the BOE notes in its brief, however, this board has held on some occasions that an arm's-length sale can occur when the property is not offered on the "open market" in the traditional sense. *Gammarino v. Hamilton Cty. Bd. of Revision* (Oct. 7, 2008), BTA No. 2006-A-1711, unreported. In *22 North Park Place Ltd. v. Licking Cty. Bd. of Revision* (Mar. 3, 2000), BTA No. 1998-S-704, unreported, this board held:

"Further, this Board has previously held that, 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. See *Dublin City School District Board of Education v. Franklin Cty. Bd. of Revision* (May 5, 1995), B.T.A. No. 93-T-1107, unreported; *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-S-361, unreported. We consider the 'openness' of market generally to relate to the ability of persons without a special interest in the property to learn of a property's availability. *Jack Beatley, Trustee v. Franklin Cty. Bd. of Revision* (June 18, 1999), B.T.A. Nos. 97-M-262, 263, unreported. Based upon the foregoing, we find the fact that the property was not listed with a realtor at the time of the sale does not affect the reliability of the sale price." *Id.* at 7.

Mr. Oaks did not appear before this board (despite the issuance of a subpoena to compel his attendance). Therefore, we have nothing more than the notations made at the BOR hearing and the conclusory statements made in his letter to the BOR to support a finding that the sale did not take place in the open market. We have no evidence of the relationship, if any, between Mr. Oaks, R. H. Oaks Farms, LLC, and the sellers. Based upon the present record, this board cannot find that the preponderance of the evidence indicates that the sale before us was other than arm's length.

In this matter we find that the BOE has brought forth competent and probative evidence of the value of the subject property and that evidence has not been rebutted by the property owner. Accordingly, upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 2006² was:

Parcel No. A01-002-05-0005		
	True Value	Taxable Value
Land	\$ 375,700	\$ 131,500
Building	\$ 2,400	\$ 840
Total	\$ 378,100	\$ 132,340

It is the order of the Board of Tax Appeals that the Auditor of Montgomery County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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² The BOR's determination letter caused the representative of the BOE to request a finding that the values assessed reflect true value, prior to the application of CAUV reductions. It should be clear from the decision that the board's determination is made on fair market value, without consideration of reductions applied through the CAUV program.