

OHIO BOARD OF TAX APPEALS

Board of Education of the)
South-Western City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
the Franklin County Auditor, and)
Stultz Real Estate Group, Ltd.,)
)
Appellees.)

CASE NO. 2007-M-1378

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant -
Bd. of Edn.

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Columbus, Ohio 43215

For the County -
Appellees

Ron O'Brien
Franklin County Prosecuting Attorney
Paul Stickel
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
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For the Appellee -
Property Owner

Stultz Real Estate Group, Ltd.
Patricia Schmidt Stultz, D.V.M., Managing Member
3067 Columbus Street
Grove City, Ohio 43123

Entered June 16, 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, Board of Education of the South-Western City Schools ("BOE"), on November 9, 2007. Appellant challenges a decision,

mailed October 24, 2007, of the Franklin County Board of Revision (“BOR”), appellee.

The property which is the subject of this appeal is located in the city of Grove City, South-Western City School taxing district of Franklin County, and is identified on the auditor’s records as parcel number 040-002171.

The value of the property determined by the Franklin County Auditor as of January 1, 2006 was as follows:

Parcel No. 040-002171			
	True Value	Taxable Value	
Land	\$ 23,800	\$	8,330
Building	\$ 49,200	\$	17,220
Total	\$ 73,000	\$	25,550

Upon consideration of a complaint filed by the BOE, the BOR determined that the auditor’s values were correct and declined to change value.

The BOE challenges the BOR’s findings for tax year 2006, claiming that the values should be increased to reflect a sale of the property taking place on or about May 31, 2006. The values claimed by the appellant for tax year 2006 are as follows:

Parcel No. 040-002171			
	True Value	Taxable Value	
Land	\$ 23,800	\$	8,330
Building	\$ 126,200	\$	44,170
Total	\$ 150,000	\$	52,500

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 Franklin County Auditor as secretary of the BOR, and the testimony presented at the hearing before this board. We will also consider the legal argument put forth by appellant's counsel.

The subject property is a plat of land improved with a small office building in use as a veterinary clinic. The current owner of the property, Stultz Real Estate Group, Ltd, purchased the property in a transaction in which Dr. Schmitt Stultz, the managing member of the property owner, also purchased certain assets of the prior owner's veterinary practice. The total purchase price of the practice and the building was \$325,000. Appellant's Exs. 1, 3b; Hearing Digital Recording ("HDR") at 9:14:32.

Dr. Schmitt Stultz testified at the hearing before this board that she had previously practiced in Grove City, Ohio and was interested in returning to the area. The owner of the property approached her to buy his practice as well as the building in which it was housed. HDR at 9:13:38. The parties negotiated the purchase price, HDR at 9:13:01, and the allocation between practice and building was made as requested by the prior owner, in order to ease his tax burden. HDR at 9:12:36.

Dr. Schmitt Stultz also testified that the building itself, constructed in 1959, was in need of significant updating. She stated that she purchased the property because it was where she wished to practice. She did not have the property appraised

before the purchase and, except for a down payment of \$25,000, the seller financed the entire transaction.

Hearing evidence basically identical to the evidence presented to this board, the BOR elected to affirm the values assessed by the auditor. The BOE, dissatisfied with that determination, appealed the BOR's finding to this board. We conclude that, given the evidence before it, the BOR erred in not valuing the subject property in accordance with the price garnered at the recent, arm's-length sale.

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 City 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 competent and probative evidence of true value has been presented by an appellant, 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.

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. In the present matter, the subject property sold on May 31, 2006.

While the property owner argues that the sale was not arm's length, the evidence supports a finding that Dr. Schmitt Stultz was not related to the seller and the parties both acted in their individual best interests. The sale itself was near the tax lien date. While the property was not listed with a realtor, Dr. Schmitt Stultz admitted before the BOR that there were other interested buyers. S.T., BOR Digital Recording at 9:46:40. The board has also found that listing with a realtor is not a prerequisite to a finding that a sale meet the elements of an arm's-length transaction. *South-Western*

City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision (July 20, 2001), BTA No. 1999-T-1808, unreported; *Griesemer v. Montgomery Cty. Bd. of Revision* (Aug. 29, 2003), BTA No. 2002-A-1949, unreported; *DePrie v. Hamilton Cty. Bd. of Revision* (Mar. 26, 2004), BTA No. 2003-M-337, unreported.

Dr. Schmitt Stultz also pointed to the condition of the property and the fact that no appraisal was prepared prior to the sale to support her claim that the property was not worth the price paid. However, the Supreme Court's holding in *Berea*, supra, and cases following suggest that the court currently is of the opinion that a recent sale is the most reliable evidence of a property's true value. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059; *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. Therefore, even if the property were appraised, the sales price is the better indicator of value.

The sale of the veterinary practice and the sale of the realty were consummated in two separate yet related transactions. Thus, the value of the personalty transferred as a part of the veterinary practice is not an issue before us. See *Bd. of Edn. of Kettering-Moraine v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2000), Montgomery App. No. 18223, unreported. Therefore, the board finds that the value of \$150,000 agreed to by the seller and the purchaser is valid evidence of the value for the realty and improvements.

Considering the record before us and based upon a preponderance of competent evidence, this board finds that the correct values of the subject property for tax year 2006 are as follows:

Parcel No. 040-002171

	True Value	Taxable Value
Land	\$ 23,800	\$ 8,330
Building	\$ 126,200	\$ 44,170
Total	\$ 150,000	\$ 52,500

It is the order of the Board of Tax Appeals that the Auditor of Franklin 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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