

OHIO BOARD OF TAX APPEALS

Hird Avenue Properties, LLC,)	CASE NOS. 2007-M-163, 164
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Cuyahoga County Board of Revision,)	
the Cuyahoga County Auditor, and)	Remanded on Settlement of Appeal Mar. 27, 2009
Lakewood City School District)	Ohio Supreme Court No. 2008-2465
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Sleggs, Danzinger & Gill, Co., LPA Todd W. Sleggs 82 W. Superior Avenue, Suite 400 Cleveland, Ohio 44113
For the County - Appellees	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee - Bd. of Edn.	Chester L. Sumpter & Associates, LLC Brian W. Bonham 16927 Detroit Avenue, Suite 4 Lakewood, Ohio 44107

Entered November 25, 2008

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

These causes and matters come to be considered by the Board of Tax Appeals upon notices of appeal filed by appellant on March 12, 2007. Appellant challenges a single decision, mailed February 16, 2007, of the Cuyahoga County Board of Revision (“BOR”), appellee.

The property which is the subject of these appeals is located in the Lakewood taxing district of Cuyahoga County, and is identified on the auditor's records as parcel number 312-33-027.

The value of the property determined by the Cuyahoga County Auditor as of January 1, 2005 was as follows:

Parcel No. 312-33-027		
	True Value	Taxable Value
Land	\$ 89,600	\$ 31,400
Building	\$ 81,300	\$ 28,500
Total	\$ 170,900	\$ 59,900

Upon consideration of a complaint filed by the Lakewood City School District Board of Education ("BOE"), the BOR determined that the subject property should be valued in the following manner:

Parcel No. 312-33-027		
	True Value	Taxable Value
Land	\$ 89,600	\$ 31,400
Building	\$ 185,400	\$ 64,900
Total	\$ 275,000	\$ 96,300

The appellant challenges the BOR's findings for tax year 2005, claiming that the auditor's values were correct and there should have been no change in value.

The matters were consolidated and submitted to the Board of Tax Appeals, pursuant to R.C. 5717.01, upon the notices of appeal and the statutory transcript certified by the Cuyahoga County Auditor as secretary of the BOR. The board scheduled a hearing; both the appellant and appellee BOE waived appearance but submitted legal argument regarding the ultimate issues in these appeals.

Prior to a consideration of the merits of these appeals, the board must consider a potential jurisdictional issue raised by the appellant. The auditor's records indicate that the property is held in the name of "Hird Avenue Properties, LLC" and not "Hird Properties LLC," the name placed on line one of the complaint, which seeks the owner of the property. The misidentification of the owner of property on the face of a real property valuation complaint can be jurisdictionally fatal to a complainant's cause. *Bolivar Road, Inc. v. Cuyahoga Cty. Bd. of Revision*, (Dec. 19, 2003), BTA No. 2002-A-582, unreported; *Ritz Carlton Hotel Partnership v. Cuyahoga Cty. Bd. of Revision* (May 11, 2001), BTA No. 1998-L-355, unreported.

However, the misidentification of the owner of a property is not always fatal to the complaint. In *Cleveland Bluffs Dev., LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 19, 2003), BTA No. 2002-V-1632, unreported, this board concluded that a listing of the owner's name omitting the word "Bluffs" did not constitute a jurisdictional defect. Similarly, in *Tri-Cam Properties, LLC v. Lake Cty. Bd. of Revision* (Interim Order, Apr. 6, 2007), BTA No. 2006-V-1268, unreported, the board found jurisdictional a complaint which identified "Tri-Cam Properties" on line one of the complaint, when the owner of the property was in fact "Tri-Cam Properties, LLC."

We find the reasoning in both *Cleveland Bluffs* and *Tri-Cam* applicable to the facts in the present appeals. The owner as listed on the complaint and the actual owner of the subject property are both the same type of entity, a limited liability company. Therefore, the case law in which complaints are dismissed because the entity listed is different from the entity which owns the property is inapposite. See, e.g., *Martell v. Stark Cty. Bd. of Revision* (Sept. 23, 2008), BTA No. 2008-N-39,

unreported (complaint listed individual when property owned by a trustee on behalf of a trust); *Jacobs West St. Clair Limited Partnership v. Cuyahoga Cty. Bd. of Revision* (Nov. 5, 2004), BTA No. 2003-T-609, unreported (complaint listed the owner as a limited partnership when property owned by a limited liability company). The error in the present appeal is minimal and would require a hypertechnical reading of both the jurisdictional statutes as well as the complaint itself in order to grant a dismissal. See *Nucorp, Inc. v. Bd. of Revision* (1980), 64 Ohio St.2d 20; *Cleveland Municipal School Dist. v. Cuyahoga Cty. Bd. of Revision* (Interim Order June 15, 2001), BTA Nos. 1999-M-1348, et seq. unreported.

We proceed to consider the valuation of the subject property. The property was transferred to its current owner on January 31, 2005 for \$275,000. Before the BOR, Mr. Dave Harris, a member of Hird Avenue Properties, LLC and the owner of a heating and air conditioning service and supply business located on the subject property, testified regarding the purchase of the subject. Mr. Harris testified that his air conditioning business is located adjacent to the subject property, and has little opportunity for expansion in its present location. When he learned that the business then located on the subject property was about to close, he contacted the owner and began negotiations for the subject. During the negotiations, he learned that the property suffered from some environmental problems, but corrective actions had been undertaken by the then current owner. Mr. Harris believed that a “no further action” letter from the Ohio Department of Commerce would free the property from ongoing environmental issues. In fact, a “no further action” letter was received on

February 15, 2006, after closing. However, the letter indicates that the release “assumes non-drinking water and non-residential use scenarios.” S.T. Ex. F.

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 the present appeals, the parties waived appearance before this board. In such cases, this board will review the evidence presented to the BOR to determine whether the BOR acted properly in amending or retaining the value of the subject property. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, where the court held, “[w]e find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from

the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”

The BOE urges this board to conclude that the sale price garnered through a recent arm’s-length transaction is the best indicator of value for the subject property. Indeed, 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.

The property owner, however, argues that the relationship of the buyer and the seller and facts revealed after the sale should be sufficient to call into question the efficacy of the use of the actual sale as an indicator of value. We do not agree. The fact that a property was purchased without general market exposure does not necessitate a finding that the subject sale was not arm’s length in nature. *Dublin City School District Board of Education v. Franklin Cty. Bd. of Revision* (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported; *Poley v. Montgomery Cty. Bd. of*

Revision (Sept. 24, 2004), BTA No. 2003-M-1784, unreported; *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported. The current property owner provided no evidence that there was a relationship between the buyer and the seller, other than proximity. Therefore, the fact that the property was purchased by an adjacent property owner is not sufficient evidence in and of itself for this board to find that the sale is not a qualifying sale.

The property owner also argues that the limitations placed upon the land by virtue of the environmental release letter from the state received after the property had transferred is a condition subsequent which, had it been known, would have affected the price paid for the subject. The property owner has presented one letter, which does not limit the manner in which the owner is currently using the property. Moreover, the letter does not prohibit residential use, merely assumes non-residential use. This board has no way of knowing whether residential use is prohibited, or what steps would have to be taken to permit such use. Further, the property owner provided no evidence as to whether this restriction affected value. Therefore, this board concludes that the sale price remains the best evidence of the property's value as of tax lien date.

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 2005 are as follows:

Parcel No. 312-33-027

	True Value	Taxable Value
Land	\$ 89,600	\$ 31,400
Building	\$ 185,400	\$ 64,900

