

OHIO BOARD OF TAX APPEALS

Michael J. Petkus, Jr.,)
)
 Appellant,)
)
 vs.)
)
)
 Montgomery County Board of Revision)
 and Montgomery County Auditor,)
)
 Appellees.)

CASE NO. 2007-T-532
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Michael J. Petkus, Jr., pro se
210 West National Road
Vandalia, Ohio 45377

For the County Mathias H. Heck, Jr.
Appellees - Montgomery County Prosecuting Attorney
Nolan Thomas
Assistant Prosecuting Attorney
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P.O. Box 972
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Entered January 27, 2009

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

Michael J. Petkus, Jr., appeals from a decision of the Montgomery County Board of Revision, in which the BOR determined the 2006 true values for the following five parcels: 1) \$40,260 for permanent parcel number R72-05801-0064, 2) \$55,980 for permanent parcel number R72-05801-0065, 3) \$39,090 for permanent parcel number R72-05801-0084, 4) \$44,160 for permanent parcel number R72-05801-0085, and 5) \$37,140 for permanent parcel number R72-05801-0086. Mr. Petkus asserts that the

correct true values for the parcels should be \$10,000, \$10,000, \$8,000, \$12,000 and \$20,000 respectively.¹

Each of the parcels is a single-family home, operated as a rental unit. Each of the homes was built in the early part of the previous century. Each is a two-story frame structure, and they range in size from 960 square feet to 1,584 square feet. Mr. Petkus argues that he purchased the five properties in an arm's-length transaction for a total purchase price of \$60,000. He asks this board to accept the purchase price as the value of the properties and to allocate the price according to values he has determined based upon comparable sales.

Mr. Petkus testified before this board that he is a real estate broker and a property manager. H.R. at 8. He managed the subject properties for the previous owner for approximately 15-20 years. H.R. at 25. In 2004, the owner asked Mr. Petkus to list the subject properties for sale. H.R. at 8, 24. The properties were to be sold individually. H.R. at 24. Eventually, the owner approached Mr. Petkus and asked whether he, having experience managing the properties, would be interested in purchasing all five as a package. According to Mr. Petkus, "They knew that we owned other properties, so they approached me as to whether or not I would be interested in buying them. At that point I – we did submit an offer ***." H.R. at 25. The \$60,000 offer was accepted, and Mr. Petkus closed the transaction on November 15, 2004. In

¹ There is a discrepancy in the record concerning the number of parcels involved in this appeal. The complaint filed with the BOR by Mr. Petkus lists only three parcels. S.T. at Ex. A. While Mr. Petkus references on the complaint that there is an attachment, the attachment was not included with the record certified by the county auditor. We note, however, that the BOR issued decisions on all five parcels, each decision referencing the same complaint number. S.T. at Ex. D. Accordingly, we find that we have jurisdiction to consider all five of the parcels.

further support of the sale, Mr. Petkus has submitted copies of the closing statement and purchase contract. Appellant's Ex. A and S.T. at Ex. A.

In order to support his asserted allocation of the purchase price to each of the properties, Mr. Petkus has submitted a "comparative market analysis." S.T. at Ex. A; Appellant's Ex. A.² This analysis reviews the sale prices of several area properties. Mr. Petkus indicated that all of the properties are single-family rental homes. Based upon his review, he determined that the sale price would be allocated to parcel R72-05801-64 at \$12,000, to parcel R72-05801-0065 at \$20,000, to parcel R72-05801-0084 at \$10,000, to parcel R72-05801-0085 at \$10,000, and to parcel R72-05801-0086 at \$8,000.

We begin our review of this matter by noting that "[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, at 566. In determining value, we will determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

² The record contains two comparative analyses. The first was submitted to the BOR at Mr. Petkus' hearing. This analysis asserts allocated values as of the sale. S.T. at Ex. A. At this board's hearing, Mr. Petkus submitted an updated analysis, showing a change in value for the subject properties as of 2008. We do not find this information to be relevant to the tax year before us, which is tax year 2006. We shall therefore limit our review to the analysis submitted to the BOR. S.T. at Ex. A.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566.

With regard to the sale now before us, R.C. 5713.03 provides that if “a 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.” In construing R.C. 5713.03, the Ohio Supreme Court has specified, “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, 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, at ¶13. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203.

“[A]n 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.” *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, at the syllabus. The absence of a single one of these factors is sufficient to demonstrate that a transaction was not conducted at arm’s length. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, at ¶13, citing *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145. See, also, *RLG Properties, LLC v. Franklin Cty. Bd. of Revision*, 2006-Ohio-5096.

Upon review, we find that all elements of an arm’s-length sale are present. The properties were listed for sale on the open market. Although the buyer and seller were engaged in an ongoing business relationship, we find from the record that they each acted in their own best interests. There is no evidence of compulsion or duress. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported. (holding that a sale price was at arm’s length despite the fact that the buyer had a fifteen-year business relationship with the seller-landlord; there was no evidence of any collusion between the parties, and it was apparent that both parties acted in their own self-interest). See, also, *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirmed (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported. A copy of the closing statement discloses nothing unusual about the terms of the sale. S.T at Ex. A; Appellant’s Ex. A. We also find that the sale is within a reasonable length of time to tax lien date and, therefore, constitutes a “proper measure of value.” *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, at 59.

As to Mr. Petkus' allocation of the purchase price, we note that the BTA is not required to accept at face value an allocation of a lump-sum purchase price paid for a group of assets. *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1966), 74 Ohio St.3d 647; *Consolidated Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St.2d 410; *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297; *Ashley Woods .LP. v. Hamilton Cty. Bd. of Revision* (Aug. 8, 2003), BTA No. 2003-V-90, unreported. A Supreme Court case is often that cited for the proposition that a lump-sum purchase sets the price for the individual components is *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. There, the court concluded that a bulk sale is not necessarily an unreliable indication of value, absent "factors that would cast suspicion on the sale price as representative of true value." *Id.* at 64. However, *Pingue* involved the bulk sale of forty-four identical condominiums, which were all located in the same project.

In the instant matter, the properties purchased in the bulk sale are not identical. In such cases, we have declined to adopt the asserted allocation where the record fails to demonstrate that the allocation of the sale price to the components represents the true value of the individual sites. *Tacohio Development, L.L.C. v. Franklin Cty. Bd. of Revision* (Apr. 4, 2003), BTA No. 2003-T-211, unreported, remanded upon settlement 99 Ohio St.3d 1537, 2003-Ohio-4671. See, also *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (July 16, 1999), BTA Nos. 1997-M-645, unreported (holding that, without some corroborating evidence, the BTA is unable to find that the true value of only a portion of a sale can be established by the submission of a conveyance fee statement for that portion). Here, however, Mr. Petkus has

provided us with comparable sales to support his allocation of the purchase price. We find these sales to be sufficiently comparable to the subject properties, and, as such, they provide probative evidence of the allocated values.

Upon review, we conclude that Mr. Petkus has satisfied his burden of persuasion and has come forward with competent and probative evidence of value for the subject parcels for tax year 2006. *Columbus*, supra. Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield* and *Mentor Exempted*, supra. Failure of an appellee to present rebuttal evidence may, upon our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra. See, also, *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value."). Here, the county appellees have elected to not provide us with any additional evidence of value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other evidence upon which we may base an opinion of value.

Accordingly, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2006:³

Parcel R72-05801-0064	TRUE VALUE	TAXABLE VALUE
LAND	\$ 3,840	\$1,344
BUILDINGS	\$ <u>8,160</u>	<u>\$2,856</u>
TOTAL	\$12,000	\$4,200

Parcel R72-05801-0065	TRUE VALUE	TAXABLE VALUE
LAND	\$ 4,600	\$1,610
BUILDINGS	\$ <u>15,400</u>	<u>\$5,390</u>
TOTAL	\$20,000	\$7,000

Parcel R72-05801-0084	TRUE VALUE	TAXABLE VALUE
LAND	\$ 3,300	\$1,160
BUILDINGS	\$ <u>6,700</u>	<u>\$2,340</u>
TOTAL	\$10,000	\$3,500

Parcel R72-05801-0085	TRUE VALUE	TAXABLE VALUE
LAND	\$ 2,900	\$1,020
BUILDINGS	\$ <u>7,100</u>	<u>\$2,480</u>
TOTAL	\$10,000	\$3,500

³ We are mindful of the Ohio Supreme's Court's recent decision in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d. 330, 2008-Ohio-2454, in which the court found that this board failed to support its finding regarding land value, as distinct from improvement value. The court specified, "The allocation of value between land and improvements does not constitute an arbitrary exercise; it relates to the basic method by which county auditors determine value." *Id.* at ¶17. In the instant matter, no party has contested the auditor's percentage allocation of land and building values. We shall therefore allocate the values according to the same percentages used by the auditor.

Parcel R72-05801-0086	TRUE VALUE	TAXABLE VALUE
LAND	\$3,500	\$1,230
BUILDINGS	<u>\$4,500</u>	<u>\$1,570</u>
TOTAL	\$8,000	\$2,800

We order the Auditor of Montgomery County to list and assess the subject property in conformity with this decision and order and to carry forward the determined values in accordance with law.

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