

OHIO BOARD OF TAX APPEALS

Edward C. Bagerstock, Trustee,)
Julie A. Bagerstock, Trustee,)
)
Appellants,)
)
vs.)
)
Summit County Board of Revision and)
Summit County Fiscal Officer,)
)
Appellees.)

CASE NO. 2007-T-788
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellants - Michael R. Pfahl
Attorney at Law
2578 Woodward Road
Cuyahoga Falls, Ohio 44221

For the County Appellees - Sherri Bevan Walsh
Summit County Prosecuting Attorney
Marvin D. Evans
Assistant Prosecuting Attorney
Tax Division
220 South Balch Street, Suite 118
Akron, Ohio 44302-1606

Entered June 23, 2009

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

Edward C. Bagerstock, Trustee, and Julie A. Bagerstock, Trustee, appeal from a decision of the Summit County Board of Revision, in which the BOR determined the true value of permanent parcel number 56-14935 to be \$309,450 for tax year 2007. The Bagerstocks claim that the correct true value should be \$200,000.

The subject property consists of approximately 0.88 acres of land. The land is improved with a residential building containing approximately 3,528 square feet of space. The building was constructed in 1991 and is divided into two rental units. The subject is also improved with a gazebo that is approximately fifty-five square feet in size.

For tax year 2005, the auditor valued the subject property at \$309,450. The Bagerstocks filed a complaint with the BOR, seeking a decrease in the subject property's value to \$200,000 based upon their purchase of the property on November 20, 2006. Although they did not appear at the hearing before the BOR, the Bagerstocks submitted to that tribunal copies of the conveyance fee statement, agreement for the exchange of real property, purchase agreement, general warranty deed, and settlement statement related to the sale. The documents reflected a purchase price of \$200,000. S.T. Noting that the transfer appeared to be part of a "like kind exchange," the BOR voted to retain the auditor's value of \$309,450 based upon a "lack of evidence." S.T. at BOR Hearing Record. The Bagerstocks now argue on appeal that the BOR erred in not accepting the sale price.

Mr. Edward Bagerstock, an appraiser and licensed real estate broker, appeared at this board's hearing and testified about the November 2006 sale.¹ Mr. Bagerstock is a trustee of the trust that purchased the property and was involved in the actual acquisition. Mr. Bagerstock admitted that the sale was part of a "1031 exchange"; however, he was of the opinion that the sale was made at arm's length.

¹ The county appellees waived their opportunity to appear at this board's merit hearing. However, they have filed a brief for our review.

Mr. Bagerstock testified 1) that the subject was being offered for sale in the open market, 2) that he negotiated a purchase price with the seller over a period of several weeks, 3) that the seller based his acceptance of the purchase price on a bank appraisal that the seller had prepared, and 4) that Mr. Bagerstock based his offer to purchase upon his review of area properties, both in terms of value and sale prices. Mr. Bagerstock testified that the subject's neighborhood was in decline at the time of the sale. Finally, Mr. Bagerstock acknowledged that his real estate company was the agent listing the subject for sale. He believed, however, that both he and the seller acted in their own best interests.

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.

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*, supra, 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 property was listed for sale on the open market. The buyer and seller were unrelated parties who acted in their own best interests. The record supports a finding that the parties were free to negotiate, as the original asking price was well above the purchase price. There is no evidence of compulsion or duress. Moreover, the settlement statement, deed, and conveyance fee statement provided to us disclose nothing unusual about the terms of the sale. S.T at Ex. 7-A and 7-B. See *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported, *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported, and *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported (holding that evidence of a sale exhibited through a deed or conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale).

The county nonetheless challenges the validity of the sale because it was made as part of a 1031 exchange. Recently, in *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1804, unreported, we rejected a similar assertion:

“A 1031 exchange, also known as a ‘like-kind exchange’ or a ‘tax deferred exchange,’ refers to USC Title 26 § 1031, which provides: ‘No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be

held either for productive use in a trade or business or for investment.’ The exchange must occur within 180 days of the selling of the original property. The concept behind a 1031 exchange is that, when a property owner sells a property and reinvests its proceeds into another property, any economic gain has not been realized in a way that generates funds to pay any tax. In short, the taxpayer’s investment is still the same, only the form has changed. Any gain is in essence deferred until the replacement property is itself sold (if not also subject to a qualifying like-kind exchange).

“Nevertheless, the process of selling one property and then buying another property is practically identical to any other real estate transaction, the tax benefits notwithstanding. The transaction still generally takes place in the open market between a willing buyer and a willing seller. Thus, a 1031 exchange will not, in and of itself, prevent the application of a sale price as the value of the property in issue. Here, there is no evidence of any collusion between the buyer and seller, and the record shows nothing but the purchase of a fee interest in real property for a stated amount. *Berea, Rhodes and AEI Net Lease*, supra.” Id. at 6.

As in *Hilliard*, the evidence now before us discloses no collusion between the Bagerstocks and the seller. The subject was purchased from the open market after negotiation, and the testimony before this board establishes that the parties were acting based upon their objective observations of the market. Thus, we are unable to find that the 1031 exchange in and of itself would invalidate the sale.

In conclusion, we have before us an arm’s-length sale. We must therefore accept the \$200,000 price as the value of the property. *Berea, Lakota, Cummins*, and *Rhodes*, supra. 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 2006:²

Parcel 56-14935	TRUE VALUE	TAXABLE VALUE
LAND	\$ 15,500	\$ 5,420
BUILDINGS	<u>\$184,500</u>	<u>\$ 64,580</u>
TOTAL	\$200,000	\$70,000

We order the Summit County Fiscal Officer 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.

ohiosearchkeybta

² 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, as no party has advanced an opinion of allocation, we shall adopt the auditor’s allocation percentage.