

**OHIO BOARD OF TAX APPEALS**

William R. Steward, )  
 )  
 Appellant, ) (CASE NO. 2007-T-836  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) DECISION AND ORDER  
 )  
 Montgomery County Board of Revision )  
 and Montgomery County Auditor, )  
 )  
 Appellees. )

APPEARANCES:

For the Appellant - William R. Steward, pro se  
321 Oxford Avenue  
Dayton, Ohio 45402

For the County Appellees - Mathias H. Heck, Jr.  
Montgomery County Prosecuting Attorney  
Laura G. Mariani  
Assistant Prosecuting Attorney  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422

Entered January 27, 2009

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

William R. Steward appeals from a decision of the Montgomery County Board of Revision, in which the BOR determined the true value of permanent parcel number R72-07808-0023 to be \$5,950 for tax year 2006. Mr. Steward asserts that the correct true value should be \$1,800.

Initially, we note that Mr. Steward did not appear at the merit hearing scheduled before this board. Although in appearance, the county elected to present no additional evidence. In this regard, we remind the parties that our duty is to conduct a

de novo review of the record and to “determine the value of the property.” R.C. 5717.03. Where the parties elect to present no additional evidence on appeal, we will independently review the record developed by the parties before the county board of revision and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, quoting *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 14.

The subject property consists of approximately 0.134 acres of unimproved land. For tax year 2006, the auditor valued the subject property at \$5,950. Mr. Steward filed a complaint with the BOR, seeking a decrease in the subject property’s value to \$1,880 based upon a March 27, 2006 sale and the sale prices of comparable properties. S.T. at Ex. A.<sup>1</sup> At his hearing before the BOR, Mr. Steward testified that he doubted that the sale could be considered arm’s length because he purchased it through a city of Dayton program that provided subsidized financing on the purchase of inner-city properties. S.T. at Ex. C. Mr. Steward did provide the BOR with a copy of part of the purchase agreement, which shows the \$1,880 purchase price. S.T. at Ex. B. In addition, Mr. Steward submitted to the BOR a list of sales of vacant lots that are located near the subject. The sales occurred between June 2003 and May 2006. Sale prices ranged from a low of \$500 to a high of \$2,800. The lots were between 0.105 acres and 0.133 acres

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<sup>1</sup> The complaint also lists a second property, parcel number R72-07808-0022. It appears that Mr. Steward received his requested reduction in value before the BOR. While the transcript certified to this board by the auditor contains evidence relating to this parcel, Mr. Steward has not challenged the value of parcel R72-07808-0022 in his notice of appeal.

in size. S.T. at Ex. A. Mr. Steward testified that he believed these sales supported his claim of value. Upon review, the BOR voted to retain the auditor's value of \$5,950.

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*, 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 the March 27, 2006 sale to be arm’s length in nature. We acknowledge Mr. Steward himself expressed doubt as to whether the sale was valid, given that he received special financing. Nonetheless, in *Berea*, supra, the court expressly found that, even where the record contains evidence that the sale price has been adjusted to reflect favorable financing, the sale price shall be considered the true value of the property when the sale takes place in the open market between a

willing buyer and a willing seller. Id. at ¶11, overruling *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59, and *Ratner v. Stark Cty. Bd. of Revision*, 35 Ohio St.3d 26. See, also, *Lakota*, supra, at ¶23.

In the instant matter, we find that all elements of an arm’s-length sale are present. The property was available for purchase on the open market. The buyer and seller appear to have acted in their own best interests; there is no evidence of compulsion or duress. A copy of the purchase agreement discloses nothing about the terms of the sale that would lead us to question the arm’s-length nature of the transaction. S.T at Ex. B. 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.<sup>2</sup>

In conclusion, we have before us an arm’s-length sale. We must therefore accept the \$1,880 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:

<b>Parcel R72-07808-0023</b>	<b>TRUE VALUE</b>	<b>TAXABLE VALUE</b>
LAND	\$1,880	\$658
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$1,880	\$658

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<sup>2</sup> Even if we were to find that the sale was not a valid transaction for purposes of R.C. 5713.03, Mr. Steward has provided thirteen sales of vacant lots in the inner-city area of Dayton. These sales all appear to be comparable to the subject and support Mr. Steward’s opinion of value. We find this evidence to be probative of value.

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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