

Bedford Board of)	
Education,)	CASE NOS. 95-T-275
)	95-T-276
Appellant,)	
)	
vs.)	
)	
Cuyahoga County Board)	
of Revision,)	(REAL PROPERTY TAX)
)	
Cuyahoga County Auditor,)	
)	
and)	
)	
Bedford Retirement, Inc.,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Carl A. Murway
	Kelley, McCann & Livingstone
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	Cleveland, Ohio 44114-2302

For the County	- Stephanie Tubbs Jones
Appellees	Cuyahoga County Prosecuting
	Attorney
	By: Sandra Curtis-Patrick
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For Appellee	- Melvyn E. Resnick
Bedford	Dworken & Bernstein Co., LPA
Retirement, Inc.	153 East Erie Street
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	Painesville, Ohio 44077

Entered January 3, 1997

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This matter is before the Board of Tax Appeals pursuant to two notices of appeal filed under date of April 5, 1995, by

appellant, Bedford Board of Education. The Board of Education appeals from two decisions of the Cuyahoga County Board of Revision, which were mailed on March 17, 1995. In both decisions, the Board of Revision determined the total true value of the subject property to be \$4,200,000 for tax year 1992. These two appeals have been previously consolidated by this Board for disposition purposes.

For the tax year in question, the Cuyahoga County Auditor determined the true and taxable values of the subject property to be as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 999,910	\$ 349,970
BUILDINGS	\$ <u>5,600,090</u>	\$ <u>1,960,030</u>
TOTAL	\$6,600,000	\$2,310,000

Under date of February 16, 1993, Bedford Retirement filed a complaint with the Cuyahoga County Board of Revision, challenging the Auditor's determination of value. Thereafter, under date of May 10, 1993, the Board of Education filed its counter complaint, urging an increase in the subject's true value. Basing its decision upon a 1992 sale, the Board of Revision subsequently determined the true and taxable values of the subject property to be as follows:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 999,910	\$ 349,970
BUILDINGS	\$ <u>3,200,090</u>	\$ <u>1,120,030</u>
TOTAL	\$4,200,000	\$1,470,000

The Board of Education disagrees with the above values and claims that the true and taxable values of the subject property should be:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 999,914	\$ 349,970
BUILDINGS	\$ <u>5,674,086</u>	\$ <u>1,985,930</u>
TOTAL	\$6,674,000	\$2,335,900

The Board of Tax Appeals now considers this matter upon the notices of appeal, the statutory transcript certified to the Board by the Cuyahoga County Auditor, and the record of the evidentiary hearing. At the hearing, all parties were represented by counsel. In support of its contention of value, the Board of Education offered several documents and the testimony of Sam D. Canitia, a real estate appraiser. Bedford Retirement presented the testimony of Thomas J. Smith, Executive Vice-President of Bedford Retirement, and Clifford D. Feierabend, a real estate appraiser. The county appellees participated in the hearing but presented no additional evidence beyond the information in the statutory transcript.

The subject property, identified in the Cuyahoga County Auditor's records as Permanent Parcel Number 811-05-015, is located in the Bedford Taxing District of Cuyahoga County. It consists of approximately 19.98 acres of land and is zoned R-4 for multi-family

residential use. The land is improved with a one-story retirement community comprising approximately 170,382 square feet of space. The building was erected in 1988 and is constructed of prefabricated modules placed on concrete slabs. The majority of the modules are divided into 188 apartment units, which are arranged in four residential wings. The apartments range from a one bedroom, one bath unit of 576 square feet to a two bedroom, two bath unit that is 864 square feet in size. Some of the units are "barrier free" for handicapped residents.

A central commons area serves as the focal point of the complex. It contains a lobby area, dining rooms, kitchen areas, activity rooms, a beauty shop, a library, and the community's administrative offices. Corridors connect the residential wings to the commons area. Interspersed among the corridors are laundry and exercise areas that are available to the residents. Parking is available in various areas of the complex. Residents may also rent one of the forty-eight carports. Other improvements include an outdoor recreation area consisting of a shuffle board court, a wood deck, and a gazebo. The community offers various levels of amenities to its residents. These include meals, housekeeping, transportation services, weekly linen changes, trash pick-up, and security checks.

We begin our review of this matter by observing that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its 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 Cty. 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 rights 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 value is presented by an appellant, other parties asserting a different value then have the corresponding burden of providing evidence which rebuts appellant's evidence of value. Springfield Local Bd. of Edn., supra; Mentor Exempted Village Bd. of Edn., supra.

Furthermore, we note that the issue in an appeal from a board of revision is the true value of the subject property. Accordingly, this Board will proceed to examine the available record and to determine value based upon the evidence before it. Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St. 3d 120; Clark v. Glander (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St. 2d 13. While we may ultimately conclude that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of

an independent, de novo, determination which is predicated upon the preponderance of the evidence. See National Church Residence v. Licking Cty. Bd. of Revision (1995), 73 Ohio St. 3d 397.

In order to make an assessment of real property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's length transaction." Conalco v. Board of Revision (1977), 50 Ohio St. 2d 129, at syllabus. See, also, State, ex rel. Park Investment Co. v. Board of Tax Appeals (1964), 175 Ohio St. 410. R.C. 5713.03 reflects the reliance to be placed on a sales price and reads, in pertinent part:

"In determining the true value of any tract, lot, or parcel of real estate under this section, if such 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 of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

"(A) The tract, lot, or parcel of real estate loses value due to some casualty;

"(B) An improvement is added to the property. * * * "

Accordingly, where there exists an actual sale of real property, which is both recent and arm's length, the county

auditor, as well as this Board, must consider such a sale as the best evidence of the property's true value. Conalco, supra; Park Investment, supra.

In the instant matter, the subject property was sold on September 29, 1992, for a total purchase price of \$4,600,000. The purchase price included \$400,000 in personal property and \$4,200,000 in real property. ¹ (Appellee's Exhibit 1, page 2.) Bedford Retirement maintains that this sale represents the subject's value as of tax lien date. The Board of Education, however, challenges the sale, claiming that it does not reflect true value.

Thomas J. Smith, Bedford Retirement's Executive Vice-President, testified about the sale at this Board's evidentiary hearing. Mr. Smith was personally involved in the purchase of the subject property from its previous owner, East Properties, Inc. Mr. Smith testified that the subject had been on the market for over one year prior to Bedford Retirement's negotiations. Mr. Smith stated that negotiations between Bedford Retirement and East Properties lasted for more than six months. The original asking price was \$6,000,000. After negotiations and appraisals, the \$4,200,000 price was agreed upon. Mr. Smith also testified that the property was not in bankruptcy at the time of the sale, was not

¹ For the remainder of our discussion, we shall refer only to the portion of the sale price that relates to the real property, i.e., \$4,200,000.

purchased in foreclosure, and was not a distressed sale. Mr. Smith stated that he believed the sale to be arm's length in nature.

When a party relies upon a sale to support its contention of value, it must show that the sale was made at arm's length. Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision (1996), 74 Ohio St. 3d 687 at 690. In the instant matter, we find the subject sale to be arm's length in nature. Generally, an arm's length sale is one that occurs on the open market between a willing seller and a willing buyer. In such a sale, both parties are generally independent of each other, and neither are coerced or otherwise compelled by the other into the sale. See Walters v. Knox Cty. Bd. of Revision (1989), 47 Ohio St. 3d 23; In Re Estate of Sears (1961), 172 Ohio St. 443. Cf. Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St. 3d 540 (compulsive business circumstances that forced the purchase of a particular parcel of real property were sufficient to establish that a recent sale was neither arm's length in nature nor representative of true value).

Here, the evidence establishes that the subject property was available on the market for at least one year. A substantial amount of negotiation occurred between the parties, as can be seen in the fact that the buyer was eventually able to obtain a price less than the original asking price. Our review of the supporting documentation shows no abnormal financing. Additionally, there is nothing in the record to suggest that the buyer and seller had any prior relationship with each other. Finally, we find Mr. Smith's testimony to be credible.

The Board of Education notes that the subject property's developer had fallen into bankruptcy and that litigation on the property was either pending or about to commence. We observe, however, that this developer owned the property prior to East Properties, Inc., the seller in the transaction at issue. There is no indication that the litigation carried over to East Properties. In fact, such would be contrary to Mr. Smith's testimony. The Board of Education has offered nothing that would suggest that these previous circumstances influenced the parties' negotiations, altered the nature of the sale, or otherwise affected the final sale price of the subject property. See Mills v. Lucas Cty. Bd. of Revision (Apr. 29, 1994), B.T.A. Case No. 92-Z-553, unreported (holding that the seller's previous acquisition of a property through foreclosure did not affect the subsequent sale between the seller and the current owner, absent evidence to the contrary).

The Board of Education nevertheless claims that the sale is not representative of the subject property's true value as of tax lien date and therefore urges us to disregard the sale. The Board of Education, through its appraiser, Sam D. Canitia, claims that the \$4,200,000 sale price for the real estate reflects the depressed business carried on at the subject property rather than market forces. Specifically, Mr. Canitia indicated that the subject was only 40% occupied on tax lien date and that the business was losing approximately \$400,000 per year. In support of its contention, the Board of Education also relies upon the January 1996 sale of the subject property for \$8,850,000. In 1996, claims

the Board of Education, the business operated at the subject was profitable. Thus, the differences between the two sale prices indicates that the 1992 sale was not reflective of true value but reflective of the business. We disagree.

Clifford D. Feierabend, a real estate appraiser, testified at this Board's evidentiary hearing as to the market conditions affecting the subject property during the 1991 through 1995 period. Mr. Feierabend testified that the market for elderly housing of the subject's type was depressed in the early 1990s. Part of the reason for this had to do with the fact that there was little demand for this type of facility. It was in the early part of 1995, Mr. Feierabend testified, that the market saw a sudden and dramatic turn-around. As a result, the demand, and hence the value, for properties like the subject increased. Mr. Smith corroborated much of Mr. Feierabend's testimony. Mr. Smith stated that when the subject was purchased in 1992, serious consideration was given to converting the retirement community into a traditional apartment complex because of the undesirability of retirement communities.

We find Mr. Feierabend's testimony to be credible. His testimony rationally accounts for the market conditions existing at the time of the 1992 sale. In fact, the later sale adds credibility to his position that there had indeed been a change in market conditions. Thus, we find that Bedford Retirement has provided us with sufficient evidence to rebut the Board of

Education's assertions and to demonstrate that the 1992 sale is representative of the subject property's true value.

In order to be considered for valuation purposes, a sale must also be recent to tax lien date. Tanson, supra., The sale in issue, occurring less than ten months after tax lien date, is recent for valuation purposes. Mr. Smith's testimony before this Board credibly shows that market circumstances existing at the time of the sale were similar to those existing on January 1, 1992. Additionally, we do not consider the 1996 sale as evidence that the 1992 transaction is unrepresentative of value. Changing economic, financial, and market conditions may affect the reliability of sales data over a period of time, and this period of time may be relatively short depending upon the circumstances. Griffin v. Fairfield Cty. Bd. of Revision (Oct. 9, 1992), B.T.A. Case No. 90-P-806, unreported; Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (Mar. 19, 1982), B.T.A. Case Nos. 79-C-105 and 79-D-557, unreported. In the instant matter, the 1996 sale occurred four years after tax lien date. Mr. Feierabend's uncontroverted testimony indicates that the market underwent a substantial change in the interim. We thus find that the 1996 sale is not recent for purposes of determining the subject property's 1992 value. In other words, the difference in the two purchase prices is not sufficient to refute our finding that the 1992 sale is reflective of true value.

Next, the Board of Education argues that the sale does not represent true value because the business losses compelled East

Properties to sell the real property to Bedford Retirement. However, we can find no support for this contention. Mr. Smith's testimony concerning the negotiations and the length of time the subject property was on the market do not evidence a transaction that is marked by compulsion or pressure of circumstances. No other evidence has been presented which indicates that either East Properties or Bedford Retirement were acting under duress or compulsion. In short, there is nothing in the record to suggest that the Board of Education's assertion is anything but conjecture.

Based upon all of the foregoing, we find that the September 29, 1992, sale of the subject property is a recent, arm's length sale that is representative of the subject property's true value. As such, we find that the sale constitutes the "best evidence" of the subject property's true value as of tax lien date. In reaching this conclusion, we note that the Board of Revision reviewed much of the same information that is now before us and based its determination upon the sale in issue. While the Board of Revision's determination has no precedential value before this Board, we do find that it lends support to our own, independent review of the evidence.

Finally, we observe that "although the sales price is the 'best evidence' of true value of real property for tax purposes, it is not the only evidence. A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value." (Emphasis added.) Ratner v. Stark Cty. Bd. of Revision (1986), 23 Ohio St.

3d 59 at syllabus; Lakeside Ave., supra, at 544. In short, there exists a rebuttable presumption that a sale price reflects true value.

The Board of Education has presented appraisal evidence that it believes demonstrates a true value of \$6,600,000 for tax year 1992. Based upon that appraisal, the Board of Education asks us to disregard the sale. Before we can review appraisal evidence, however, the Board of Education must first show that the sale price is not reflective of true value. Ratner, supra. See, also, Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd. (1984), 9 Ohio St. 3d 218 (holding that appraisals are appropriate for consideration only where there has been no recent arm's length sale or where it is shown that the sale price is not reflective of true value). The Board of Education has failed to support this contention. Thus, it has not met the threshold requirement necessary for the review of appraisal evidence. In addition, the Board of Education has failed to prove the existence of factors that may affect the use of the sale price, as is indicated by our review, above. The appraisal also elicits no evidence of any abnormal circumstances, whether related to the sale or to the subject property itself, that would cause us to reconsider the sale's applicability to our determination.

Even if we were to consider the appraisal evidence submitted by the Board of Education, we would not find Mr. Canitia's opinion of value to be sufficient, in and of itself, to overcome the presumption that the September 1992 sale is the "best

evidence" of value. We have several concerns with the methodology applied in the appraisal, including the fact that the appraiser mixed both assisted living facilities and regular apartment complexes in calculating an income for the subject property. We also find several of the sale and rental properties used in the report to be of questionable comparability to the subject. Finally, we acknowledge that Bedford Retirement submitted appraisal evidence of its own. We find Mr. Feierabend's appraisal to be competent and reflective of true value. Thus, if we were to consider the appraisal evidence now before us, we would find that a preponderance of such evidence supports Bedford Retirement's contention of value.

To conclude, we find that the Board of Education has not presented us with competent and probative evidence to rebut the presumption that a recent sale is the best evidence of value and to establish the Board of Education's right to its contention of value. Zukowski v. Franklin Cty. Bd. of Revision (1994), 70 Ohio St. 3d 503. Accordingly, we find that the September 29, 1992, sale of the subject property by means of a recent, arm's length transaction to be the most reliable indication of value before us. Therefore, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows for tax year 1992:

	TRUE VALUE	TAXABLE VALUE
LAND	\$ 999,910	\$ 349,970
BUILDINGS	\$ 3,200,090	\$ 1,120,030
TOTAL	\$4,200,000	\$1,470,000

The Auditor of Cuyahoga County is hereby ordered to list and assess the subject property in conformity with this Board's decision and order and to carry forward the determined value in accordance with law. ohiosearchkeybta