

# OHIO BOARD OF TAX APPEALS

Daniel R. O'Neil, )  
 ) CASE NO. 97-G-1204  
 )  
 Appellant, ) (REAL PROPERTY VALUE)  
 )  
 vs. )  
 )  
 Franklin County Board of Revision, ) DECISION AND ORDER  
 Franklin County Auditor, and Columbus )  
 City Schools District Board of Education, )  
 )  
 Appellees. )

## APPEARANCES:

For the Appellant - Daniel R. O'Neil, *Pro se*  
3151 N. High Street  
Columbus, Ohio 43202

For the County - Ron O'Brien  
Appellees Franklin County Prosecuting  
Attorney  
By: Matthew H. Chafin  
Assistant Prosecuting  
Attorney  
373 South High Street, 20<sup>th</sup> Floor  
Columbus, Ohio 43215

For the Appellee - Mark Gillis  
Columbus City Schools Teaford, Rich, Crites & Wesp  
District BOE 20 East Broad Street  
Columbus, Ohio 43215

Entered March 17, 2000

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

This cause and matter is before the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant. The appellant appeals from a decision of the Franklin County Board of Revision (“BOR”). In its decision, the BOR determined the taxable value of the subject real property for the tax year 1996.

The subject property is located in the City of Columbus – Columbus City School District taxing district and appears on the Auditor’s records as permanent parcel number 010-95412. The land is improved with a residential 4-unit apartment building, consisting of 1-bedroom apartments and a garage which may be used by residents of an adjacent building. The subject property is located at 93 Village Drive, Columbus, Ohio.

The Franklin County Auditor determined the true value and taxable value of the subject property, as of January 1, 1996, to be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 18,000	\$ 6,300
Buildings	<u>73,400</u>	<u>25,690</u>
Total	\$ 91,400	\$31,990

Upon review of the complaint filed by the Board of Education and the corresponding counter-complaint filed by Mr. O’Neil, the BOR determined the true and taxable values of the subject property to be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 18,000	\$ 6,300
Buildings	<u>117,000</u>	<u>40,950</u>
Total	\$135,000	\$47,250

Whereas the appellant asserts that the true and taxable values of the subject property should be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 18,500	\$ 6,475
Buildings	91,500	32,025
Total	\$110,000	\$38,500

This matter is now submitted upon the notice of appeal, the statutory transcript certified to the Board of Tax Appeals by the BOR, and the record of the evidentiary hearing held before this Board.

The record establishes that Daniel O’Neil purchased the subject property, a four-unit apartment complex, for \$135,000 on April 30, 1996. He testified that the property was purchased in a 1031 exchange (“like-kind exchange”). (R. 10) Mr. O’Neil explained that in February or March of 1996, he sold a single-family residential property located at 1728 Alpine Drive for \$122,500. He had purchased the property approximately five years earlier at a sheriff’s sale for \$75,000. (R. 19, 20) In order to defer capital gains taxes from the sale of the Alpine Drive property, Mr. O’Neil testified that he needed to invest in a property which would qualify for a like-kind exchange. Therefore, he claims he was operating under a “time constraint” to purchase the subject property.

Mr. O’Neil stated that subsequent to selling the Alpine Drive property, he approached the owners of the subject property for a possible purchase. The property was not currently on the market. Mr. O’Neil is a broker/realtor and his company does property management. He had been managing the subject property for the owners, a charitable foundation, for approximately 1 year. Mr. O’Neil described his relationship with the foundation as their real estate broker/property manager/agent. (R. 36)

Mr. O’Neil claims that the price he paid for the property was inflated because that was how it was carried on the seller’s books. However, after working the numbers from the funds he had available for the exchange, he determined that it was financially feasible to acquire the property at the asking price, and also an opportunity to

do something good for the charitable foundation. Mr. O’Neil stated that he believed the foundation could do more with the money they received from the sale than with the property.

The issue this Board must resolve is whether an arm's-length sale of the subject property took place, as between Mr. O’Neil and the charitable foundation.

In order to make an assessment of property at its taxable value, the County Auditor must first determine its true value. Specifically, R.C. 5713.03 provides, in part:

“The county auditor, from the best sources of information available, shall determine as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon \* \* \* .

“\* \* \*

“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. \* \* \* .

“\* \* \*”

Prior to the enactment of the current version of R.C. 5713.03, the Ohio Supreme Court discussed what constitutes the best evidence of the true value for real estate purposes in *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so

and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In Re Estate of Sears (1961), 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.”

Since *Park Investment*, the Supreme Court has continued to examine the meaning of “true value.” The Court, following its prior decision, held in *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, paragraph one of the syllabus, that the best evidence of the true value of real property, although not necessarily the only evidence, is that amount for which a subject property would sell on the open market in a recent, actual, arm's-length transaction.

Other factors can affect the use of the property's sale price as evidence of its true value. *Zaworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604. It is a strong presumption that the sale price equates to the true value of property, but the presumption can be rebutted when the evidence indicates otherwise. However, where no reliable, competent evidence is presented to contradict the recorded purchase price, then the actual sale price is the best evidence of fair market value. *Columbus Bd. of Edn. v. Bd. of Revision* (May 15, 1986), B.T.A. No. 83-C-774, unreported.

In *Walter v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the Supreme Court, in affirming the decision of the Board of Tax Appeals, cited, with approval, the Board's definition of “arm's-length sale” as:

“one which encompasses bidding and negotiation on the open market between a ready, willing and able buyer and a ready,

willing and able seller, both being mentally competent and neither acting under duress or coercion.”

Further, noting the characterization in Black's Law Dictionary (5th Ed., 1979) of “arm's-length” as a transaction wherein each party acts in his own self-interest, the Court held that:

“In sum, an 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* at 25.

See, also, *White Castle Systems, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 27, 1991), B.T.A. No. 90-F-521, unreported.

In claiming that the sale price sale is not a reliable indicator of the property's value, Mr. O’Neil presented several arguments. First, he argues, the subject property was acquired in a like-kind exchange. There were no negotiations regarding the price. Moreover, according to Mr. O’Neil, he was operating under a time constraint and was compelled to purchase the property or lose the federal tax benefit associated with the exchange. (R. 18) Further, due to the time constraint, he claims he was willing to pay more than the subject property was allegedly worth. (R. 10) Second, Mr. O’Neil notes that the property was not for sale on the open market and claims that his other motivation for purchasing the property was to help the foundation get the money they eventually wanted out of the property. (R. 21) Third, he stated that the financing was not normal financing due to the excessive down payment required for the 1031 like-kind exchange.<sup>1</sup>

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<sup>1</sup> The subject property was purchased in conjunction with an adjoining property located at 105 Village Drive, which is the subject of a companion case B.T.A. No. 97-G-1205, issued this date. Mr. O’Neil testified that the lender gave a blanket mortgage for the properties therefore it was hard for him to separately value the property at issue. (R. 17)

In support of the value he asserts, Mr. O’Neil submitted three exhibits. Exhibit 1 is an excerpt from the Institute of Real Estate Management’s income and expense analysis for apartments nationwide. Exhibit 2 is a document entitled “Age Group Reports” from the same publication which contains median income and operating costs for garden type buildings in Columbus, Ohio. The age groups reflected are 1965 – 1977 and 1978 to date. Exhibit 3 contains information on four sales of properties that Mr. O’Neil used as comparable sales.

Regarding Exhibits 1 and 2, there is insufficient evidence in the record to establish that the subject property’s valuation should comport with the figures therein. Exhibit 1 is for apartments nationwide. Mr. O’Neil provided no credible or persuasive testimony or other evidence tying the nationwide analysis to the subject property. The same holds true for Exhibit 2. Mr. O’Neil did not supply sufficient information regarding the subject property to enable this Board to determine whether the statistics in Exhibits 1 and 2 would be probative of value determination. Finally, upon cross-examination, Mr. O’Neil acknowledged that he had no independent knowledge whether his comparable sales in Exhibit 3 were arms-length transactions. Indeed, sales numbered 1, 2, 3, located in Arbor Village, which closed on the same day for the same price, he conceded were probably part of a single transaction which could have affected the sales price. Also, they were 2-bedroom apartments, whereas the subject contains 1-bedroom apartments.

At the BOR hearing, Mr. O’Neil testified that the property at issue was donated to the charitable foundation approximately a year earlier. At that time an appraisal was performed. The same appraisal was utilized by the bank when Mr. O’Neil purchased the property. He stated that the bank did not do a separate appraisal. Although

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We also note that some of the documents, addresses and figures in the Statutory Transcripts for the two cases were inadvertently switched. This problem was cleared up at the hearing for these matters.

he did not have a copy of the appraisal at the BOR hearing, Mr. O’Neil told the BOR members that he would supply a copy subsequent to the hearing. No appraisal report was ever supplied.

He further testified that the foundation was uncomfortable handling the property and preferred to have cash for their endeavors. Mr. O’Neil stated that although he looked at other properties for the like-kind exchange, he was motivated to purchase this property because the seller was the charitable foundation.

The Board finds it important here to emphasize that the presumption of value in a case, such as the one presently before the Board, generally runs in favor of the sale price. See *Conalco, supra*. Thus, it is incumbent upon the party challenging that sales price to bring forth sufficient competent, probative, and reliable evidence to rebut the presumption. *Zazworsky, supra*.

The Board acknowledges that a like-kind exchange can produce motivational factors which may affect the validity of equating sales price with fair market value. However, the Board also recognizes that the fact a property was acquired as part of a like-kind exchange is not sufficient in itself to establish such divergence between sales price and true value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision, et al.* (June 30, 1994), B.T.A. No. 92-R-1133, unreported; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision, et al.* (May 10, 1996) B.T.A. No. 94-R-719, unreported.

There is no evidence in the record to prove that both parties to the sales transaction, Mr. O’Neil and the charitable foundation, were not acting in their own best interests. It is clear from the facts surrounding this transaction that Mr. O’Neil was seeking to defer capital gains. Mr. O’Neil's motivation to defer tax liability is not distinguishable from his own self-interests.

Webster's Third New International Dictionary (1961) defines “self-interest” as a concern for one's own advantage and material well-being. It further states that self-

interest is regarded as the most, if not the only, reliable motivating force in economic behavior.

The fact that a price is non-negotiable and the property is not offered for sale on the open market will not necessarily prevent the transaction from being an arm's-length sale. *Bd. of Edn. of the Plain Local Schools v. Franklin Cty. Bd. of Revision, et al.* (June 9, 1995), B.T.A. No. 94-S-361, unreported. In that case, the potential buyer approached the seller about a property not on the open market. The seller refused to sell. Only after a second contact did the seller agree to sell the property, but at a nonnegotiable price. This Board found that the sale in question qualified as an arm's-length transaction. The Board of Tax Appeals opined in *Plain Local Schools* that the lack of advertisement and exposure on the open market may have influenced the price paid for the subject property, but that fact alone does not necessitate a finding that the subject sale was not arm's-length in nature. See, also, *Dublin City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), B.T.A. No. 93-T-1107, unreported, affirmed (Mar. 6, 1996), Franklin App. No. 95APH06-718, unreported.

Mr. O'Neil's contention that he was "compelled" to purchase the property, and therefore it was not an arms-length sale, we also find to be without merit. In considering the impact of duress on an arm's-length sale of real property, the Tenth District Court of Appeals held in *Columbus Bd. of Edn. v. Grange Mutual Cas. Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, unreported, that a sale is an arm's-length transaction where a buyer is economically compelled to buy the property. In determining whether a sale was the result of compulsion or duress, the court found that the "subjective motives" of the buyer and seller must be examined. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sep. 29, 1992), Franklin App. No. 92AP-281, unreported.

A similar standard has been set forth by this Board in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 23, 1993), B.T.A. No. 91-P-1122, unreported. Therein, we held:

“ ‘Subjective motives’ relied upon by an individual buyer or seller in entering into a given transaction may be examined to determine if the sale was the result of compulsion or duress. Columbus Board of Education v. Franklin County Board of Revision and Karl Road Corporation (September 29, 1992), 92AP-281; Columbus Board of Education v. Franklin County Board of Revision and Grange Mutual Casualty Company (January 28, 1992), 90AP-317, unreported. However, actual compulsion or duress must be present.

“A distinction may be drawn between those subjective reasons that motivate an individual buyer or seller to enter into a given transaction - as opposed to those actual circumstances which constitute compulsion or duress, themselves. Parties to virtually every transaction are influenced by subjective factors and circumstances. \* \* \* The fact that a buyer may be influenced by certain subjective factors or circumstances alone does not cause the sale price to be an unreliable measure of true value. \* \* \*”

Certain subjective motivations were present in the instant case. Mr. O’Neil wanted to consummate a like-kind exchange. Under Section 1031 of the Internal Revenue Code (“IRC”), a taxpayer has forty-five days after the transfer of property to identify a like-kind property and one hundred, eighty days to effect a transfer. Mr. O’Neil alleges that this forty-five day period compelled him to purchase the property in question. The motivation set forth by Mr. O’Neil may have affected the price he was willing to pay for the subject property. However, we find that this factor does not rise to the level necessary to constitute compulsion. In the instant matter, Mr. O’Neil could have purchased a different property for purposes of the like-kind exchange. The Board also concludes that the forty-five day identification requirement under IRC Sec. 1031 is not an unreasonable time period and, therefore, did not put an unreasonable time restraint on the appellant. Consequently, the Board finds that Mr. O’Neil was a “ready willing and able buyer.” Further, the motivation behind selling and purchasing the property satisfied both

parties' self-interest, therefore, the sale does satisfy a portion of the definition or the requirements of, an arm's-length transaction.

Based upon the foregoing, the Board finds that the purchase of the subject property on April 30, 1996 was an arm's-length transaction. In addition, Mr. O'Neil has failed to provide sufficient competent and/or probative evidence which successfully rebuts the presumption that the sale price is the best indication of true value. Accordingly, this Board finds the sale price involved herein is the most reliable indication of the value of the subject property as of January 1, 1996.

Thus, the Board of Tax Appeals determines that the true value and the taxable value of the subject property for 1996 to be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 18,000	\$ 6,300
Buildings	<u>117,000</u>	<u>40,950</u>
Total	\$135,000	\$47,250

Accordingly, the Franklin County Auditor is hereby ordered to list and assess the subject property in conformity with this Board's decision and order. ohiosearchkeybta