

OHIO BOARD OF TAX APPEALS

Tacohio Development L.L.C.,)	
)	
Appellant,)	CASE NOS. 98-T-431
)	98-T-433
vs.)	98-T-434
)	98-T-435
Franklin County Board of)	
Revision, the Franklin County)	(REAL PROPERTY TAX)
Auditor, and South-Western)	
City Schools Board of Education,)	DECISION AND ORDER
)	
Appellees.)	

APPEARANCES:

For the Appellant -	J. Kieran Jennings Fred Siegel Co., LPA Pepper Pike Place Suite 205 West 30195 Chagrin Boulevard Cleveland, Ohio 44124-5703
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney By: Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street 20th Floor Columbus, Ohio 43215-6310
For the Bd. of Edn. -	Mark H. Gillis Teaford, Rich, Crites & Wesp 20 East Broad Street Columbus, Ohio 43215-3682

ENTERED: December 8, 2000
Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This matter is before the Board of Tax Appeals pursuant to four notices of appeal filed by appellant, Tacohio Development L.L.C. Tacohio appeals from a decision of the

Franklin County Board of Revision, wherein the Board of Revision determined the total true value of the subject property to be \$500,000 for tax year 1995. Tacohio claims in its notices of appeal that the Board of Revision's determination is in error and that the correct true value for the subject property should be \$248,200. The Board of Tax Appeals now considers this matter upon the notices of appeal, the statutory transcript certified to this Board by the Franklin County Auditor, and the briefs of the parties.¹

The subject property is identified in the Franklin County Auditor's records as Permanent Parcel Number 570-116066 and is located in the City of Columbus-South Western City Schools Taxing District. The subject is composed of approximately .358 acres of land. It is improved with a one-story structure that is approximately 1968 square feet in size. The structure, erected in 1977, is used as a fast-food restaurant. The subject is further improved with asphalt parking for approximately twenty automobiles.

This matter came before the Board of Revision pursuant to an increase complaint filed by the South-Western City Schools Board of Education. In support of its assertion of value, South-Western presented to the Board of Revision the conveyance fee statement related to a December 28, 1995, sale of the subject property. The statement shows a sale price for the subject property of \$500,000. In response, Tacohio provided information to the Board of Revision, in the form of a purchase agreement, showing that the subject's sale was part of a lump sum purchase of fifty-three properties for \$37,000,000. Tacohio maintained

¹ The parties agreed to waive evidentiary hearing and submit this matter upon the record and briefs. See this Board's letter of August 31, 1999. South-Western's motion to exclude Tacohio's brief is overruled under authority of *Ashland Railway, Inc. v. Tracy* (July 8, 1994), BTA No. 92-H-249, unreported.

that the conveyance fee statement was in error, as the purchase agreement showed an actual allocation for the subject of \$658,039, with \$448,640 allocated to real property. The remainder was allocated to equipment and intangibles. In addition, Tacohio provided the Board of Revision with a copy of an appraisal report prepared in connection with the financing for the sale. Tacohio asserted that the appraisal supported a value of \$250,000. The Board of Revision issued its decision on April 2, 1998, wherein it valued the property in accordance with the sale information contained on the conveyance fee statement. Tacohio maintains that the Board of Revision erred in not rejecting the sales price as the best evidence of value.

We begin our review of this matter by noting 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 that demonstrates its right 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.

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 adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests

with the appellant to convince this Board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this Board must 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.

With regard to the sale now before us, it is long established 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. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. R.C. 5713.03 further provides:

“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 tax lien date, the auditor *shall consider* the sale price of such tract, lot or parcel to be the true value for taxation purposes. “ (Emphasis added.)

Thus, where there is 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* and *Park Investment, supra*. While the sale may be the “best evidence” of value, however, it is not the only evidence. Consequently, the Supreme Court has held that there exists a rebuttable presumption that a recent, arm’s length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio

St.3d 59, 61. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 98-S-155, unreported, 4.

Here, based upon the action of the Board of Revision, the rebuttable presumption that the sale price represents true value is present in favor of South-Western. *Cincinnati Bd. of Edn., supra*, 327. In *Cincinnati*, the Court held that, by recognizing the rebuttable presumption that the sale price accurately reflects true value, a consequent presumption exists that the sale has met all the elements that characterize true value. As a result, the burden rests with the challenging party to rebut the presumption that the sale price reflects true value by submitting reliable evidence that the sale was either not arm's length in nature or, due to circumstances related to the sale, that the price was not indicative of true value of the subject as of tax lien date. *Id.*

Initially, we observe that no party has specifically contested the arm's length nature of the sale or its recency for purposes of valuation, and we can find nothing in the record that would lead us to conclude otherwise. See, generally, *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, for the requirements of an arm's length sale. Thus, Tacohio is left with the burden of demonstrating that, due to circumstances surrounding the sale, the price was not indicative of the true value of the subject property. *Ratner, supra*. See, also, *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov. 9, 2000), BTA No. 99-M-150, unreported, at 5.

Tacohio alleges that the bulk nature of the transfer raises an inference that the sale price is not reflective of true value and relies upon the testimony of Mary Bottoms, its controller, the purchase agreement, and the appraisal. Initially, South-Western implies in its

briefs that Tacohio's evidence is not properly before this Board, as no one at the Board of Revision's hearing had personal knowledge of the transaction or the documents. We find, however, that the Board of Revision's acceptance of the testimony and documents was reasonable. Mary Bottoms testified that she was involved in the finalizing of the bulk sale, including the allocation of the sale price. She also testified that, as controller, she had custody of the purchase agreement and appraisal, both of which were prepared and kept in the course of Tacohio's business. While the question of weight still remains for this Board, we find that the purchase agreement and appraisal are properly a part of the record, as a sufficient foundation has been laid for the authentication of those documents.

In support of its claim that the sale is not reflective of true value, Tacohio relies upon our decision in *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jul. 16, 1999), BTA Nos. 97-M-645 and 97-M-646, unreported. That appeal involved the transfer of another parcel in the bulk sale now before us. In *N. Olmsted*, we determined that, without some corroborating evidence, we were unable to find that the true value of only a portion of a sale could be established by the submission of a conveyance fee statement for that portion. We noted that we are not required to accept at face value an allocation of a lump sum purchase price paid for a group of assets. See, also, *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. We further found that the bulk sale nature of the transfer raised an inference that the sale price was not evidence of the value of the real property.

Recently, the Supreme Court announced *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.* 64. *Pingue* involved the bulk sale of forty-four identical condominiums, which were all located in the same project.

The instant situation is clearly distinguishable in that the bulk sale concerns the purchase of fifty-three properties located throughout the state. The markets for each property differ dramatically, making any uncorroborated allocation suspect. The properties are also not identical but vary in age, size, layout, and condition. The bulk sale includes the transfer and allocation of personal property, including equipment, and the purchase of intangibles, such as goodwill. Finally, we note that the purchase was not just for real property but for the purchase of an ongoing business franchise. Our review of the Board of Revision testimony of Mary Bottoms, Tacohio’s controller and a person involved with the allocation of the bulk sale, suggests that the allocation was based more upon the value of the business than upon the fair market value of the properties involved. The purchase agreement and appraisal further support not only the bulk nature of the sale but also Tacohio’s claim that the allocation was driven more by business values and concerns, rather than by market value.

Upon review of the foregoing factors, we find that Tacohio has successfully rebutted the presumption in favor of the sale price. The record fails to demonstrate that the allocation of the bulk purchase price represents the true value of the subject property. *Elsag-Bailey, Consolidated Aluminum, and Corporate Exchange, supra.* Given the nature of the

sale, we find that reliance upon the conveyance fee statement, without corroborating evidence of value, is inappropriate. *N. Olmsted, supra*.

Although it has rebutted the presumption, Tacohio still retains the burden of providing evidence of value. Here, Tacohio relies upon an appraisal that it submitted to the Board of Revision. The appraisal was prepared in connection with the bulk sale and values each of the parcels, including the subject property, as of December 10, 1995. We find little probative value in the appraisal.

Initially, we note that the appraisal purports to value the “leased fee,” not the fair market value of the properties involved in the sale. The appraiser did not appear at the Board of Revision hearing and, given concerns we have regarding the conclusions in the appraisal, we are unable to determine either the competency or the probity of the opinion. Finally, we note that the appraisal values the subject as of December 10, 1995, nearly one year after tax lien date. There is no evidence before us upon which we may conclude that the value opined would be valid for January 1, 1995. *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 30 (BTA may reject appraisal opining value on a date other than tax lien date where there is no proof that the valuation between the two dates is constant and uniform); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555 (“the BTA must base its decision on an opinion of true value that expresses a value for the property as of tax lien date of the year in question”). See, also, *The Appraisal of Real Estate* (11th Ed. 1996), 84.

Upon review, we find that Tacohio has not presented sufficient competent or probative evidence of value for the subject property. We further find that the Board of

Revision's reliance upon the conveyance fee statement was inappropriate, given the factors involved in the bulk sale. The only other evidence of value in the record is the Franklin County Auditor's property record card. However, it would be inappropriate for us to rely upon such data, alone, without any associated testimony and corroborating evidence within the record. As there is no way to determine the validity or accuracy of the data the auditor relied upon, we are unable upon the auditor's valuation process. *Jaelot Dev. Co. v. Cuyahoga Cty. Bd. of Revision* (Oct. 16, 1998), BTA No. 96-A-1146, unreported.

This Board has the duty to determine the value of property before it on appeal from a board of revision. R.C. 5717.03. In many cases, where we reject the evidence of value presented as not being competent and probative, or not credible, and there is no evidence before us upon which we can independently determine value, we may approve a board of revision's valuation, without the need for the board of revision to present additional evidence. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Here, we must conclude that there is not sufficient probative evidence before this Board that would enable us to determine a value for the subject property. Nevertheless, we find that adopting the Board of Revision's determination of value would be inappropriate under the circumstances, as we have specifically determined the Board of Revision's reliance upon the sale price on the conveyance fee statement to be in error. See *The Hippodrome Bldg. Co. v. Cuyahoga Cty. Bd. of Revision* (1962), 117 Ohio App. 102 (holding that a decision of the BTA fixing true value at a figure not supported by, and having no apparent relationship to, the evidence is unreasonable and unlawful).

Given that no sufficient competent or probative evidence has been presented to this Board upon which we may reasonably determine value, we find it necessary to require the parties to present additional evidence to this Board upon which a value for the subject can be based. R.C. 5717.01 (Board of Tax Appeals “may order the appeal to be heard on the record and the evidence certified to it *** or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.”); R.C. 5717.03.

Therefore, it is the order of the Board of Tax Appeals that this matter be scheduled for hearing in accordance with this Board’s Rules of practice and procedure.