

OHIO BOARD OF TAX APPEALS ohiosearchkeybta

Michael J. Petkus, Jr. &	)	CASE NO. 98-S-979
Marion E. Petkus,	)	
	)	
Appellants,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
Montgomery County Board of Revision	)	,
Montgomery County Auditor and th	)	e
Board of Education of the Vandalia	)	-
Butler City Schools,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant -	Michael J. Petkus, Jr. <i>Pro se</i> , 405 South Dixie Drive Vandalia, Ohio 45377
For the Appellee - Board of Education	Mark Gillis Teaford, Rich, Crites & Wesp 20 East Broad Street Columbus, Ohio 43215
For the County Appellees	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney By: Walter Ruf Assistant Prosecuting Attorney 5 <sup>th</sup> Floor, Columbus, Ohio 43215

Entered December 10, 1999

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

This appeal is considered by the Board of Tax Appeals pursuant to a notice of appeal filed herein on behalf of the above named appellants. The appeal is taken from a

decision of the Montgomery County Board of Revision (“BOR”), which determined the value of the subject property for tax year 1997.

The subject property is located in Vandalia City in the Vandalia Butler City School District of Montgomery County, Ohio, and is further identified as Parcel No. B02-1-4-18. The Montgomery County Auditor found the true and taxable value of the subject property for tax year 1997 to be as follows:

	True Value	Taxable Value
Land	\$39,650	\$13,880
Building	\$53,820	\$18,840
Total	\$93,470	\$32,720

Upon consideration of the complaint filed by the Board of Education of the Vandalia Butler City School District (“BOE”), the BOR determined the true and taxable value of the subject property for the 1997 tax year to be as follows:

	True Value	Taxable Value
Land	\$ 39,650	\$13,880
Building	\$110,350	\$38,620
Total	\$150,000	\$52,500

In their notice of appeal, appellants allege that the correct value for the subject for 1997 and to be as follows:

	True Value	Taxable Value
Land	\$39,650	\$13,880
Building	\$53,820	\$18,840
Total	\$93,470	\$32,720

On September 22, 1999, an evidentiary hearing was held in this matter. Mr. Petkus appeared at this hearing and testified on appellants' behalf. The appellee BOE was represented by counsel. No appearance was made on behalf of the county appellees. Therefore, this matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Auditor pursuant to R.C. 5717.01 and the record of the evidentiary hearing.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the 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 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. Once competent and probative evidence of true value has been presented by an appellant, other parties asserting a different value then have a corresponding burden of providing evidence which tends to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. The BOE contended before the BOR that the subject property was transferred in a valid, recent arm's length sale when the appellant purchased the properties on June 30, 1997. As such, the BOE urged and the BOR agreed the price received was the best evidence of the value of the subject property as of January 1, 1997.

R.C. 5713.01 provides, in part:

"The auditor shall assess all the real estate situated in the county \*\*\* at its true value in money \*\*\*."

Further, R.C. 5713.03 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 the tax lien date, the auditor shall consider the sale price \*\*\* to be the true value for taxation purposes."

Case law supports the contention that an arm's length sale generally represents the best evidence of true value. See *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. In interpreting the meaning of "true value" as set forth above, the Supreme Court has consistently held that the best evidence of a property's fair market value or "true value in money" for tax purposes is the amount for which the property would sell on the open market between willing parties. *State, ex rel. Investment Co., v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears*, (1961), 172 Ohio St. 443. In the later case of *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, the Court further expounded upon its view of the use of a sale to establish the fair market value of real property. In paragraph one of the syllabus, the Court stated:

"The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

The Court again stressed that the sale price represents the best indication of value in *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543. Therein, the Court stated:

"Nevertheless, we have always insisted that the sale price of an arm's length transaction occurring within a reasonable time of the tax lien date was the value of the property as of the tax lien date." (Citation omitted.)

"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 v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 25. Appellant's initial claim is that the present sale does not meet the indices of an arm's length sale. We note that, as the proponent of change, appellant bears the burden of proof. *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision*, (1996), 74 Ohio St.3d 687. Furthermore, in *Cincinnati School District Bd. of Edn. v. Hamilton Cty Bd. of Revision* (1997), 78 Ohio St.3d 325, the Court recognized a rebuttable presumption that the sale price accurately reflects the true value of the subject property. Consequently, the Court recognized a corresponding rebuttable presumption that the sale has met all the requirements that characterize true value. Once this presumption arises, the opposing party, the appellant in this instance, is required to rebut the presumption by submitting competent and probative evidence that the sale was either not an arm's length transaction, or, due to other related circumstances, the sale price was not indicative of the true value of the subject property as of the lien date.

Appellants challenge the BOR's finding that the sale in June of 1997 constituted an arm's length sale. Appellants first challenge the timeliness of the sale, arguing that June of 1997 is too remote from a tax lien date of January 1, 1997 to represent a reliable sale. Appellant also claims that the circumstances surrounding the sale require a finding that the elements of an "arm's length sale" are not present. While we will address each claim, we do not find any basis for this Board to conclude that the appellant has rebutted the presumption (or satisfied the burden of persuasion) that the value assessed by the BOR does not represent true value.

As we have often stated, tribunals have been reluctant to adopt a bright-line test for determining whether a sale is “recent.” See, e.g., *Corning Glass Works v. Cuyahoga Cty. Bd. of Revision* (Nov. 19, 1992), Cuyahoga App. No. 61448, unreported; *Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (Aug. 7, 1992), B.T.A. Nos. 89-F-903, *et seq.*, unreported, affirmed *sub. nom.*; *School Employees Retirement Bd. v. Franklin Cty. Bd. of Revision* (Feb. 4, 1993), Franklin App. Nos. 92AP-1177, *et seq.*, unreported. The reason for such reluctance was acknowledged by this Board on *Cuturic v. Cuyahoga Cty. Bd. of Revision* (July 16, 1993), B.T.A. No. 92-R-329, unreported, wherein we held:

“Webster’s New World Dictionary, 3<sup>rd</sup> Ed. (1961), defines ‘recent’ as ‘of or belonging to a period of time relatively near; not remote.’ The key word in the foregoing definition seems to be ‘relatively,’ since our consideration of a number of cases wherein arm’s length sales are examined for real property valuation purposes, establishes that the term ‘recent’ is viewed as relative. Thus, a time which might be considered recent under one set of facts might not be so regarded under another or different factual situation. That is, whether a sale is ‘recent’ for real estate tax purposes depends on the surrounding circumstances in each case and not upon some arbitrary or absolute notion about what constitutes a recent sale when valuing real property.”

In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the Supreme Court expressed a similar view:

“The question of how long after a sale price is to be considered the best evidence of true value will vary from case to case. R.C. 5713.03 provides that if there has been 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.’ \*\*\* One of the factors that must

be considered in determining what is a ‘reasonable length of time’ is a consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or is changing very slowly.”

In this case, we have no evidence regarding the market in which the subject is located. Despite their opportunity to present such evidence, either before the BOR or this Board, appellants elected not to do so. Instead appellants simply assert that a sale occurring more than six months after the tax lien date cannot be applied retroactively to determine the true value of the subject property. With nothing more than appellants’ arguments, we cannot assume changing market conditions existed which would render the subject’s sale too remote from tax lien date. See e.g., *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198 (Affirming this Board’s decision that the property’s sale price from twelve months prior to tax lien date provided a good indication of the property’s true value); *Hilliard City school Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57 (holding that a sale of property twelve months after tax lien date constituted a proper measure of its true value; *U.S. Postal Service v. Logan Cty. Bd. of Revision* (Sept. 16, 1987), Logan App. No. 8-85-14, unreported (holding that a sale of property approximately forty months prior to tax lien date still constituted the best evidence of the property’s value); *Nicholas & Mary Haddad v. Cuyahoga Cty. Bd. of Revision* (March 5, 1999), B.T.A. No. 98-K-273 (holding that sale price paid in sale of property approximately six months following tax lien date constituted the best evidence of value.)

Appellants next argue that the circumstances surrounding the sale do not meet the elements of an “arm’s length sale.” Appellants argue that they were willing to pay more for the subject property because the property had previously been used as a real

estate office, which was their intended use of the subject.<sup>1</sup>

By making this argument, appellants attempt to encompass the reasoning found in *Lakeside Avenue Ltd. Prtnrshp. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540. Therein, the Supreme court determined that a sale upon which a county board of revision relied to value a property was not arm's length since the property was purchased "under compelling business circumstances," basically, to prevent the property owner's bankruptcy. The Franklin County Court of Appeals, in *Columbus Bd. of Edn. v. Grange Mut. Cas. Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, found that a property owner was compelled to purchase a particular parcel to complete a development and no other parcel met the development requirements. Thus, the Court concluded, the price paid for the single parcel was not indicative of its value.

We do not find the above holdings applicable herein. There is nothing in the record to indicate that the appellants were compelled to purchase the subject property. While the subject property had previously been used as a real estate office, appellants have submitted no evidence that there is anything particularly unique about the property which would make it more beneficial for such use, or that would enable it to be used exclusively for such use. Therefore, the necessary "compulsion" is not present. Appellants' perceived benefit from the previous use of the property does not rise to the level of "compulsion" contemplated by the Court in *Lakeside Avenue Limited Prtnrshp.*

Herein, the appellants presented no opinion of value other than their own, and that opinion was not supported with corroborative evidence of comparable sales in the area. Rather, the appellants argue the true value of the subject is \$93,470, the value initially determined by the Auditor. While an owner is entitled to provide an opinion of his property's worth, to be considered probative such an opinion must be supported with

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<sup>1</sup> The record indicates, however, that the subject property was the only thing purchased in the sale in June of 1997. Appellants did not purchase the real estate business previously operated in the subject, nor did they purchase any personal property associated with such business.

tangible evidence of a property's value. *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. See, also, *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621. While appellants now expresses an opinion that the properties purchased were only worth \$93,470, their action of purchasing the properties for \$150,000 contradict that statement. Therefore, the Board finds that appellants have not overcome the presumption that the sale price controls.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines upon a preponderance of probative and competent evidence, that the value of the subject property as of January 1, 1997 was:

	True Value	Taxable Value
Land	\$ 39,650	\$13,880
Building	\$110,350	\$38,620
Total	\$150,000	\$52,500

It is the order of the Board of Tax Appeals that the Auditor of Montgomery County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.