

OHIO BOARD OF TAX APPEALS

Columbus City Schools)	
Board of Education,)	
)	CASE NO. 99-L-1287
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	
Franklin County Board)	DECISION AND ORDER
Of Revision, the Franklin)	
County Auditor, and)	
Willard Cunningham,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Mark H. Gillis, Esq. Rich Crites & Wesp 20 East Broad Street Columbus, Ohio 43215
For the County -	Ron O'Brien, Esq. Franklin County Prosecutor Paul Stickel, Esq. Asst. Franklin County Prosecutor 373 South High St., 20 th Floor Columbus, Ohio 43215-6310
For the Property Owner -	Willard Cunningham, <i>pro se</i> 1959 Sullivant Ave. Columbus, Ohio 43223

Entered: January 12, 2001

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

This appeal is considered by the Board of Tax Appeals upon a notice of appeal filed by Columbus City School District Board of Education (hereinafter

Appellant or BOE). The appeal is taken from a final decision of the Franklin County Board of Revision (hereinafter BOR), which determined the value of the subject real property for tax year 1998. Specifically the BOR entered a decision increasing the value of the building portion of the property from the Franklin County Auditor's (hereinafter Auditor) valuation determination. The BOE timely filed an appeal of the decision of the BOR below seeking an additional increase in value for the subject property.

The Auditor found the true and taxable value for the subject property for tax year 1998 to be as follows:

Parcel No. 010-88832:

	True Value	Taxable Value
Land	\$ 10,500	\$ 3,680
Building	<u>\$ 63,000</u>	<u>\$ 22,050</u>
Total	\$ 73,500	\$ 25,730

The BOR found the true and taxable value for the subject property for tax year 1998 to be as follows:

Parcel No. 010-88832:

	True Value	Taxable Value
Land	\$ 10,500	\$ 3,680
Building	<u>\$ 89,500</u>	<u>\$ 31,330</u>
Total	\$ 100,000	\$ 35,010

The BOE contends that the subject property remains undervalued by the BOR based upon the sale of the property in April, 1998. The BOE claims in its notice of appeal that the true and taxable values of the subject property for tax year 1998 is as follows:

Parcel No. 010-88832:

	True Value	Taxable Value
Land	\$ 10,500	\$ 3,680
Building	<u>\$ 114,400</u>	<u>\$ 40,040</u>
Total	\$ 124,900	\$ 43,720

This matter is submitted to the Board of Tax Appeals pursuant to R.C. 5717.01, upon the notice of appeal, the statutory transcript (ST) of the proceedings before the BOR as certified by the Auditor, the record (R) and the exhibits (EX) from the evidentiary hearing before the Board of Tax Appeals. Legal briefs were not filed in the instant appeal.

The property in question is located in the City of Columbus/Columbus City School District taxing district at 905 S. Barnett Ave. The property is improved with a 2-story, 4-unit apartment building. Each unit is a one-bedroom apartment of approximately 400 square feet in size. The apartment building has a laundry facility located in the basement and an off-street parking lot. The total square footage of the building is 1,320 based upon the records of the Auditor.

The BOE asserts that the true value of the subject property is \$124,900 based upon the sale price paid by the property owner on April 6, 1998. The sale price is reflected on the settlement and conveyance fee statement included in the statutory transcript.

The BOR asks this Board to affirm their decision below based upon the statutory transcript. Counsel for the BOR noted that the BOR made a substantial increase in the value of the building on the subject property based upon the evidence presented at the BOR's hearing below and the information contained in the records of the Franklin County Auditor. (R. 6). The BOR concluded that the subject property's true market value was \$100,000. The BOR did not identify or present any of the evidence from the auditor's records that the BOR relied upon in support of the BOR's value determination of \$100,000 for the subject property.

Mr. Cunningham, the property owner, testified regarding his purchase of the subject property at the hearing before this Board. Mr. Cunningham stated that he purchased the real property with some used personal property for \$124,900. (R. 8, 19, 22, 31-33). Mr. Cunningham testified that the seller would not negotiate to a lower price. (R. 31-32). Mr. Cunningham stated that he paid \$18,000 down and financed the balance of the purchase price with a mortgage. (R. 8). Mr. Cunningham stated that he was motivated to purchase the property because he needed a place to live and his former residence had recently burned down. (R. 8, 19, 27-28). Mr. Cunningham further stated that he wanted to spend \$125,000 in order to collect the

entire proceeds from the fire insurance on his personal residence. (R. 33, 36-37). The subject property itself had burned down and was just rebuilt in 1997. (R. 14, 20).

Mr. Cunningham testified that he acquired nothing else with the purchase of the subject property although he was leasing office space at another location from the seller at a discounted rent. (R. 19, 22). Later Mr. Cunningham also purchased the office building he was leasing from the same seller. (R. 34).

Mr. Cunningham presented several bills regarding the replacement and maintenance of personal property and fixtures for the tenants. (EX. 2, 3, 4, 5, 11). However, most of the expenses were incurred after the tax lien date and do not impact the valuation of the real property as of the tax lien date. (R. 16, 23). The property was fully rented at the time of purchase and is operated as Section 8 subsidized housing. (R. 16, 17). The units rented for \$350.00 per month at the time of purchase. (R. 16). Mr. Cunningham also stated that he had some tenant problems that required court intervention, however, these problems occurred in October and November, 1999, nearly two years following the tax lien date. (R. 18-19, 23).

We have often pointed out the affirmative burdens that exist in an appeal to this Board from a decision of a county board of revision finding value. In *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, the Supreme Court made it clear that in an appeal filed pursuant to R.C.

5717.01, there exists no presumption that the values found by a board of revision are correct. Rather, it is incumbent upon an appellant to come forward with credible, competent, probative evidence to demonstrate their right to the value the appellant has asserted. *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26; *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29; *Rocco v. Cuyahoga Cty. Bd. of Revision* (1994), 71 Ohio St.3d 103; *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, supra, Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2000), 89 Ohio St.3d 450. In *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, the Supreme Court held:

“The appellant seeking an increase or decrease in value before the BTA bears the burden of persuasion. *** The BTA need not adopt any expert’s valuation, and has wide discretion in granting weight to evidence and credibility to witnesses, it may find all or part or none of the testimony and evidence presented by either party to be credible and probative.”

Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence that rebuts that of the appellant. *Springfield Local Bd. of Edn. v. Summit Cty. BOR, supra; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319; *Crane Corp. – Deming Division v. Columbiana Cty. Bd. of Revision* (August 29, 1997), B.T.A. Case No. 95-M-1042.

While this Board may ultimately find 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; *Bd. of Education for the Berea School Dist. v. Cuyahoga Cty. BOR, et al.* (October 13, 2000), BTA Case No. 96-L-1382, unreported.

Applying this rationale to the instant appeal, it is clear that the burden of persuasion is on the BOE. In order to meet this burden, the BOE presented copies of the settlement and conveyance fee statements from the April 6, 1998 sale to the BOR which are included in the statutory transcript. In addition, Mr. Cunningham, the property owner, has not disputed the purchase price of the subject property. Mr. Cunningham stated that he tried to negotiate a lower purchase price with the seller but was unsuccessful. (R. 32). Mr. Cunningham further stated that he financed the property with FHA financing through Homeside Lending. (R. 24-25). In addition, Mr. Cunningham negotiated the purchase of a second property from the same seller only a couple of years after he acquired the subject property. (R. 34).

The BOE asserts that based upon the evidence before the Board, the value of the subject property for tax year 1998 should be increased to reflect the price for which the property sold on April 6, 1998. Case law supports the contention that an arm's length sale represents the best evidence of true value. In interpreting the meaning of "true value" as set forth above, the Supreme Court has traditionally held

that the best evidence of a property's fair market value or "true value in money" for tax purposes is an "actual, recent sale of the property in an arm's-length transaction." *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

Reviewing the sale evidence before us, we note that there is nothing in the record to indicate that the sale of the subject property for \$124,900 in April 1998, just 100 days after the tax lien date, was anything but an arms-length transaction between a willing seller and a willing buyer without special conditions or financing. Although Mr. Cunningham may have felt personally rushed to make the purchase based upon his then personal housing circumstances, it was Mr. Cunningham's sole decision to purchase the newly reconstructed apartment building for \$124,900 in April, 1998.

The evidence and testimony before the Board support a finding that the sale price is the value of the subject property. Based upon the foregoing, we find that the BOE has met its burden of proof. Accordingly, this Board finds, upon consideration of the record and a preponderance of the evidence before us that the value of the subject property as of January 1, 1998, shall be as follows:

Parcel No. 010-88832:

True Value

Taxable Value

Land	\$ 10,500	\$ 3,680
Building	<u>\$ 114,400</u>	<u>\$ 40,040</u>
Total	\$ 124,900	\$ 43,720

It is hereby ordered that the Auditor of Franklin County shall cause his records to reflect the values herein determined and to assess the subject property in conformity with this decision.