

OHIO BOARD OF TAX APPEALS

South-Western City Schools Board)
of Education,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor and)
Sok Son Chon,)
)
Appellees.)

APPEARANCES:

For the Appellant -

James Gorry
Jeffrey Rich
Teaford, Rich, Crites & Wesp
20 East Broad Street, Third Floor
Columbus, Ohio 43215-3682

For the County Appellees -

Ron O'Brien
Franklin County Prosecuting Attorney
By: Paul Stickel
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio 43215-6310

For the Appellee Property
Owner

Sok Son Chon
1937 Kendall Place
Grove City, Ohio 43123

Entered: November 9, 2000

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

This cause and matter comes to be considered by the Board of Tax Appeals upon a Notice of Appeal filed by appellant herein on January 25, 1999 from a decision, dated December 29, 1998, of the Franklin County Board of Revision ("BOR"), appellee herein.

The subject property is located in the City of Columbus, South-Western City School taxing district of Franklin County, Ohio, and further identified as Parcel No. 230-1450. The Franklin County Auditor found the true and taxable value of the subject property for the tax year 1997 to be as follows:

<u>PARCEL NO. 230-1450</u>	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 21,200	\$ 7,420
BUILDING	\$ 100	\$ 30
TOTAL	\$ 21,300	\$ 7,450

Upon complaint filed with that body, the BOR determined that the correct values for the subject property for the 1997 tax year were:

<u>PARCEL NO. 230-1450</u>	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 21,200	\$ 7,420
BUILDING	\$ 116,800	\$ 40,880
TOTAL	\$ 138,000	\$ 48,300

The appellant alleged the true and taxable value of the subject property for the tax year 1997 to be as follows:

<u>PARCEL NO. 230-1450</u>	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 21,200	\$ 7,420
BUILDING	\$ 153,800	\$ 53,830
TOTAL	\$ 175,000	\$ 61,250

This matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the Notice of Appeal, the Statutory Transcript certified by the Franklin County Auditor as Secretary of the BOR and the testimony adduced at the hearing before this Board. At that hearing, counsel for the South-Western City School District Board of Education (“BOE”) and the BOR appeared. The current property owner, Ms. Sok Son Chon, also appeared.

The subject property is located on Harrisburg Pike in Grove City, Ohio. The property is improved with a small commercial building which houses a convenience store.

The BOE originally sought an increase in value for the subject property based upon a sale of the property, occurring on or about April 8, 1997. That sale is evidenced by a real property conveyance fee statement included in the Statutory Transcript. The real property conveyance fee statement indicates that the consideration for said transfer was \$175,000. The transfer was between a Jerry Balo and William R. and Carolyn S. Hastings. Based upon this transfer, the BOE urges this Board to increase the value of the subject to the sale price. The BOE argues that true value was established by a recent, arm's length transaction between unrelated parties and the sales price of the transaction represented such value. Therefore, the BOE argues that the BOR erred when it failed to determine value in accordance with the sales price.¹

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 County Bd. of Revision* (1994), 37 Ohio St.3d 336; *Crow v. Cuyahoga County 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 an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

¹ The BOR did raise value, but not to the sales price. Instead, the BOR reviewed sale documentation submitted by Ms. Chon, who appeared at the BOR hearing with her purchase documents, and determined that a portion of the prior sale represented the value of chattels purchased with the real estate. (S.T., Hearing Worksheet)

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 BOE’s contention that an arm’s length sale generally represents the best evidence of true value. 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. Park 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* (1977), 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 recently 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.)

While the Court has held that the sale price of a property should be considered when setting taxable value, in *Ratner v. Stark Cty. Bd. of Revision* (1986), 23

Ohio St.3d 59, the Court made it clear that fair market value is not synonymous with the sale price. Rather, the Court held, the sale price is presumptively the best evidence of value, but that other factors may affect the ultimate determination as to a property's value. See, also, *Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision, et al.* (Jan. 3, 1995), B.T.A. No. 93-H-1106, unreported; *Bauer v. Cuyahoga Cty. Bd. of Revision* (June 30, 1994), B.T.A. No. 92-S-1453, unreported; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 27, 1994), B.T.A. No. 92-K-463, unreported.

In *Cincinnati School District Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, the Court held that whenever the rebuttable presumption arises that the sale price accurately reflects the true value of the subject property, then a corresponding rebuttable presumption exists that the sale has met all the elements that characterize true value. Once this presumption arises, the opposing party is required to rebut the presumption by submitting reliable 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 tax lien date. Therefore, it is this Board's duty to determine whether the property owner has presented sufficient evidence to rebut the validity of the sales price.

We first note that there is no evidence that the sale price was not established by an arm's length transaction. There is no allegation of relationship between the purchaser and the seller or that either was under any compulsion to buy or to sell. Therefore, the requirements of *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, have been met. The property owner is now left with the burden of proving that, due to circumstances surrounding the sale, the price was not indicative of the true value of the subject real property as of tax lien date. *Ratner v. Stark Cty. Bd. of Revision, supra.*

The current property owner, Ms. Sok Son Chon, did not bring forth any evidence regarding the sale the BOE asserts captures value. However, at the BOR hearing, she brought forth evidence concerning her purchase of the property which took

place on or about April 8, 1998. Ms. Chon purchased the subject property along with a convenience store operation known as the “Corner Market.” The settlement statement presented at the BOR indicated that the sale price was \$160,000. Included in the sale were certain items of personalty and business fixtures. (S.T., Purchase documents)

Based upon the evidence presented to this Board, we find that the property carried her burden of proving that the sale price was affected by factors other than the value of the real property sold. It is clear that the Ms. Chon’s purchase included the purchase of a business operating within the real property. In this regard, we find *Bd. of Edn. of the Groveport Madison Local School Dist. v. Franklin Cty. Bd. of Revision* (June 30, 2000), B.T.A. No. 98-N-701, unreported, controls. In that appeal, the Board of Education attempted to support its claimed value increase by presenting a real property conveyance fee statement and warranty deed to the Franklin County Board of Revision. The purchaser therein testified that the sale price attributed to the real property included other valuable business assets (*i.e.*, a car dealership). This Board affirmed the valuation findings of the Franklin County Board of Revision. We determined that the property owner had rebutted the presumption that the sale price of the property was tantamount to true value. We recognized that if items of personalty are included with a sale of realty, an ultimate value determination based upon the sale price could be skewed. See, also *Bd. of Edn. of Kettering-Moraine v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2000), Montgomery App. No. 18223, unreported.

In the present appeal, the Board has only a conveyance fee statement and warranty deed reflecting a purchase price of \$175,000 to support the BOE’s claim that the value of the subject real property is equal to that price. However, the purchaser of the realty as of April, 1998 has brought forth evidence that a later purchase of the same property (at an amount only slightly less than the amount paid in the first transaction) includes the purchase of the realty as well as an on-going business operated within said realty. The BOR, presented with the same evidence, concluded that the sale upon which the BOE asserted valued also included the sale of a business. The BOR determined that the value of the realty itself was \$138,000.

We agree with the BOR that the property owner has carried its burden to rebut the presumption that the sale price is reflective of the value of the real property alone. Having made this finding, we return to the record to determine whether the BOE has carried its burden of persuasion. *Cincinnati School District Bd. of Edn., supra.* However, the BOE presented nothing more than the conveyance statement and general warranty deed, which we have previously found not to be probative of value in this instance. The Board may rely upon a board of revision's valuation when we reject evidence presented to us as not being competent, probative or credible and when there is no other evidence from which we can independently determine value. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Therefore, based upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines the value of the subject property as of January 1, 1998 was as follows:

<u>PARCEL NO. 230-1450</u>	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 21,200	\$ 7,420
BUILDING	\$ 116,800	\$ 40,880
TOTAL	\$ 138,000	\$ 48,300

It is the order of the Board of Tax Appeals that the Auditor of Franklin 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.