

OHIO BOARD OF TAX APPEALS

LTC Ohio, Inc.,)	
)	
Appellant,)	
)	
vs.)	CASE NO. 99-T-1993
)	
Franklin County Board of)	(REAL PROPERTY TAX)
Revision, the Franklin County)	
Auditor, and Upper Arlington)	DECISION AND ORDER
City Schools Board of Education,)	
)	
Appellees.)	Appeal Filed 12/28/01 Ohio Supreme Court Remanded upon Settlement June 21, 2002

APPEARANCES:

For the Appellant -	Annrita S. Johnson J. Kieran Jennings Fred Siegel Co., L.P.A. 30195 Chagrin Blvd. Suite 205 Cleveland, Ohio 44124
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. -	Ronald B. Noga Weltman, Weinberg & Reis Co., L.P.A. 175 South Third Street Suite 900 Columbus, Ohio 43215-5134

ENTERED: November 30, 2001
Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

The Board of Tax Appeals considers this matter upon a notice of appeal filed by appellant, LTC Ohio, Inc. LTC appeals from a decision of the Franklin County Board of Revision, wherein the BOR determined the true value of the subject property to be

\$6,051,100 for tax year 1998. LTC disagrees with the BOR's value and claims that the correct value for the subject property should be \$2,820,000.

The subject property, identified in the Franklin County Auditor's records as permanent parcel numbers 070-4932, 070-4984, 070-7048, and 070-4878, is comprised of approximately 1.677 acres of land located in the City of Columbus-Upper Arlington City Schools taxing district. The subject is improved with a three-story building approximately 32,396 square feet in size. The building was erected in 1992 and is operated as an assisted living facility. The facility has fifty-three residential units. The facility also contains a central lobby, parlors, living rooms and other common areas, kitchen and dining areas, a fitness center, and library. Additional improvements include significant landscaping and an asphalt parking area large enough to accommodate twenty-five automobiles.

This matter came before the BOR pursuant to an increase complaint filed by the Upper Arlington City Schools Board of Education. Upper Arlington submitted to the BOR a copy of a limited warranty deed and a copy of a conveyance fee statement, both related to an April 22, 1998, sale of the subject property. The statement indicated a total purchase price of \$6,625,000, with \$573,885 being allocated to items other than real property. The statement thus indicated a consideration paid for real property to be \$6,051,115. Upon review of the evidence before it, the BOR determined the value of the subject property to be the April 22, 1998, sale price.

Before this Board, LTC argues that the sale price is not indicative of the subject property's value. LTC represents that the sale in question concerned the bulk sale of six assisted living facilities. Moreover, the transaction itself involved the sale/leaseback of the

subject property by LTC to Karrington Health, the seller. LTC argues that the BOR erred in not rejecting the sale price as the best evidence of value and further offers an appraisal in support of its value contention.

In support of its contention, LTC offered the testimony of Robert Wilbanks, a property tax specialist for Sunrise Assisted Living, an entity that merged with Karrington Health. Although he provided no opinion as to the nature of the sale/leaseback, Mr. Wilbanks did identify a package of documents related to the transaction. LTC maintains the documents demonstrate that the bulk sale/leaseback should not be relied upon.

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 a 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. 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 appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn., supra.*

Furthermore we note that the issue on appeal is the true value of the subject property. Accordingly, this Board will seek to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, 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.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. It has long been held by the Supreme Court 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. See, also, *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Accordingly, where there exists an actual sale of real property, which is both recent and arm’s-length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property’s true value. *Conalco, supra; Park Investment Co., supra*. While the sale may be the “best evidence” of value, it is not the only evidence. Consequently, the Supreme Court has held 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. In the instant matter, we recognize that, based upon the action of the BOR, the rebuttable presumption that the sale price represents true value is present in favor of Upper Arlington. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, at 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.* Upon review, we must conclude that LTC has not met this burden.

Initially, we note that Sunrise Assisted Living did not merge with Karrington Health until more than one year following the sale to LTC and the leaseback to Karrington. Moreover, Mr. Wilbanks admits that he was not involved in the transaction and thus has no personal knowledge regarding the sale/leaseback or the allocation of the sale price among the subject and the other properties. Second, although responsible for filing personal property tax returns, Mr. Wilbanks had no information with him upon which he could base an opinion of the value of personalty LTC claims was included in the transaction. Third, the documents identified by Mr. Wilbanks consist of the agreement to purchase and lease the subject and other facilities, an agreement of purchase and sale and joint escrow instructions, and a bill of sale of the subject property. However, these documents are incomplete. The agreement to purchase and lease refers to an exhibit A, which is not attached. The bill of sale refers to attachments for a listing of all transferred personal property and for other intangible property. These attachments are not included with the exhibits. Mr. Wilbanks testified that several Karrington documents were misplaced during the merger with Sunrise.

In *Bd. of Edn. of the Lancaster City School Dist. v. Fairfield Cty. Bd. of Revision* (Sept. 1, 2000), BTA No. 98-V-675, unreported, we considered evidence similar to that presented by LTC. In *Lancaster*, a board of education sought an increase in value for a nursing home based upon a recent sale evidenced by a warranty deed and conveyance fee statement. The property owner challenged the board of education's claim by presenting the

testimony of an individual who was not involved in the transaction and who was not employed by the owner at the time of the sale. The individual identified a package of documents relating to the sale and offered his opinion that the nursing home's sale was a part of a sale/leaseback transaction involving 27 nursing facilities.

While the BOR in that appeal accepted the testimony, we concluded that the evidentiary presentation fell short of that which would have been necessary to rebut the presumption accorded to the sale documents:

“We are unable to place probative weight to the documents submitted since they are unauthenticated and appear to be incomplete. Likewise, Mr. McVeigh's testimony and description of what took place at closing is afforded the same minimal weight, given his lack of personal knowledge. ***

“However, beyond the non-testimonial explanations of Appellee property owner's counsel, we can find no competent, credible or admissible evidence to support the BOR's rejections of the October 7, 1997 sale as the basis upon which to value the property. ***

“The burden then shifted to the Appellee property owner to rebut the evidence presented by Appellant. The property owner in this instance failed to offer a witness who had direct knowledge of the methodology of purported allocation, or any other probative or competent evidence that the sale was not arm's-length in nature.

“We therefore hold that Appellee property owner failed to rebut the presumption against it. The Appellant met its assigned burden of persuasion as to the value of the property. The subject property was sold in an arm's-length sale on October 7, 1997, for an amount which we find, based on the uncontroverted evidence presented, to accurately reflect the true value thereof. ***

“Appellee property owner's failure to introduce competent and credible evidence (i.e., a fact witness with knowledge to testify

that the sale price was not indicative of true value) prevents it from overcoming the burden established by the conveyance fee statement and deed tendered by Appellant.” (Footnote omitted)

See, also, *Bd. of Edn. of the Westerville City School Dist. v. Franklin Cty. Bd. of Revision* (Sept. 7, 2001), BTA Nos. 00-M-422 and 00-M-423, unreported; *Lancaster City Schools v. Fairfield Cty. Bd. of Revision* (Aug. 13, 1993), BTA No. 91-P-642, unreported.

The facts herein result in a similar conclusion.

In *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 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.* at 64. LTC has not presented such factors. Moreover, LTC has presented no evidence that would cast suspicion upon the allocation employed by the parties. In addition, we have relied upon sale/leaseback transactions in the absence of evidence that the price was dictated by the specific needs of the parties and not by the property’s market value. See *Lancaster, supra*. Here, LTC has presented no evidence to establish that the sale was subject to special financing, nor has LTC provided evidence of special consideration in the lease. LTC’s appraiser further declined to look at the subject sale and therefore did not consider the economic aspects of the purchase. In short, there is no indication in the record to demonstrate that either the sale or the lease was at other than a market rate.

Upper Arlington has presented competent and probative evidence of a sale of the subject property. LTC has presented no competent and probative evidence to meet its burden of demonstrating that the sale is not indicative of the subject’s value. The evidence

presented is incomplete and establishes no factors that would raise suspicions as to the sale price. Moreover, we note that, upon filing the conveyance fee statement, LTC specifically removed from the purchase price a value representing items not considered to be real property. The value adopted by the BOR reflects this deduction. Based upon all of the foregoing, we must conclude that LTC has failed to rebut the presumption in favor of the arm's-length sale before us.

Next, LTC has presented an appraisal, which finds a value of \$2,820,000 for the subject as of tax lien date. However, as LTC has failed to rebut the presumption in favor of the sale price, we find that the appraisal is not before us for consideration. In *Cincinnati, supra*, the court held that those who seek to overcome the presumption in favor of a sale price for purposes of receiving either an increase or decrease in value must satisfy a two-step process:

“In *Ratner, supra*, we held in the syllabus: ‘A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value.’ The burden of persuasion at the BTA was always on the BOE, as appellant, to prove its right to an increase in value. See *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, 527 N.E.2d 874, and *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 626 N.E.2d 933. To prove its right to an increase in value the BOE had to prove two points. First, the BOE had to prove that the sale price did not reflect true value. To prove that point the BOE attempted to prove that the sale was not an arm's-length sale. If the BOE had proven the first point, it next had to establish the increased valuation. In this case the BOE never got beyond the first point. Thus, consideration of the auditor's appraisal never became an issue.” *Id.* at 328-329.

Likewise, as LTC has failed to rebut the presumption in favor of the sale price, a consideration of LTC's appraisal is not an issue before this Board.

In conclusion, we find that Upper Arlington has proven, by competent and probative evidence, that the April 22, 1998, sale of the subject property was made at arm's-length and that the \$6,051,100 sale price provides the most reliable indication of value as of tax lien date. LTC has not presented credible and probative evidence sufficient to rebut the sale price. *Cincinnati, supra; Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. Therefore, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows for tax year 1998:

	TRUE VALUE	TAXABLE VALUE
Parcel 070-4932		
LAND	\$ 144,000	\$ 50,400
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$ 144,000	\$ 50,400

	TRUE VALUE	TAXABLE VALUE
Parcel 070-4984		
LAND	\$ 186,000	\$ 65,100
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$ 186,000	\$ 65,100

	TRUE VALUE	TAXABLE VALUE
Parcel 070-7048		
LAND	\$ 258,000	\$ 90,300
BUILDINGS	\$ <u>5,451,100</u>	\$ <u>1,907,890</u>
TOTAL	\$ 5,709,100	\$ 1,998,190

	TRUE VALUE	TAXABLE VALUE
Parcel 070-4878		
LAND	\$ 12,000	\$ 4,200
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$ 12,000	\$ 4,200

The Auditor of Franklin County is hereby ordered to list and assess the subject

property in conformity with this Board's decision and order and to carry forward the determined values in accordance with law.

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