

# OHIO BOARD OF TAX APPEALS

Board of Education, Upper Arlington City	)	
School District,	)	
	)	CASE NOS. 00-A-1802
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor, and Donn V.	)	
Frizzell, et al.,	)	
	)	
Appellees.	)	

## APPEARANCES:

For the Appellant -	Charles L. Bluestone Carlile Patchen & Murphy LLP 366 East Broad Street Columbus, Ohio 43215
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For the County Appellees -	Ronald O'Brien Franklin County Prosecuting Attorney By: Paul Stickel Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215
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For the Appellee Property Owners -	Donald V. Frizzell, <i>pro se</i> 4178 Waddington Road Upper Arlington, Ohio 43220
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Entered: October 12, 2001

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the

Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 1999.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board by the county board of revision, and the record of the hearing before this Board.

The property in question is located in the City of Upper Arlington/Upper Arlington City School District taxing district and appears on the auditor's records as parcel number 070-3084. Located on the subject parcel are 2, 4-unit apartment buildings, 5/6 of which was sold to the appellee property owners in February 1996 for \$400,000.<sup>1</sup>

The value for the subject parcel for tax year 1999 as determined by the county auditor is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 64,000	\$ 22,400
Bldg	339,000	118,650
Total	\$ 403,000	\$ 141,050

The value for the subject parcel for tax year 1999 as determined by the county board of revision is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 64,000	\$ 22,400
Bldg	211,000	73,850
Total	\$ 275,000	\$ 96,250

The appellant board of education contends that the auditor and the board of revision have undervalued the parcel in question by not relying upon the sale of the subject in February 1996 as the indicator of its value. Accordingly, the appellant argues that the subject's

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<sup>1</sup> The appellee property owners already owned 1/6 of the subject property at the time they purchased the remaining 5/6.

true value should be \$480,000, which equates to the \$400,000 sale price plus \$80,000 for Marguerite Frizzell's 1/6 interest that was previously conveyed to her.

At the outset, this Board must rule upon the admissibility of Exhibits 1 – 5, as offered by the appellant regarding the history of the subject property. Counsel for the county has objected to such documents' admission into evidence, arguing that they could have been offered at the proceedings before the board of revision and since they were not, they must be precluded from being received into evidence before this Board, pursuant to the provisions of R.C. 5715.19 (G). We agree. Although these exhibits merely support the factual representations of the school board concerning the sale of the subject property, which the property owner has not denied, these exhibits are not admitted into evidence as counsel clearly could have presented them at the board of revision and good cause for their acceptance was not established. See *Chahda v. Cuyahoga Cty. Bd. of Revision* (June 15, 2001), B.T.A. No. 99-S-1905, unreported; *CASA 94, L.P. v. Franklin Cty. Bd. of Revision* (2000), 89 Ohio St.3d 622.

Before turning to the merits of this case, we will review how the instant matter came to this Board on appeal. Specifically, the appellee, Donn V. Frizzell, one of the property owners, filed an original decrease complaint against the valuation of the subject property with the Franklin County Board of Revision. (S.T., Ex. 1) The board of education in turn filed a counter-complaint seeking to maintain the auditor's valuation of the subject. (S.T., Ex. 2) The property owners and counsel for the board of education appeared at a hearing on September 28, 2000, before the board of revision.

At the hearing before the board of revision, Mr. Donald Frizzell testified that the subject property is the first piece of investment property that he had ever purchased. He indicated that it had been deeded by his father-in-law to each of his children, including Mr.

Frizzell's wife. None of Mrs. Frizzell's siblings wanted to retain the property after the death of Mr. Frizzell's father-in-law, so Mr. and Mrs. Frizzell purchased all of their interests in the subject property for \$400,000 in February 1996. Mr. Frizzell indicated that there was no negotiation on the price paid, that the \$400,000 amount was simply the amount that the siblings felt they should get, and, taking the siblings "at their word" and wanting to keep the property "in the family," he went along with the price. He also stated that after he actually had the opportunity to inspect the subject property and saw what maintenance he would have to complete, he determined he never should have paid \$400,000 for it. (S.T., audio tape)

Mr. Frizzell testified that he obtained approximately \$425-\$480 per month for each of the 8 units in the two subject buildings. (R., p. 22) Each unit consists of 2 bedrooms and 1 bath, with a carport. All utilities are paid by Mr. Frizzell. Mr. Frizzell provides all maintenance for the property, except those jobs for which he is not qualified to complete, *e.g.*, heating/air conditioning repairs. (S.T., audio tape) Mr. Frizzell also testified that in 2000, he presented a bank with information on his current rental rates, and based upon such information, the bank estimated the subject's overall economic value at \$275,000, with a maximum loan amount of \$235,000. (S.T., audio tape, Ex. 4; R., p. 22-23)

Upon review and consideration of the testimony and evidence received, the board of revision determined that a decrease in valuation of the subject to \$275,000 for tax year 1999 was warranted.

At the hearing before this Board, the appellant school board relied upon the evidence of sale of the subject. The county offered no evidence or witness testimony, relying upon the contents of the statutory transcript. Mr. Frizzell testified, reiterating the statements he made before the board of revision, including that the subject property was not offered on the

open market nor listed with a real estate broker and the price paid by Mr. Frizzell had not been negotiated (R., p. 14-15, 20); the siblings wanted cash and came up with their desired price of \$400,000 on their own (R., p. 26-27). Mr. Frizzell further clarified that after he and his wife purchased the subject, they sold a ½ interest in the subject to their son in April 1996 for half of what they paid for the subject, i.e., \$200,000, leaving the remaining ½ interest for him and his wife. (R., p. 18, 27-28)

In our review of this matter, we initially note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

Further, when determining value, the Supreme Court has on numerous occasions held 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; *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "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* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. However, the presumption that the sale price is the best evidence of value is rebuttable when “another indicator is a more accurate representative of that value.” *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284. Consequently, it is the burden of a party who claims that a sale is other than arm’s-length to meet such presumption. However, the burden of persuasion does not change, as it is still on the appealing party [the board of education], to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), B.T.A. No. 96-S-93, unreported.

While the board of education seeks application of the presumption by this Board herein, we find that the property owner has sufficiently rebutted that presumption with his testimony describing the transaction between related parties. Because the subject was never for sale on the open market and it was purchased from relatives for a price that was simply agreed upon by the buyers, without attempting to negotiate a different price, a sufficient question is raised as to how the sale price was even determined. Considering the transaction also constituted the sale of an undivided fractional interest rather than the entire fee as well as all the circumstances under which the subject was purchased, that is, from relatives, for purposes of keeping it “in the family,” we are not convinced that the \$400,000 sale price is reflective of the market.

Thus, based upon the foregoing, we find that the sale price, upon which the auditor based his valuation, is not the best evidence of value herein. Having made such determination, and there being no other evidence of value offered, and, as it is this Board's statutory duty to find taxable value herein (R.C. 5717.03), we will rely upon the county board of revision's valuation of the subject, which is supportable by an income approach to value. (R., p. 40) As the Supreme Court stated in *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, "(W)here the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."

Accordingly, we find, based upon the preponderance of the evidence before this Board, the value of the subject real property for tax year 1999 shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 64,000	\$ 22,400
Bldg	211,000	73,850
Total	\$ 275,000	\$ 96,250

It is the Decision and Order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision.

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