

OHIO BOARD OF TAX APPEALS

Strongsville Board of Education and the)	
City of Strongsville,)	
)	CASE NO. 2002-A-2566
Appellants,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and OTG 3,)	
LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	-	Kolick & Kondzer Daniel J. Thomas 24500 Center Ridge Road, Suite 175 Westlake, Ohio 44145-5697
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney 1200 Ontario Street Courts Tower, Ninth Floor Cleveland, Ohio 44113
For the Appellee Property Owner	-	NO APPEARANCE OTG3, LLC ¹ c/o CSC Lawyer's Incorporating Service 50 West Broad Street Columbus, Ohio 43215

Entered December 5, 2003

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

¹ OTG 3, LLC's statutory agent is being utilized in this matter as all correspondence mailed to OTG 3, LLC's last known address (i.e., Building E, 2nd Floor, 800 Roosevelt Road, Glen Ellyn, IL 60137) has been returned as undeliverable as addressed.

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 appellants from a decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2000.

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.² Although duly notified by letter of the date and time of said hearing, neither the county appellees nor the appellee property owner made an appearance.

The subject property, a gas station with building and associated pumps situated on a corner lot, is located in the Strongsville taxing district and is identified on the auditor's records as parcel number 397-01-025. The value of the parcel, as determined by the county auditor and by the board of revision, is as follows:

	AUDITOR	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 131,600	\$ 46,060
Building	\$ 44,600	\$ 15,610
Total	\$ 176,200	\$ 61,670

	BOARD OF REVISION	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 131,600	\$ 46,060
Building	\$ 95,200	\$ 33,320
Total	\$ 226,800	\$ 79,380

² The instant appeal is a continuation of matters earlier filed with this board but dismissed upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Strongsville Bd. of Edn. and the City of Strongsville v. Cuyahoga Cty. Bd. of Revision* (Oct. 18, 2002), BTA No. 2002-A-598, unreported. In light of the fact that no party has objected and in the interests of administrative economy, this board will accept the previous record as probative of the issues in the current appeal.

In its notice of appeal, the appellant board of education has alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 131,600	\$ 46,060
Building	\$ 508,400	\$ 177,940
Total	\$ 640,000	\$ 224,000

The property under consideration was sold on or about July 8, 1999 for \$640,000. (S.T., Ex. B) In March 2001, relying upon the sale price obtained, the board of education filed a complaint against the valuation of real property with the Cuyahoga County Board of Revision seeking an increase in the subject's value. (S.T., Ex. A) "Upon consideration of the complaints and after investigation, research, examination of testimony and evidence submitted ***, " the board of revision ultimately increased the building's true value from that which was originally assigned by the auditor by \$50,600, to approximately the amount listed on the conveyance fee statement for the amount of the sale price allocated to the real property. (S.T., Ex. B, D)

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), 37 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 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.

As we review the evidence of sale of the subject property, we note that the statutory transcript includes a special warranty deed transferring the subject on or about July 6, 1999 to OTG 3, LLC. The conveyance fee statement is also included, indicating a transfer of both the subject real property and some personal property on or about July 8, 1999, for \$640,000. Such statement indicates that included in the subject sale was \$413,188 of personal property (i.e., 65% of the sale price) and \$226,812 of real property (i.e., 35% of the sale price). (S.T., Ex. B) Arguably, then, only the portion of the sale price attributable to the real property, or \$226,812, is taxable as real property.

However, counsel for the board of education contends that such an allocation between real and personal property is suspect and that the total transfer price should be considered the best evidence of the value of the subject property as of January 1, 2000. As support for such claim, counsel provided this board with a certified copy of a quit claim deed (Ex. A) and a bankruptcy court order (Ex. B) which demonstrate that on or about August 22, 2003, OTG 3, LLC sold the subject real estate through bankruptcy, for \$480,500 and the subject inventory for \$54,945.72 (including a purchase price deposit). Counsel claims that because the subject real estate was sold

through bankruptcy, i.e., a distress sale, for more money than had been originally allocated to it under its prior sale, there is no support for the allocation made in the July 1999 sale. Further, counsel contends that any deduction for personal property in the subject valuation should not exceed that which has been paid through bankruptcy for the personal property since the subject property and/or the area in which it is located has not changed since the July 1999 sale.

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.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual recent arm’s-length sale. *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Further, we have previously held that a copy of a real property conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm’s-length sale. See *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Bd. of*

Edn. of the Princeton City School District v. Butler Cty. Bd. of Revision (Dec. 20, 1991), BTA No. 1990-J-829, unreported.

However, if evidence is introduced which indicates that the sale price is not reflective of true value, then other evidence such as appraisal reports may be presented in order to establish the true value of the property. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59. Furthermore, if evidence exists which calls into question the validity of a sale, the party placing reliance thereon to support its contention of value must show that the sale was made at arm's length and is a valid indicator of market value. *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 3, 1997), BTA Nos. 1995-T-275, 276, unreported. Finally, in *Belfance, Trustee Successor in Interest to Copperweld Steel Co. v. Trumbull Cty. Bd. of Revision* (June 30, 1997), BTA Nos. 1995-M-898, 899, unreported, this board, relying upon *Walhonding Hills Campground v. Coshocton Cty. Bd. of Revision* (Aug. 6, 1993), BTA No. 1992-A-903, unreported, concluded that a sale of assets from a bankruptcy estate did not reflect value for real property tax purposes. In such cases, the allocation made by the bankrupt estate and a future purchaser were found to have the characteristics of a forced sale, and thus could reflect factors other than the value of the property sold. In *Belfance*, we found that because the seller was in a state of liquidation under bankruptcy, it could not be considered to have entered into the transaction freely. As we stated in *Walhonding*, supra, wherein we found that a sale price in bankruptcy may reflect many factors other than the actual value of the property sold:

“*** this Board is unwilling to consider said sale as indicative of the price that the subject could have brought on the open market; there is no evidence in the record to indicate the perspective of the bankruptcy court in approving the sale, i.e., whether the price agreed upon originated in the amount needed to cover the debt on the property or whether the price reflected what the court had determined to be the fair market value of the subject. Thus, because of the nature of a sale originating in bankruptcy, not unlike a sale consummated at an auction or a sheriff’s sale, and the lack of detailed information about the circumstances surrounding this specific sale, the Board does not find that the sale price is indicative of the subject’s fair market value.” Id. at 3-4.

See, also, *LTV Steel v. Strongsville Bd. of Education* (Nov. 23, 1990), BTA No. 1989-J-323, unreported.

Based upon the foregoing, this board finds that the evidence of the July 1999 sale, the conveyance fee statement, demonstrates that the sale of the subject property included a substantial amount of personal property. “This Board recognizes the evidentiary value to be accorded the sale price as listed on the conveyance fee statement in an arm's-length transaction. The production of the conveyance fee statement requires the party disagreeing with the valuation to rebut this evidence with other evidence indicating the sale price on the conveyance fee statement was not reflective of true value.” *Gaidar Partnership v. Hamilton Cty. Bd. of Revision* (July 15, 1994), BTA No. 1993-J-663, unreported. See, also, *Bd. of Edn. of Princeton City School District v. Butler Cty. Bd. of Revision* (Oct. 16, 1992), BTA No. 1990-H-898, unreported. It is the appellant’s burden to persuade this board to increase the value assigned to the subject because the allocation of the recent sale was not the best evidence of the subject’s true value. See *Dublin Bd. of Edn. v. Franklin Cty. Bd. of*

Revision (1997), 80 Ohio St.3d 450. Other than the board of education's counsel's contention that the lopsided allocation of the purchase price between the real and personal property purchased is suspect, there is no evidence in the record to support the board of education's claim. We have received no evidence on which we can allocate the purchase price between the real and personal property any differently than what has been listed on the conveyance fee statement; the appellant has not provided any evidence to demonstrate that the allocation as listed on the conveyance fee statement from the first sale was incorrect. See *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297. See, also, *Fournier v. Montgomery Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-15, unreported; *Bd. of Edn. of the Groveport Madison Local School District v. Franklin Cty. Bd. of Revision* (June 30, 2000), BTA No. 1998-N-701, unreported. While appellant argues that the evidence of the August 2003 sale of the subject from bankruptcy indicates that the real property's value had been understated in the first sale, it could also arguably be that the real property was accurately valued for the July 1999 sale and it appreciated in value from the date of the first sale to the date of the second sale, August 2003, some four years later. This board finds that because the second sale originated in bankruptcy and no evidence was offered to indicate the reliability of the price obtained from such sale for the real or personal property, it cannot be utilized to establish the value of the subject on tax lien date, January 1, 2000, or to discredit the earlier sale of the subject.

Thus, we find, after consideration of the evidence that appellant has presented, there is insufficient evidence before us to rebut the presumption that the sale price, as stated on the conveyance fee statement, is the best indicator of value. With no specific evidence that the July 1999 allocated purchase price for the real property is inaccurate, we will utilize such allocated sale price, as the county board of revision did.

Accordingly, we find, based upon the preponderance of the evidence before this board, the value of the subject real property for tax year 2000 shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 131,600	\$ 46,060
Building	\$ 95,200	\$ 33,320
Total	\$ 226,800	\$ 79,380

The Auditor of Cuyahoga County is hereby ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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