

OHIO BOARD OF TAX APPEALS

GWJ Holdings II, Ltd.,)	
)	
Appellant,)	CASE NO. 2002-T-1345
)	
vs.)	(REAL PROPERTY TAX)
)	
Franklin County Board of Revision, Franklin County Auditor, and the Board of Education of the Columbus City School District,)	DECISION AND ORDER
)	
Appellees.)	Remanded on Appeal Nov. 1, 2004 Franklin County Court of Appeals

APPEARANCES:

For the Appellant - Fisher & Skrobot, LLC
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For the Bd. of Edn. - Rich, Crites & Wesp, L.L.C.
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Entered April 2, 2004

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by GWJ Holdings II, Ltd. GWJ appeals from a decision of the Franklin

County Board of Revision, in which the BOR determined the total true value of certain real property to be \$3,700,000 for tax year 2001. GWJ argues that the correct true value of the real property should be \$1,875,000.

The subject property, listed in the Franklin County Auditor's records as permanent parcel numbers 026-190712-80 and 026-190712-90, is located in the city of Gahanna-Columbus City Schools taxing district of Franklin County. It consists of approximately 14.1 acres of land and is improved with a structure that is used for retail and manufacturing purposes. The structure was erected in 1980 and is approximately 119,000 square feet in size.

The subject property is split listed, with land listed as permanent parcel number 026-190712-80 and improvements listed as permanent parcel number 026-190712-90. The improvements, parcel number 026-190712-90, are owned by GWJ and were tax exempt for the year in question. The city of Gahanna owns the land, which is leased to GWJ. GWJ has filed a complaint both on its parcel and on behalf of the city. See *Mayfield City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Nov. 21, 2003), BTA No. 2002-G-2683, unreported (lessee of ground lease had standing to file on entire parcel, where the lessee was the legal owner of the improvements but a different entity had legal title to the land). Under such circumstances, we will proceed to determine value for the entire subject property, i.e., both the abated and non-abated portions of the unit of real property. *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Aug. 10, 2001), BTA No. 2000-E-792, unreported.

Before this board, as it had unsuccessfully done before the BOR, GWJ contends that the best evidence of the subject property's value is a May 15, 2001 sale. In March 2001, GWJ entered into a contract to purchase from RFS Group all of the improvements located on the subject property and to acquire, by assignment and assumption, all of RFS' leasehold interest in the land. The original contract price was for \$2,200,000. However, after addressing items of due diligence, the final purchase price was adjusted to \$2,050,000. On the date of sale, RFS and GWJ also memorialized in writing an allocation of the purchase price, which included \$375,000 for land, \$1,500,000 for improvements, and \$175,000 in personalty.

Pursuant to assignment, GWJ is the lessee of the land at issue. The lease is for a period of thirty-five years, commencing on June 1, 1979 and expiring on May 31, 2014.¹ Under the terms of the lease, GWJ agrees to pay the city of Gahanna \$1,698.39 per month through May 31, 2009. From June 1, 2009 through May 31, 2014, GWJ has agreed to pay the city a minimum of \$20.00 per year. GWJ is responsible for real estate taxes. GWJ also pays to the city a "service charge" equivalent to the amount of real estate taxes that would have been due on the exempt parcel, had that portion of the property been subject to tax. The lease further grants GWJ an option to purchase the land for \$100.00 at the conclusion of the lease period.

¹ The ground lease actually lists an expiration date of May 31, 2009. However, the lease term is specifically for a period of thirty-five years, a period that ends in 2014. Accordingly, we agree with GWJ that the 2009 year listed in the lease is a typographical error. See Exhibit 9 at 3. The 2014 date is also consistent with other documents in the record, including the "Lessee-Lessor Estoppel Certificate." Exhibit 3 at 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 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, 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. Where the inference is raised that the sale price does not reflect true value, we must at least consider and review other probative evidence of the subject property's true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4.

In the instant matter, GWJ, as the appellant, contends that the sale price reflects true value. As the appellant seeking a reduction in value, GWJ has the burden of persuasion. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. None of the parties before us question the arm's-length nature of the sale, and we find nothing in the record that would lead us to conclude otherwise. However, the BOR rejected the sale price as evidence of value, and the board of education also maintains before us that the evidence presented by GWJ establishes that the price is not reflective of the subject property's true value. Upon review of the evidence presented, we must concur.

In *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, at 23, the court determined: “It is the fair market value of the property in its unrestricted form of title which is to be valued. It is to be valued free of the ownerships of lesser estates such as the *leasehold interests*, deed restrictions, and restrictive contracts with the government. For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.” (Emphasis added.) See, also, *In re Estate of Sears* (1961), 172 Ohio St. 443 (adopting a definition of “market value” that stated that the fee simple estate is to be valued free of any limitation on the title of the property). The term “fee simple estate” has been defined as “[a]bsolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power, and taxation.” *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710, at 711, citing *The American Institute of Real Estate Appraiser’s Dictionary of Real Estate Appraisal* (1984), at 123.

Valuing the fee simple interest in real property ensures that the true value of all the rights and interests are being reflected. In short, it ensures that a portion of the property’s true value does not escape taxation. The sale now before us was not for the purchase of land and improvements, but for the purchase of improvements and the acquisition of a lessee’s interest. The assignment and assumption of RFS’ lease is not the same as the actual purchase of the land itself and does not reflect the fee simple estate, as part of the property’s value remains in the possession of the lessor. Such a transaction is not reflective of a property’s true value for purposes of taxation:

“R.C. 5709.01 provides that all real property in this state is subject to taxation. R.C. 5701.02 defines real property and land to include land and all buildings on the land and all rights and privileges belonging or appertaining thereto. The fee owner of the property is taxed based upon the value of all of the interest in the property, including leasehold interest ***.

“The recent sale price of a property at an arm's-length transaction is the best evidence of its value for taxing purposes if it reflects the true value of all of the rights and interest in the property. When there is a valuable leasehold interest to which the property is subject, the sale price does not truly reflect the value of the land, the buildings, and all rights and privileges belonging, or appertaining thereto due to the fact that a valuable interest was not purchased, i.e., the leasehold interest. Although R.C. 5713.03 provides that the county auditor shall consider the sale price to be the true value for taxation purposes, reliance on the sale price as the sole factor is not justified where it is shown that the sale price is not reflective of true value.” *Zell v. Franklin Cty. Bd. of Revision* (Aug. 26, 1986), Franklin App. No. 86AP-153, unreported at 5-6.

In *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (Dec. 6, 1996), BTA No. 1995-S-390, unreported, reversed on other grounds (1997), 80 Ohio St.3d 455, a property owner raised the contention that a purchase of a mortgage involved negotiations between a willing buyer and a willing seller on the open market, thereby satisfying the components of an arm's-length sale. The property owner argued that this purchase could thus be used for valuation purposes.

In declining to rely upon the purchase of the mortgage, we noted that R.C. 5713.03 states that only an arm's-length sale involving the transfer of a tract, lot, or parcel is to be considered the true value of the property:

“Regardless of the circumstances surrounding appellant’s assumption of the mortgage on the property, the fact remains that appellant did not acquire title to or possession of the subject property in December of 1993, as required by R.C. 5713.03. Rather, appellant acquired the mortgagee’s interest in the property. The December 1993 sale did not involve a transfer of a tract, lot or parcel, but rather the assignment of the mortgagee’s interest in the tract, lot, or parcel. Therefore, the transaction between appellant and MIF Realty is not the type of ‘sale’ contemplated by the legislature in enacting R.C. 5713.03.” BTA No. 1995-S-390, at 7.

In its review of our decision, the court agreed that the transfer of a mortgage interest does not establish the true value of real property:

“Likewise, R.C. 5713.03 is not applicable to the transaction between Dublin and MIF Realty L.P. R.C. 5713.03 provides that if a ‘tract, lot, or parcel has been the subject of an arm’s length sale between a willing seller and willing buyer within a reasonable length of time * * *, the auditor shall consider the sale price * * * to be the true value for taxation purposes.’ As we have just decided, there was no sale of a ‘tract, lot, or parcel’ ***.” *Dublin Senior Community*, supra, at 458.

In the instant matter, RFS did not own title to the land and taxable portion of the subject real property at the time of the May 15, 2001 transaction. The only interest RFS possessed was that of the lessee. It was this interest that GWJ purchased, not the actual tract, lot, or parcel as required by R.C. 5713.03. Likewise, GWJ had no title to the land after the transaction. In short, GWJ acquired something other than a fee simple estate in the subject property. As such, we must conclude that the May 15, 2001 purchase price does not reflect true value. *Alliance Towers and Zell*,

supra. See, also, *The Appraisal of Real Estate* (12th Ed. 2001), at 83 (discussing how a leased fee interest can be worth less than the unencumbered fee simple interest).

Having found that the sale price does not reflect true value, the burden rests with GWJ to come forward with other probative evidence to establish its right to a decrease in value. *Cincinnati*, supra; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. GWJ, however, has not come forward with any other evidence of value, and, based upon our review of GWJ's evidence as a whole, we must conclude that GWJ has not satisfied its burden. *Cincinnati* and *Dublin*, supra.

“Where 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 ***.” *Simmons v. Cuyahoga Cty. Bd. of Revision* (1988), 81 Ohio St.3d 47, at the syllabus. Here, the board of education, as appellee, has presented no additional evidence of value. The only other evidence of value contained in the record is the property record card and the record of the BOR's review of the evidence submitted before it. Based upon its review of the evidence, the BOR retained the value originally placed on the subject by the auditor. Given our review of the BOR's record as a whole, and given that there is no other evidence from which we may independently determine value, we approve the BOR's valuation of \$3,700,000. *Simmons*, supra.

In conclusion, we find that GWJ has not presented sufficient competent or probative evidence of value for the subject property. Accordingly, the Board of Tax

Appeals finds the true and taxable values of the subject property to be as follows for tax year 2001:

	TRUE VALUE	TAXABLE VALUE
Parcel 026-190712-80		
LAND	\$ 743,900	\$ 260,370
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$ 743,900	\$ 260,370

	TRUE VALUE	TAXABLE VALUE
Parcel 026-190712-90		
LAND	\$ -0-	\$ -0-
BUILDINGS	\$ <u>2,956,100</u>	\$ <u>1,034,640</u>
TOTAL	\$ 2,956,100	\$ 1,034,640

	TRUE VALUE	TAXABLE VALUE
Total –All Parcels		
LAND	\$ 743,900	\$ 260,370
BUILDINGS	\$ <u>2,956,100</u>	\$ <u>1,034,640</u>
TOTAL	\$3,700,000	\$1,295,010

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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