

OHIO BOARD OF TAX APPEALS

Cleveland Municipal School District)
Board of Education,)

CASE NO. 2002-V-1670

Appellant,)

(REAL PROPERTY TAX)

vs.)

DECISION AND ORDER

Cuyahoga County Board of Revision, the)
Cuyahoga County Auditor, and)
180 Euclid Avenue LLC,)

Appellees.)

Appeal Filed Dec. 29, 2003 Ohio Supreme Court
Remanded Upon Settlement Feb. 18, 2004

APPEARANCES:

For Appellant
BOE

- Britton, Smith, Peters &
Kalail Co., LPA
David H. Seed
Summit One, Suite 540
4700 Rockside Road
Cleveland, OH 44131-2152

For the County
Appellees

- William D. Mason
Cuyahoga County Prosecuting Attorney
Courts Tower, Ninth Floor
1200 Ontario Street
Cleveland, OH 44113

For the Appellee
Property Owner

- Roetzel & Andress
Amie L. Bruggerman
222 South Main Street
Cleveland, OH 44113

Entered December 5, 2003

Ms. Jackson, Ms. Margulies, and Mr. Eberhart 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 Cleveland Municipal School District Board of Education (“BOE”) from a decision of the Cuyahoga County Board of Revision (“BOR”). In said decision, the BOR determined the true and taxable

values of the subject property for tax year 2000, originally established by the Cuyahoga County Auditor (“auditor”), should remain as follows:

Parcel 101-26-028	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$9,030,000	\$3,160,500
BLDG	\$8,070,000	\$2,824,500
TOTAL	\$17,100,000	\$5,985,000
Parcel 101-26-051	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,359,890	\$475,960
BLDG	\$2,300,000	\$805,000
TOTAL	\$3,659,890	\$1,280,960
Parcel 101-26-052	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$205,310	\$71,860
BLDG	\$0	\$0
TOTAL	\$205,310	\$71,860
Parcel 101-26-054	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$654,000	\$228,900
BLDG	\$0	\$0
TOTAL	\$654,000	\$228,900
Parcel 101-26-061	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$150,000	\$52,500
BLDG	\$35,000	\$12,250
TOTAL	\$185,000	\$64,750
GRAND TOTAL	\$21,804,200	\$7,631,470

The BOE requests that the subject property’s total true valuation be increased to \$22,150,000 based on the sale of the subject property on April 25, 2000 to appellee 180 Euclid Avenue LLC (“180 Euclid Avenue”). We now consider this matter upon the notice of appeal and the statutory transcript (“S.T.”) certified by the auditor. All parties waived their opportunity to present evidence at hearing before this board, electing instead to rely upon their written legal argument.

In response to the merit brief filed on behalf of 180 Euclid Avenue, the BOE has made a motion that the documentary evidence¹ attached to 180 Euclid Avenue's brief not be considered by this board and stricken from the record.

This board has consistently held that documents submitted by parties outside the context of a hearing do not rise to the level of evidence upon which we may rely in making a determination. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported; *Montgomery v. Cuyahoga Cty. Bd. of Revision* (Aug. 14, 1998), BTA No. 1997-T-897, unreported; *Kemen v. Hamilton Cty. Bd. of Revision* (Jan. 2, 1998), BTA No. 1997-M-433, unreported; *Triple V's Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000), BTA No. 1997-K-1701, unreported. Since the unauthenticated documents attached to the brief do not rise to the level of competent or reliable evidence, the statements made by counsel in reliance on the documents are not evidence. *Corporate Exchange Bldgs. IV. & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297 (holding that the nontestimonial statements of counsel are not evidence).

Therefore, the motion of the BOE is sustained. The exhibits attached to 180 Euclid Avenue's merit brief will not be considered by this board. Furthermore,

¹ Said documents include: a platted map of the subject property, auditor's website information concerning the subject property, a "Concept Master Plan" concerning the subject property, photographs of selected areas of the subject property, and a two-page letter (dated June 18, 2002) concerning an offer to purchase the subject property. (See Appellee 180 Euclid Avenue's response brief)

even if we were able to consider said evidence of 180 Euclid Avenue's inability to realize its hopes for the subject property (as is discussed infra), said evidence fails to address, much less rebut, the arm's-length nature of the sale before us.

The subject property is located in Cuyahoga County, Ohio and is improved with a 932,000 square foot, eight-story structure that was formerly Kaufmann's Department Store and an attached 698-space parking garage in downtown Cleveland. (S.T. hearing tape, Exhibit F)

At hearing before the BOR, the BOE presented copies of a conveyance fee statement and recorded deed evidencing that the subject property had sold for \$22,150,000 on April 25, 2000. (S.T. at A) 180 Euclid Avenue presented no sworn testimony before the BOR. Instead, counsel provided the BOR with non-testimonial statements and argument as to why the subject property was not worth the purchase price. (S.T. hearing tape)²

We begin our review of the evidence 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 its right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 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

² Specifically, counsel describes 180 Euclid Avenue's unrealized expectations in purchasing, rehabilitating and attempting to develop the subject as a telecommunications center. Although counsel does not dispute the price paid for the property, she explained in detail how market forces frustrated 180 Euclid Avenue's expectations as well as its difficulty in subsequently marketing the vacant portions of the property. (S.T. hearing tape) Additionally, 180 Euclid Avenue submitted copies of lease representation agreements (S.T. at E) and copies of selected pages of what appears to be a commercial office space trade publication marketing the property. (S.T. at F)

Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of the board of revision to come forward and offer evidence that 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the 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. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, 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.

Because the parties have elected to waive hearing before this board, it is particularly important for this board to review the existing record consistent with the

Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11:

“The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision]* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its formal determination is more than a mere rubber stamping of the board of revision's determination. ***.” Id. at 13-14.

See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 1996-Ohio-432 (“We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.”)

Before the BOR, the BOE presented evidence of an arm's-length sale involving the subject property nearly four months after tax lien date. (S.T., Conveyance Fee Statement and Deed, Exhibit A) Based on our review of the record below, 180 Euclid Avenue failed to demonstrate that the sale of the property was not arm's-length in nature. Rather, counsel proceeded to provide non-testimonial argument that the price paid for the property was excessive, given the owner's failed expectations for future development. (S.T., hearing tape)

This board has 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, e.g., *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Gaidar Partnership v. Hamilton Cty. Bd. of Revision* (July 15, 1994), BTA No. 1993-J-663, unreported (finding that a "rebate" to buyer for reimbursement of closing costs and operating expenses was excludable from sale price for purposes of determining true value); *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Princeton City School District v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported (holding that once a deed or conveyance fee statement is introduced into evidence, the opposing party must introduce sufficient evidence to overcome the presumption that arises that the sales price is the true value of the property).

We can find nothing in the record that would lead us to otherwise conclude that the April 25, 2000 sale was not arm's length. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that "encompasses bidding and negotiation in the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under coercion." In short, the court found an arm's-length sale to be 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." *Id.* at 25. 180 Euclid Avenue has offered no competent or probative evidence to rebut the existence of these elements in the sale.

Furthermore, the non-testimonial explanations of 180 Euclid Avenue's counsel do not rise to the level of competent probative evidence. As we have

previously held in *Bd. of Edn. of the Lancaster City School District v. Fairfield Cty. Bd. of Revision* (Sept. 1, 2000), BTA No. 1998-V-675, unreported, the failure of the property owner to introduce competent and probative evidence in the form of a fact witness with knowledge to testify that the sale was not arm's length in nature prevented it from overcoming the burden established by the conveyance fee statement and deed tendered before the BOR. See, also, *Bd. of Edn. of the Westerville City School Dist. v. Franklin Cty. Bd. of Revision* (Sept. 7, 2001), BTA No. 2000-M-422, et seq, unreported, affirmed (Franklin App. Nos. 01AP-1147 and 1148, 2002); *Praedium II, Buckeye LLC v. Franklin Cty. Bd. of Revision* (Oct. 5, 2001), BTA No. 1999-T-1543, unreported.

In reviewing the record before us, it is clear that the BOE has satisfied its burden of establishing the presumption when it presented the conveyance fee statement and deed to the BOR which demonstrates that the subject property sold for \$22,150,000. The sale carried with it the rebuttable presumption that the sale is arm's length.

The burden then shifted to 180 Euclid Avenue to rebut the evidence presented by the BOE. We can find no competent, credible or admissible evidence to support the BOR's rejection of the April 25, 2000 sale of the subject property as the basis upon which to value the property.

We therefore hold that 180 Euclid Avenue failed to rebut the presumption against it. The BOE 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 April 25,

2000, for an amount, which we find, based on the uncontroverted evidence presented, to accurately reflect the true value thereof.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines³ from the preponderance of the evidence the value of the subject property as of January 1, 2000 to be:

Parcel 101-26-028	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$9,206,700	\$3,222,350
BLDG	\$8,164,440	\$2,857,550
TOTAL	\$17,371,140	\$6,079,900
 Parcel 101-26-051	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,375,620	\$481,470
BLDG	\$2,342,260	\$819,790
TOTAL	\$3,717,880	\$1,301,260
 Parcel 101-26-052	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$208,650	\$73,030
BLDG	\$0	\$0
TOTAL	\$208,650	\$73,030
 Parcel 101-26-054	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$664,500	\$232,570
BLDG	\$0	\$0
TOTAL	\$664,500	\$232,570
 Parcel 101-26-061	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$152,140	\$53,250
BLDG	\$35,690	\$12,490
TOTAL	\$187,830	\$65,740
 GRAND TOTAL	\$22,150,000	\$7,752,500

³ In its notice of appeal before this board the BOE allocated the sale price across the five parcels that constitute the subject property before us today. Although we have accepted the sale price offered by the BOE as a reliable indicator of value, the BOE has not explained its methodology in its allocation presented to this board. In ordering the auditor to change the values attributed to the subject property, we have allocated the sale price to the five parcels in the same percentages (rounding the true and assessed values to the nearest tenth) that the auditor's original values assigned to the individual parcels compared to the total valuation of the subject.

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

ohiosearchkeybta