

OHIO BOARD OF TAX APPEALS

Lakota Local School District)	
Board of Education,)	
)	
Appellant,)	CASE NO. 2003-G-1835
)	
vs.)	(REAL PROPERTY TAX)
)	
Butler County Board of Revision,)	
Butler County Auditor, and)	DECISION AND ORDER
Fox 75, LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Ennis, Roberts & Fischer C. Bronston McCord, III 121 West Ninth Street Cincinnati, Ohio 45202
For the County Appellees	-	Robin N. Piper Butler County Prosecuting Attorney Dan Ferguson Assistant Prosecuting Attorney 315 High Street, 11 th Floor Hamilton, Ohio 45012
For the Appellee Fox 75, LLC	-	Griffin-Fletcher LP Richard D. Herndon 3500 Red Bank Road Cincinnati, Ohio 45227

Entered March 18, 2005

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

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed herein by counsel for the above-named appellant from a decision of the Butler County Board of Revision, wherein said board determined the taxable

value of the subject real property for tax year 2002.

The subject property is located in the Liberty Township taxing district of Butler County, Ohio, and appears on the auditor's records as Parcel No. D2010-013-000-021.

The Butler County Auditor and the Butler County Board of Revision ("BOR") found the true and taxable values of the subject property for tax year 2002 to be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$852,650	\$298,430
Building	<u>\$ 99,460</u>	<u>\$ 34,810</u>
Total	\$952,110	\$333,240

Appellant disagrees with the above-stated values and contends in its notice of appeal that the total correct values should be as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$2,909,380	\$1,018,283
Building	<u>\$ 99,460</u>	<u>\$ 34,811</u>
Total	\$3,008,840	\$1,053,094

This matter is now considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the briefs of counsel.

At the outset, we acknowledge the affirmative burdens which exist in an

appeal to this board from a decision of a county board of revision finding value. In its decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, the Supreme Court of Ohio made it clear that in an appeal filed pursuant to R.C. 5717.01, there exists no presumption that the values found by a board of revision are correct. Nevertheless, an appellant has the burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319. While this board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, de novo determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***. [I]f 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.” (Emphasis added.)

In State ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175

Ohio St. 410, the Supreme Court of Ohio addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In Re Estate of Sears [(1961)], 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” Id. at 412.
(Emphasis added.)

The parties agree that the sale of the property on September 24, 2002 was an arm’s-length transaction. The parties further agree that the purchase price of \$3,008,900 accurately reflects the fair market value of the property. The issue before this board is whether the sale price should apply to tax year 2002 or be applied to the property beginning with tax year 2003. The BOE contends that the sale price represents the value of the property as of January 1, 2002. The property owner, Fox

75, LLC (“Fox”), contends that the valuation of the property by the county auditor that was retained by the BOR accurately reflects the value as of January 1, 2002, and the sale price should apply to January 1, 2003. The BOR decided to retain the auditor’s value for tax year 2002 and flagged the property to reflect the sale for tax year 2003.

The facts germane to our decision are not in dispute. On December 5, 2001, a purchase agreement was entered into for the subject property. The purchase price set forth in the agreement was \$45,000 per acre, which equates to a rounded figure of \$3,008,900. The purchase agreement contained certain contingencies to be satisfied before the closing. Three of the contingencies are at issue in this case. The first contingency required the appellant to obtain the necessary zoning changes, variances, permits, and permission to construct an industrial and business park. The second contingency required the appellant to insure that all necessary utility lines and related facilities were sufficient for the park. Last, the appellant was required to determine that access to the property would be adequate for the park, since the construction of the public road depended on the appellant’s ability to create a tax increment financing district to fund the construction, and obtain all necessary agreements and approvals from the appropriate governmental authorities. If any of the above-stated contingencies could not be met, the appellant had the right to terminate the agreement. The contingencies were met and they closed on the property on September 24, 2002.

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. 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. In doing so, we will determine the proper 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 the present case, the parties agree that the sale which took place on September 24, 2002 was arm's length and represented the true value of the property. Further, neither party has asserted that the sale was too remote. However, the Supreme Court of Ohio has held that there exists a rebuttable presumption that a recent, arm's-length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1968), 23 Ohio St.3d 59, 61. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4.

There is ample case law addressing the evidentiary value of factors, such as a sale, that have occurred before or after the tax lien date. In *Youngstown Sheet & Tube Co. v. Bd. of Revision* (1981), 66 Ohio St.2d 398, the Supreme Court of Ohio stated as follows in its syllabus at paragraph two:

“The Board of Tax Appeals may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.”

See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575; *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339,345-346; *Licking Hts. Bd. of Edn. v. Licking Cty. Bd. of Revision* (Apr. 5, 1996), BTA No. 1995-K-875, unreported.

Fox argues that since the land was used for agricultural purposes on

January 1, 2002, and the purchase agreement was subject to contingencies, the correct value of the property should reflect only agricultural use. We disagree. When Fox entered into the purchase agreement with the seller, it intended to construct an industrial and business park. The fact that contingencies had to be met in no way affected the purchase price. The contingencies only affected whether the sale would be concluded. Further, there has been no argument advanced that the sale date was too remote from the tax lien date. Therefore, we find Fox's argument to be without merit. Consequently, we find that the sale price is the best indication of the fair market value of the subject property as of January 1, 2002.

Giving consideration to the entire record in this matter, it is the decision and order of the Board of Tax Appeals that the total value of the subject property on January 1, 2002 was as follows:

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$2,909,380	\$1,018,283
Building	<u>\$ 99,460</u>	<u>\$ 34,811</u>
Total	\$3,008,840	\$1,053,094

It is ordered that the Auditor of Butler County shall list and assess the subject real property in conformity with this decision and order. It is further ordered that these values be carried forward in accordance with the law.

ohiosearchkeybta