

OHIO BOARD OF TAX APPEALS

Cleveland Municipal School)	
District Board of Education,)	
)	
Appellant,)	CASE NO. 2003-T-291
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision,)	DECISION AND ORDER
Cuyahoga County Auditor, and)	
Michael E. Fazio,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Britton, Smith, Peters & Kalail Co., L.P.A. David A. Rose Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-2152
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For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
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For M. Fazio -	Michael Fazio, pro se 1315 Russell Road Cleveland, Ohio 44103
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Entered March 18, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by the Cleveland Municipal School District Board of Education. Cleveland appeals from a decision of the Cuyahoga County Board of Revision, in

which the BOR found the true value of certain real property to be \$\$500,000 for tax year 2003. Cleveland claims that the correct true value should be \$92,000.

We consider this matter upon the notice of appeal, the transcript certified to this board by the county auditor, and the brief filed by Cleveland. An opportunity to present additional evidence at a hearing before this board was waived. In this regard, we remind the parties that our duty is to conduct a *de novo* review of the record and to “determine the value of the property.” R.C. 5717.03. Where the parties elect to present no additional evidence on appeal, our review is conducted pursuant to the principles set forth by the Ohio Supreme Court in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (1996), 76 Ohio St.3d 13:

“The parties herein apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. The situation faced by the BTA in this case is analogous to that faced by the common pleas court in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 16 OBR 363, 475 N.E.2d 1264. The court in *Black* had before it an appeal from a board of revision under R.C. 5717.05, the alternative appeal provision to R.C. 5717.01. The only evidence before the common pleas court was the statutory transcript from the board of revision. We stated in *Black* that the common pleas court was not required to hold an evidentiary hearing or a trial *de novo*, but that the common pleas court “has a duty on appeal to independently weigh and evaluate all 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 final determination is more than a mere rubber stamping of the board of revision’s determination.” *Id.* at 13-14, 16 OBR at 5 365, 475 N.E.2d at 1267. Our conclusion in *Black* was that R.C. 5717.05 ‘contemplates a *decision de novo*.’ (Emphasis *sic*.) *Id.* at 14, 16 OBR at

365, 475 N.E.2d at 1268.

“The duty of both the BTA and the common pleas court upon an appeal is to “determine the taxable value of the property.” See R.C. 5717.03 and 5717.05. 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.” Id. at 15.

The subject property is identified in the Cuyahoga County Auditor’s records as permanent parcel number 106-02-124 and is comprised of approximately .09 acres of unimproved land. The land is zoned for commercial use.¹

This matter came before the BOR pursuant to an increase complaint filed by Cleveland. In support of its contention of value, Cleveland asserted that the property had been the subject of an arm’s-length sale on March 30, 1999. In support, Cleveland introduced a copy of the conveyance fee statement and the general warranty deed related to the sale. Although notified, Mr. Fazio did not appear at the BOR hearing to offer evidence regarding the sale. Upon review, the BOR voted to retain the auditor’s original value of \$1,510. In reaching its decision, the BOR noted that it “after field check Bd. *** feels sale not arm’s length.” S.T. at Exhibit D. On appeal to this board, Cleveland argues that the BOR erred in not adopting the sale price as the value of the subject property.

We begin our review of this matter by noting that a party who asserts a

right to an increase or a 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 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 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. 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.

¹ The record is unclear as to whether there is an improvement to the land. Although the property record card lists a structure, a notation indicates that it was razed sometime prior to the tax lien date.

With regard to the sale now before us, it is long established 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, at the syllabus; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. R.C. 5713.03 further 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 tax lien date, the auditor shall consider the sale price of such tract, lot or parcel to be the true value for taxation purposes.”

Thus, where there is an actual sale of real property, which is both recent and arm’s length, the county auditor, as well as this board, must consider such a sale as the best evidence of the property’s true value. *Conalco* and *Park Investment*, supra.

While the sale may be the “best evidence” of value, however, it is not the only evidence. Consequently, the Ohio Supreme Court 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* (1986), 23 Ohio St.3d 59, 61. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4. In *Cincinnati*, supra, the court held that, by recognizing the rebuttable presumption that the sale price accurately reflects true value, a consequent presumption exists that the sale has met all the elements that characterize true value. As a result, the burden rests with the challenging party to rebut the presumption that the sale price reflects true value by submitting reliable evidence that either the sale was not arm’s length in

nature or, due to circumstances related to the sale, the price was not indicative of the true value of the subject as of tax lien date. Id. at 327.

Here, the property record card establishes that the property transferred on March 30, 1999 for \$92,000. We have previously held that evidence of a sale exhibited through a deed or conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. Here, although the BOR indicated that the sale may not have been arm's length in nature, there is nothing in the record that would support such a conclusion. A review of the documentation in the record discloses no association or condition that would impact the validity of the sale at issue. We must conclude, in the absence of evidence to the contrary, that the \$92,000 sale price provides the most reliable indication of value as of tax lien date.

Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2000:

Parcel 106-02-124	TRUE VALUE	TAXABLE VALUE
LAND	\$92,000	\$32,200
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$92,000	\$32,200

The Auditor of Cuyahoga 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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