

OHIO BOARD OF TAX APPEALS

Jewish Senior Housing of Akron,)
)
 Appellant,) (CASE NO. 2003-V-2089
) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Summit County Board of Revision,)
 Summit County Auditor, and the)
 Copley-Fairlawn City School District)
 Board of Education,) **Dismissed on Appeal Oct. 31, 2005**
) **Ohio Supreme Court**
)
 Appellees.)

APPEARANCES:

- For the Appellant Property Owner - Siegel, Siegel, Johnson & Jennings, Co., LPA
Jay P. Siegel
25700 Science Park Drive
Suite 210
Cleveland, OH 44122

- For the County Appellees - Sherri Bevan Walsh
Summit County Prosecuting Attorney
Christopher C. Ross
Assistant Prosecuting Attorney
53 University Avenue
Akron, OH 44308-1680

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

Entered June 17, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Jewish Senior Housing of Akron (“JSH”) from the final

determination of the Summit County Board of Revision (“BOR”). The BOR determined the taxable value of the subject property owned by JSH for tax year 2002.

The subject real property is a 2.3-acre lot, improved with a seven-story, 101-unit apartment building constructed in 1981. The subject property is located in the Akron City, Copley-Fairlawn Schools taxing district, Summit County, Ohio, and appears on the Summit County Auditor’s (“auditor”) records as permanent parcel number 69-00148.

The values of the subject, as originally determined by the auditor for tax year 2002, are as follows:

69-00148	TRUE VALUE	TAXABLE VALUE
LAND	\$ 168,300	\$ 58,910
BUILDING	<u>\$3,149,310</u>	<u>\$1,255,890</u>
TOTAL	\$3,317,610	\$1,314,800

The Copley-Fairlawn City School District Board of Education (“BOE”) filed a complaint against the valuation of the subject parcel for tax year 2002 with the BOR, requesting the subject’s true value be increased to \$3,756,570, based on the sale of the property on February 1, 2002. Statutory transcript, (“S.T.”), Ex. 1. After conducting a hearing, the BOR increased the value of the subject to the sale price of \$3,756,570. S.T. at 10.

In its notice of appeal JSH maintains that the BOR erred in accepting the subject property’s 2002 sale price as the best evidence of value and contends that the subject property values should be returned to the values originally determined by the auditor.

This matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the BOR. The parties have elected to waive their opportunity to present evidence at hearing before this board and submitted legal memorandums arguing their respective positions.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

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 that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 1997-Ohio-212. 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 the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Because the evidence before us is limited to the record contained in the statutory transcript from the BOR, 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*, 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.”).

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule *according to value* ***.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “true value”:

“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 tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes.”

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court 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.

See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

Before the BOR, counsel for JHS presented the testimony and analysis of Ms. Ann Rutledge, who is a state-certified general real estate appraiser. Ms. Rutledge testified that the subject property realizes a monthly rental rate of \$720 for each of its 101 units and that said rental rate are subsidized by HUD. S.T., BOR audio-tape. Ms. Rutledge further testified that said rates were in effect at the time of the sale. Id.

Ms. Rutledge prepared a market rent study of comparable apartment complexes in an effort to evaluate whether the subject's subsidized rental rate was representative of the market at the time of sale. Ms. Rutledge's report provides six comparable apartment properties, which utilized rental rates ranging from \$495 to \$617 per month. After making adjustments to the comparable rents for neighborhood, parking, utilities, and amenities, Ms. Rutledge concluded that the subject's market rental rate would be \$585 per month. S.T. at 9. Ms. Rutledge acknowledges that she has not arrived at an opinion of value for the subject property, and that she had not investigated the terms or conditions of sale on February 1, 2002. S.T., BOR audio-tape.

As was the case before the BOR, JSH argues that the evidence concerning the HUD-subsidized monthly rent coupled with Ms. Rutledge's market rental analysis defeats any presumption that the sale of the subject was at arm's length. The BOE counters that no individual connected to the property has testified as to the February 1, 2002 sale, or to confirm that the property was in fact being subsidized by HUD.

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. See, also, *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, 21 at fn. 5 (quoting R.C. 5713.04 which states that "[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value."); *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687 (addressing a sale of property between corporations owned by the same shareholder and a sale which results from the settlement of a lawsuit); *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455 (in context of a congregate care facility, court rejected a rather complicated sheriff's sale as a means by which to determine a property's value).

It is only when evidence exists which calls into question the validity of a sale that the party placing reliance thereon to support its contention of value must show that the sale was made at arm's length. *Tanson Holdings, supra*; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 3, 1997), BTA Nos. 1995-T-275, 276, unreported.

There is simply no competent and probative evidence in the record before us to conclude that the subject property was in fact sold subject to any federally subsidized program. Presumably, if this was indeed the case, as suggested by counsel's claim that there was a contract, the best evidence would be through the actual written documentation.

Furthermore, JSH has refrained from providing any testimony of a fact witness who was involved in the transaction to explain (assuming the property was sold subject to the federally subsidized program) how the alleged subsidy affected the terms and conditions of sale. We find that JSH has failed to sufficiently "call into question" the arm's-length nature of the sale. *Tanson Holdings, supra; Bedford Bd. of Edn., supra.*

By presenting the deed and conveyance fee statement before the BOR, the BOE initially met its burden. S.T. at 1. In the absence of such documentary proof that the property was being subsidized, the sale constitutes the best evidence of value because JSH failed to rebut the presumption to be accorded the sale. *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

It is this board's statutory duty to find taxable value herein. R.C. 5717.03. As such, we must determine the market value of the subject property based on the record before us. Based upon the foregoing, we find and determine the true and taxable values of the subject real property as of January 1, 2002 to be:

69-00148	TRUE VALUE	TAXABLE VALUE
LAND	\$ 168,300	\$ 58,910
BUILDING	<u>\$3,588,260</u>	<u>\$1,255,890</u>
TOTAL	\$3,756,560	\$1,314,800

It is the decision and order of the Board of Tax Appeals that the Summit County Auditor shall list and assess the subject property in conformity with this decision and carry the same values forward in accordance with applicable law.

ohiosearchkeybta