

OHIO BOARD OF TAX APPEALS

South Euclid-Lyndhurst City School District Board of Education,)	CASE NO. 2004-K-850
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Cuyahoga County Board of Revision, Cuyahoga County Auditor, and Warner Real Estate, LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant		- Britton, Smith, Peters & Kalail Co., LPA David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-2152
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
For the Appellee Property Owner		- No Appearance Warner Real Estate LLC Charles and Marjorie Warner 5900 Sawmill Road Dublin, Ohio 43017

Entered September 9, 2005

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

On September 10, 2004, appellant, South Euclid-Lyndhurst City School District Board of Education, filed an appeal with this board challenging a decision of the Cuyahoga County Board of Revision (“BOR”), wherein the BOR determined the value of the subject real property for tax year 2003. The property in issue, which is located in the South Euclid-

Lyndhurst taxing district, is identified in the records of the Cuyahoga County Auditor (“auditor”) as parcel number 702-05-020. The only description of the property appears on appellant’s complaint and the BOR’s hearing work papers in which its use is indicated to be “commercial” and “retail.”

The values of the subject property as originally determined by the auditor for tax year 2003 were as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$221,500	Land	\$ 77,500
Building	\$753,500	Building	\$236,700
Total	\$975,000	Total	\$314,200

Following its consideration of appellant’s complaint, the BOR retained the auditor’s original values for tax year 2003. However, it increased the subject’s total true and taxable values to \$1,327,200 and \$464,500, respectively, for the two subsequent tax years, i.e., 2004 and 2005. It is from the BOR’s decision to leave unchanged the subject’s 2003 values that appellant has now appealed to this board.

The property owner has not entered an appearance or otherwise sought to participate in these proceedings before either the BOR or this board. Appellant expressly waived hearing in this appeal, electing instead to file written argument. Neither the property owner nor the county appellees presented additional evidence nor filed argument in this appeal. Therefore, this matter is considered by this board based upon appellant’s notice of appeal, the statutory transcript certified by the BOR, and the written argument submitted on behalf of appellant.

In considering appellant’s appeal, we first note the standards by which our review is to be conducted. As has been pointed out by the Supreme Court, “[w]hile a determination of

the true value of real property by a board of revision is entitled to consideration by the BTA, such determination is not presumptively valid.” *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 572, 574. See, also, *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495; *Cambridge Arms, Ltd. v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 337, 338. Nevertheless, it is incumbent upon an appellant challenging the decision of a board of revision to support its claim. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566.

Where parties elect to waive hearing on appeal, as in the present matter, it is particularly important for this board to independently review the record developed before the county board of revision. In *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, the court held:

“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 ***. 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 ***. Our conclusion in *Black* was that R.C. 5717.05 ‘contemplates a *decision de novo*.’ (Emphasis *sic.*) *Id.* at 14 ***.

“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. (Parallel citations omitted.)

A review of the record reveals that the instant proceedings were initiated by appellant through the filing of a complaint in which it asserted that the taxable value of the subject property should be increased commensurate with a sale occurring approximately eleven months after tax lien date. In support of its contention, appellant submitted a copy of a real property conveyance fee statement indicating that the subject property was transferred on October 21, 2003 from WXZ/Mayfield, LLC to Warner Real Estate, LLC for \$1,327,235.

R.C. 5713.03 imposes certain requirements upon county auditors, including the following:

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

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm’s-length sale. See, e.g., *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62; *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *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; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Nothing within the existing record suggests that the sale of the subject property in October 2003 was other than arm's length. Although the BOR did not expressly make such a finding, given its decision to apply the sale price to subsequent tax years, it appears it reached a similar conclusion. We must therefore speculate, as we have had to do with seemingly increasing frequency, that the BOR's reluctance to apply the sale price to tax year 2003 was due solely to the fact that it occurred after the tax lien date in question.

As noted above, R.C. 5713.03 expressly provides that a sale of a property "either before or after the tax lien date," is to be considered its true value for taxation purposes. In fact, this board can take into consideration *any* event, whether a sale or not, occurring within a reasonable time before or after tax lien date which potentially impacts a property's value. See, e.g., *Youngstown Sheet & Tube v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, paragraph two of the syllabus ("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."); *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339, 345-346.

In a number of cases, the Ohio Supreme Court has determined that a post-tax lien date sale may provide the best indication of a property's value. See, e.g., *Pingue*, supra (value based upon sale occurring thirteen months after tax lien date); *Reynoldsburg Bd. of Edn.*, supra (value based upon sale occurring five months after tax lien date); *Zazworsky*, supra (value based upon sale occurring fifteen months after tax lien date); *W.S. Tyler Co. v. Lake Cty. Bd. of*

Revision (1990), 57 Ohio St.3d 47 (value based upon sale occurring eleven months after tax lien date); *Hilliard City School Dist. Bd. of Edn.*, supra (value based upon sale occurring twelve months after tax lien date).

Consistent with arguments advanced by both taxpayers and boards of education, this board has, on many prior occasions, found value consistent with a sale occurring subsequent to the tax lien date in issue. See, e.g., *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (May 13, 2005), BTA No. 2003-G-1041, unreported (value based upon sale occurring seventeen months after tax lien date); *Bd. of Edn. for the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Mar. 18, 2005), BTA No. 2004-A-562, unreported (value based upon sale occurring fifteen months after tax lien date); *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 7, 2000), BTA No. 1998-S-426, unreported (value based upon sale occurring nineteen months after tax lien date); *Columbus City Bd. of Education v. Franklin Cty Bd. of Revision* (Oct. 18, 1996), BTA No. 1996-B-60, unreported (value based upon sale occurring seventeen months after tax lien date); *Society Natl. Bank v. Wood Cty. Bd. of Revision* (June 21, 1996), BTA No. 1994-R-628, unreported (value based upon sale occurring nineteen months after tax lien date); *Westerville City Schools v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported (value based upon sale occurring thirty-three months after tax lien date); *Equity Strongsville II v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported (value based upon sale occurring twenty-one months after tax lien date); *Cipriani Property Co. v. Cuyahoga Cty. Bd. of Revision* (June 30, 1995), BTA No. 1994-S-833, unreported (value based upon sale occurring eighteen months after tax lien date); *Columbus Bd.*

of Edn. v. Franklin Cty. Bd. of Revision (Apr. 10, 1992), BTA No. 1990-F-1151, unreported (value based upon sale occurring seven months after tax lien date); *Balombin v. Franklin Cty. Bd. of Revision* (Sept. 27, 1991), BTA No. 1990-F-1486, unreported (value based upon sale occurring twelve months after tax lien date); *Bd. of Edn. of Dublin Local Schools v. Delaware Cty. Bd. of Revision* (Oct. 13, 1987), BTA No. 1986-C-543, unreported (value based upon sale occurring twelve months after tax lien date).

The preceding decisions demonstrate a sale occurring after a tax lien date is not, per se, an unreliable indication of its value for that moment in time. As this board commented more than two decades ago in *U.S. Postal Serv. v. Lorain Cty. Bd. of Revision* (Mar. 29, 1985), BTA Nos. 1982-B-501, et al., unreported, at 10, “[i]n our opinion the time interval, in and of itself, is of little consequence. It is the effect of the interval that is important. What happened between the sale of the subject property and the tax lien date that would alter the fair market value?”¹ This board’s long-standing view is consistent with that expressed by the Supreme

¹ The board’s decision in *U.S. Postal Serv.*, which relied upon a sale occurring forty months prior to tax lien date, is not without limits. As indicated by the Eleventh District Court of Appeals’ decision in *Koskinen v. Ashtabula Cty. Bd. of Revision* (Mar. 31, 1993), Ashtabula App. No. 92-A-1707, unreported, where there exists evidence of changing market conditions, the length of time a sale may be considered a valid indicator of value can be reduced:

“Almost four years passed between the time of sale and the tax lien date. While this alone does not require a conclusion that the transaction did not occur within a reasonable length of time, obviously, as the span of time between the arm’s length sale and the tax lien date increases, the likelihood that the auditor is not bound by the sale price is similarly increased. As previously stated, almost four years passed between the sale date and the tax lien date. Furthermore, there was testimony that the surrounding area was developing. Specifically, higher priced homes in the range of \$250,000 to \$350,000 were under construction. Accordingly, due to the span of time coupled with the change in the surrounding neighborhood, and the market value analysis conducted, *infra* at 5, the county was not bound by the 1986 sale price.”

See, also, *Streetsboro City School District Board of Education v. Portage Cty. Bd. of Revision* (June 30, 2005), BTA No. 2004-K-601, unreported (rejecting post-tax lien date sale as evidence of value where the property had been improved between the tax lien date and the date of sale).

Court in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d

36. Involving a sale occurring more than two years prior to the tax lien date, the court again emphasized the impact market conditions have upon the length of time a sale may provide a reliable indication of value:

“The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case. R.C. 5713.03 provides that if there has been ‘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.’ *** One of the factors that must be considered in determining what is ‘a reasonable length of time’ is a consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or changing very slowly.” *Id.* at 44.

See, also, *Cuturic v. Cuyahoga Cty. Bd. of Revision* (July 16, 1993), BTA No. 1992-R-329, unreported.²

More recently, in *South Euclid-Lyndhurst City School Dist. Bd. of Edn.*, *supra*, we stated:

² In *Cuturic*, the board commented as follows:

“Webster’s New World Dictionary, 3rd Ed. (1961), defines ‘recent’ as ‘of or belonging to a period of time relatively near; not remote.’ The key word in the foregoing definition seems to be ‘relatively,’ since our consideration of a number of cases wherein arm’s length sales are examined for real property valuation purposes, establishes that the term ‘recent’ is viewed as *relative*. Thus, a time which might be considered recent under one state of facts might not be so regarded under another or different factual situation. That is, whether a sale is ‘recent’ for real estate tax valuation purposes depends on the surrounding circumstances in each case and not upon some arbitrary or absolute notion about what constitutes a recent sale when valuing real property.” *Id.* at 7.

“In the present case we observe that while a 17-month interval between an arm’s-length sale and a tax lien date is not insignificant when valuing property for tax purposes, it is clear from the foregoing that some evidence must be provided that during the intervening period, certain circumstances impacted the property supporting a value different from that reflected by the sale.

“No evidence of a material event or changing market conditions tending to affect the subject property between the sale and the tax lien date has been submitted.

“The property owners[’] argument that, as a matter of law, the 17-month interval is ‘too remote’ is not supported by existing authority.” *Id.* at 9.

To the extent it is believed that post-tax lien date factors, for that reason alone, should be excluded from consideration in determining a property’s value, it would appear such departure from the preceding authority must emanate from legislative action. In this case, we have no evidence of varying market conditions, or any other factors, which would call into question the reliability of the October 2003 sale of the subject property in determining its taxable value.

Accordingly, it is the decision of the Board of Tax Appeals that the best evidence of the subject property’s value as of tax lien date is the aforementioned sale. This board therefore finds the true and taxable values of the subject property, as of January 1, 2003, to be as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 221,500	Land	\$ 77,500
Building	<u>\$1,105,740</u>	Building	<u>\$387,010³</u>

³ Values have been rounded to the nearest \$10 as permitted by R.C. 5715.26(A)(1). See, e.g., *Consolidation Coal Co. v. Noble Cty. Bd. of Revision* (June 30, 1988), BTA Nos. 1985-D-291, et al., unreported; *Litteral v.*

Total \$1,327,240

Total \$464,500

Further, it is the order of this board that the Cuyahoga County Auditor list and assess the subject property in conformity with our decision as announced herein.

ohiosearchkeybta

Footnote contd. _____
Montgomery Cty. Bd. of Revision (June 11, 2004), BTA No. 2003-J-2057, unreported; *Walker v. Montgomery Cty. Bd. of Revision* (July 16, 2004), BTA No. 2003-J-1641, unreported.