

OHIO BOARD OF TAX APPEALS

Board of Education for the Berea)	
City School District,)	
)	CASE NO. 2004-A-562
Appellant,)	
)	
)	(REAL PROPERTY TAX)
vs.)	
)	
)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and)	
Colombo Enterprises, Inc.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Kadish, Hinkel & Weibel
Kevin M. Hinkel
Rita M. Jarrett
1717 East Ninth Street, Suite 2112
Cleveland, Ohio 44114

For the County
Appellees -William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy J. Kollin
Assistant Prosecuting Attorney
Courts Tower, Ninth Floor
1200 Ontario Street
Cleveland, Ohio 44113

For the Appellee
Property Owner -NO APPEARANCE
Colombo Enterprises, Inc.
11018 Edgewater Drive
Cleveland, Ohio 44102

Entered March 18, 2005

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 above-named appellant from a decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2003.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the county board of revision. By letter, counsel to the board of education waived the BOE's appearance at a hearing and also indicated that a representative of the property owner had confirmed with her that the property owner also wished to waive its appearance. It was also requested in such letter that a decision be issued by this board based upon the existing record. The county appellees made no appearance herein.

The subject property is located in the Berea taxing district and is identified on the auditor's records as parcel number 361-10-006. The value of the parcel, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$235,000	\$ 82,200
Building	624,100	218,400
Total	\$859,100	\$ 300,600

In its notice of appeal, the appellant board of education has alleged that the correct value for the subject parcel is \$900,000 based upon a sale of the subject on March 19, 2004. In March 2004, relying upon the sale price obtained, the board of education filed a complaint against the valuation of real property with the Cuyahoga

County Board of Revision seeking an increase in the subject's value. The board of revision ultimately declined to change the values assigned by the auditor.

We begin our review of this matter 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 the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 37 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 which 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. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Because no party appeared before this board to offer any evidence or testimony regarding the subject, it is necessary to review the record established before the board of revision 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.").

As we review the statutory transcript certified to this board by the board of revision, we note that counsel appeared on behalf of the complainant board of education but no one appeared on behalf of the property owner. The BOE offered a copy of a limited warranty deed transferring the subject property on March 19, 2004 to Colombo Enterprises, Inc. into evidence. Included on the deed is information from the county auditor indicating the subject property was transferred on March 19, 2004, for \$900,000. Counsel for the board of education contends that this sale constitutes a valid, recent, arm's-length sale, and, as such, the transfer price should be considered the best evidence of the value of the subject property as of January 1, 2003. We agree.

R.C. 5713.03 provides, in pertinent part, that:

"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 *** to be the true value for taxation purposes."

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. *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Since the board of education has submitted competent evidence of the recent¹ sale, the burden shifts to the opposing parties to submit evidence that the sale was not arm's length. No competent or probative evidence rebutting the presumption that the sale price is the best evidence of value is contained within the record. Accordingly, this board finds that the best evidence of value of the subject property is its \$900,000 sale price paid on March 19, 2004.

Therefore, based upon the record before this board, the value² of the subject parcel as of January 1, 2003, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$243,000	\$ 85,050
Building	657,000	229,950
Total	\$ 900,000	\$ 315,000

The Auditor of Cuyahoga County is hereby ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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¹ We find the evidence of the sale of the subject 14 ½ months after tax lien date is sufficiently recent for tax valuation purposes. See R.C. 5713.03; *Equity Strongsville II. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Bd. of Edn. for the Orange City School District v. Cuyahoga Cty. Bd. of Revision* (May 17, 2002), BTA Nos. 2000-R-880, et seq., unreported; *Bowman v. Franklin Cty. Bd. of Revision* (March 6, 1998), BTA No. 1996-A-470, unreported.

² The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject's initial valuation.

