

OHIO BOARD OF TAX APPEALS

Streetsboro City School District Board)
of Education,)
)
Appellant,)
)
vs.)
)
Portage County Board of Revision,)
Portage County Auditor and Park View)
Federal Savings Bank,)
)
Appellees.)

CASE NO. 2004-K-601

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant - Britton, Smith, Peters & Kalail Co., LPA
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Cleveland, Ohio 44131-2152

For the County Appellees - Victor V. Vigluicci
Portage County Prosecuting Attorney
Theresa M. Scahill
Assistant Prosecuting Attorney
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For the Appellee Property Owner - No Appearance
Park View Federal Savings Bank
30000 Aurora Road
Solon, Ohio 44139

Entered June 30, 2005

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

On July 13, 2004, appellant, Streetsboro City School District Board of Education, filed an appeal with this board challenging a decision of the Portage 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 Streetsboro City/Streetsboro City Schools taxing district, is identified in the records of the Portage

County Auditor (“auditor”) as parcel numbers 35-045-00-00-007-006 and 35-045-00-00-042-003.

The values of the subject property as originally determined by the auditor, and subsequently retained by the BOR, for the tax year in question are as follows:

Parcel No. 35-045-00-00-007-006

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$98,300	Land	\$34,410
Building	\$ -0-	Building	\$ -0-
Total	\$98,300	Total	\$34,410

Parcel No. 35-045-00-00-042-003

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$126,300	Land	\$44,210
Building	\$ -0-	Building	\$ -0-
Total	\$126,300	Total	\$44,210

Due to the BOR’s decision to leave the auditor’s values unchanged, appellant filed the present appeal. The property owner has not entered an appearance or otherwise sought to participate in these proceedings. Although the parties were accorded an opportunity to present additional evidence before this board, they waived hearing, electing instead to file briefs. 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 arguments submitted on behalf of appellant and the county appellees.

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. As the court held in *Columbus City School Dist. Bd. of Edn.*
v. Franklin Cty. Bd. of Revision (2001), 90 Ohio St.3d 564:

“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325, 328, ***. The appellant before the BTA must present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, ***.” *Id.* at 566. (Parallel citations omitted.)

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 by the parties 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 twelve months after tax lien date. In support of its contention, appellant submitted a copy of a real property conveyance fee statement indicating that the property was transferred on January 28, 2004 from Kallstrom Taylor Partnership, LLC to Park View Federal Savings Bank for \$860,000.

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. However, the existence of a recent sale merely creates a rebuttable presumption in favor of it being considered reflective of value. If probative evidence exists which calls into question the reliability of the sale, "the presumption that sale price reflects true value disappear[s]," and the burden shifts back to the proponent of the sale to demonstrate that it should be relied upon. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Franklin App. No. 03AP-106, 2004-Ohio-586.

As reflected initially by the auditor's and BOR's value determinations, and consistent with the property records cards included within the statutory transcript, the subject property was unimproved as of the pertinent tax lien date, i.e., January 1, 2003.

However, the conveyance fee statement relied upon by appellant indicates that when the property transferred more than twelve months later, it had been improved with a building.

At the hearing before the BOR, appellant's counsel was asked about this apparent discrepancy:

"Barrett I just have one question, is the school board under the impression that this sale in 2004, was it a vacant land sale or did it involve an improvement?

"Rose Let me see ... I know that the conveyance fee statement indicates that it comprised

"***

"Warner On number 5 of the conveyance fee it says are there buildings on this land and it says yes.

"Barrett We had a 2002 transaction on these two parcels for approximately \$225,000 and we picked up new construction for January of 2004, during 2003, there's a bank building under construction for 2004. I think it was in the neighborhood of 90% complete. So we have a different value for January of 2004 with that building on there. It will approach the sale price, it may not be quite to the sale price, but it will approach that.

"Rose Board, I can't answer that for sure ...

"Barrett According to the conveyance, that transaction in 2004 included a building, so we're assuming it's the new building that was built during 2003[.]

"Rose I think that is probably fair to assume[.]

"Barrett So, for tax year 2003, though, for the county purposes for tax year 2003, there is no building on the property. We pick them up once a year at the beginning of each year, so for 2004 that building will go on to the record. Prior to that, I

think the land value is almost exactly at the previously 2002 sale for land only, which was \$225,000.

“Rose I can’t say for sure that that building was there as of 1-1-03, so, just leave it to the Board’s discretion to determine what the value should be.” S.T. at Ex. D.

In *Wal-Mart Stores, Inc. v. Medina Cty. Bd. of Revision* (Nov. 9, 1995), BTA No. 1994-T-660, unreported, this board addressed a similar situation, finding a sale to be an unreliable indicator of value where the property had been improved between the tax lien date and the date of sale:

“Upon review of the record, we find the sales price is not reflective of the subject property’s true value as of tax lien date. The subject property was vacant at the time of its purchase. By tax lien date, however, the subject had been improved with a multi-million dollar building. R.C. 5713.03 states that a recent arm's length sale cannot be considered the true value of a parcel of real property where an improvement has been added to the property. In short, we simply cannot overlook the fact that the condition of the subject property on January 1, 1993, is significantly different than its condition at the time of the sale in question. Consequently, we find that the June 1, 1992, sale is not a reliable indication of land value. See *Groveport-Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 29, 1990), B.T.A. Case No. 88-F-653, unreported (holding that the sale of the property in question was not indicative of value due to the fact that it was subsequently improved). See, also, *Cuyahoga Falls Downtown Development Corp. v. Summit Cty. Bd. of Revision* (Mar. 10, 1995), B.T.A. Case No. 93-T-1015, unreported (Board of Tax Appeals may not accept sales price as best evidence of value where a parcel vacant at the time of sale has been subsequently improved).” Id. at 16.

See, also, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 1, 2002), BTA No. 1999-T-1378, unreported.

Although appellant asserts that the BOR “inexplicably” retained the auditor’s original value, the record explains and supports the BOR’s, as well as this board’s, rejection of the January 28, 2004 sale as a basis for determining the subject’s value as of January 1, 2003. Appellant was accorded an opportunity before both the BOR and this board to either “rehabilitate” the utility of the sale or, in the alternative, to present other evidence of value. It elected not to do so.

In the absence of competent and probative evidence indicating a more appropriate value, we find no basis upon which to alter the auditor’s and BOR’s value determination in this appeal. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49 (“Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision’s valuation, without the board of revision’s presenting any evidence.”)

Accordingly, it is the decision of the Board of Tax Appeals that the true and taxable values of the subject property, as of January 1, 2003, are as follows:

Parcel No. 35-045-00-00-007-006

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$98,300	Land	\$34,410
Building	<u>\$ -0-</u>	Building	<u>\$ -0-</u>
Total	\$98,300	Total	\$34,410

Parcel No. 35-045-00-00-042-003

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$126,300	Land	\$44,210
Building	<u>\$ -0-</u>	Building	<u>\$ -0-</u>
Total	\$126,300	Total	\$44,210

It is therefore the order of this board that the Portage County Auditor list and assess the subject property in conformity with our decision as announced herein.

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