

OHIO BOARD OF TAX APPEALS

Brooklyn City School District)	
Board of Education,)	
)	CASE NO. 2004-R-19
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and)	
Carrabbas Italian Grill, Inc.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Board of Education	- Britton, Smith, Peters & Kalail Co., LPA David A. Rose Summit One, Suite 540 4700 Rockside Road Cleveland, OH 44131
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Eighth Floor 1200 Ontario Street Cleveland, OH 44113
For the Appellee Property Owner	- No Appearance Carrabbas Italian Grill, Inc. 2202 North Shore Blvd., 5 th Floor Tampa, FL 33607

Entered April 22, 2005

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by the Brooklyn City School District Board of Education (“BOE”). The BOE appeals

from a decision of the Cuyahoga County Board of Revision (“BOR”), in which it determined the taxable value of the subject property for tax year 2002.

The Cuyahoga County Auditor and the BOR determined the true and taxable values of the subject property for 2002 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 460,600	\$ 161,210
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 460,600	\$ 161,210

The BOE disagrees, and in its notice of appeal contends that the true and taxable values of the subject property for 2002 should be increased to:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$1,105,580	\$ 386,960
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$1,105,580	\$ 386,960

The subject property consists of 3.320 acres of vacant land, located at 4904 Tiedeman Road, in Brooklyn, Cuyahoga County, Ohio, and referred to as Lot 2. It is identified on the county’s records as permanent parcel number 433-09-005.

The BOE filed a complaint, seeking an increase in value at the BOR. The property owner, Carrabbas Italian Grill, Inc. (“Carrabbas”), did not file a counter-complaint nor did it appear at hearing, present evidence, or in any way contest the sales price as the true value of the property. At the BOR hearing, the BOE presented a copy of a limited warranty deed that established a sale of the subject property as part of a larger parcel on December 21, 2001, from Keybank National Assn. to Tiedeman Development,

LLC for a sales price of \$2,103,000.¹ After considering the record, the BOR retained the value as determined by the auditor for 2002. It is from that decision that the BOE now appeals.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR (“S.T.”), and the record of the hearing before this board, including exhibits (“H.R.”). The BOE appeared at this hearing represented by counsel. Despite notice, the BOR and Carrabbas did not appear at the hearing before this board.

In an appeal from a board of revision valuation, this board must determine the true value of the subject property. R.C. 5717.03. Specifically, R.C. 5717.03 reads:

“In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of ***.”

While the action of a county board of revision is given a presumption that it was taken in good faith and reflects sound judgment, the decision of a county board of revision regarding the value of property is not to be accorded a presumption of correctness. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. The Board of Tax Appeals must make an independent de novo determination as to a property’s true value predicated upon the preponderance of the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122.

¹ Note that the board has an appeal before it involving a second parcel split off from this larger parcel. That parcel number is 433-09-008, and is known as Lot 1. See *Brooklyn City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2004-R-34, issued this same day.

A party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 335; *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. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must make a de novo review of the available record and then determine value based upon the evidence before it. *Coventry Towers, Inc.*, supra, and *Clark v. Glander* (1949), 151 Ohio St. 229; *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13. In so doing, we 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.

In the present appeal, the record establishes that there was a sale of the subject property as part of a larger parcel on December 21, 2001, only one month before the tax lien date, January 1, 2002. In addition, there is evidence in the record that the

subject parcel, once split off, was subsequently transferred from Tiedeman Development, LLC to the property owner Carrabbas on March 25, 2002 for \$825,000.

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. Further, R.C. 5713.03 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 the tax lien date, the auditor shall consider the sales 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 evidence of the property’s true value. *Conalco* and *Park Investment*, supra.

While a sale may be the “best evidence” of value, it is not the only evidence. Consequently, the Supreme Court of Ohio 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. Where the inference is raised that the sale price does not reflect true value, we must at least review and consider other probative evidence of the subject property’s true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, 4. The burden rests with the opposing party, the owner in this instance, to present evidence to rebut the presumption that the sale price reflects the property’s true value. *Cincinnati Bd. of Edn.*, supra, 327.

In the present matter, the BOE presented evidence at the BOR and before this board of a recent arm's-length sale of the subject property as part of a larger parcel for \$2,103,000, then subsequently as split off for \$825,000. Both sales were recent in time with regard to the tax lien date, January 1, 2002. Although sparse, there is nothing in the record to indicate that any of the parties contest that the sales were recent or arm's length.

Just as on appeal to this board from a BOR decision, a party challenging the value determined by the auditor at the BOR has the burden of establishing a different value by competent, reliable, and probative evidence. Once competent and probative evidence of true value has been presented by the complaining party, the other party has a corresponding burden of providing evidence to rebut the complainant's evidence. Carrabbas was afforded the opportunity to present further evidence of value to the BOR at hearing as well as to this board, which it chose not to do.

Therefore, based upon the foregoing, the board finds that there was a recent, arm's-length sale of the subject property. The board also finds that the March 25, 2002 sale for \$825,000 better represents the value of the subject property than the December 21, 2001 sale, in which the property was a part of a larger transaction. With regard to the December 21, 2001 sale, there is a lack of evidence in the existing record as to how the apportionment between the parcels was determined. In addition, there are additional parcels listed on the deed, which makes the December 21, 2001 sale suspect. Further, Carrabbas failed to present sufficient competent, probative, and reliable evidence to rebut the presumption that the March 25, 2002 sale price reflects the property's true value. *Cincinnati Bd. of Edn.*, supra, 327.

Therefore, taking the record as a whole, we find that the value of the subject property as of January 1, 2002, shall be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$825,000	\$288,750
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$825,000	\$288,750

Accordingly, the Cuyahoga County Auditor 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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