

## OHIO BOARD OF TAX APPEALS

South Euclid-Lyndhurst City School District Board of Education,	)	
	)	
Appellant,	)	CASE NO. 2004-T-849
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Cuyahoga County Board of Revision, Cuyahoga County Auditor, and Victoria S. Whitmore,	)	DECISION AND ORDER
	)	
Appellees.	)	

APPEARANCES:

For the Appellant -	Britton, Smith, Peters & Kalail Co., L.P.A. David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-2152
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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
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For Victoria - Whitmore	Victoria S. Whitmore, pro se 5162 Austin Lane Richmond Heights, Ohio 44143
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Entered April 8, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by the South Euclid-Lyndhurst City School District Board of Education. South Euclid-Lyndhurst appeals from a decision of the Cuyahoga County Board of

Revision, in which the BOR found the true value of certain real property to be \$332,600 for tax year 2003. South Euclid-Lyndhurst claims that the correct true value should be \$500,000.

We consider this matter upon the notice of appeal and the transcript certified to this board by the county auditor. South Euclid-Lyndhurst waived its opportunity to present additional evidence at a hearing before this board. The property owner, Victoria S. Whitmore, did not appear at the scheduled hearing. In this regard, we remind the parties that our duty is to conduct a de novo review of the record and to “determine the value of the property.” R.C. 5717.03. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (1996), 76 Ohio St.3d 13, at 15.

The subject property is identified in the Cuyahoga County Auditor’s records as permanent parcel numbers 703-30-028, 703-30-029, 703-30-035, and 703-30-036 and is comprised of approximately .657 acres of land. The land is improved with two connected buildings, totaling 9,494 square feet in size. The improvements are operated for commercial purposes.

This matter came before the BOR pursuant to an increase complaint filed by South Euclid-Lyndhurst. In support of its contention of value, South Euclid-Lyndhurst asserted that the property had been the subject of a \$500,000 arm’s-length sale on October 23, 2003. In support, South Euclid-Lyndhurst introduced a copy of the conveyance fee statement and the general warranty deed related to the sale. Although notified, Ms. Whitmore did not appear at the BOR hearing to offer evidence regarding the sale. Upon review, the BOR voted to retain the auditor’s original value

of \$332,600. On appeal to this board, South Euclid-Lyndhurst argues that the BOR erred in not adopting the sale price as the value of the subject property.<sup>1</sup>

We begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 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 that 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.

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 which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it.

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<sup>1</sup> The record indicates that the BOR did apply the sale price to the subject's 2004 and 2005 value. However, the BOR did not apply the sale for 2003. In reaching its determination, the BOR indicated in its hearing notes that the subject had no income for 2003 but did in 2004 and 2005. S.T. at Exhibit C. The BOR's actions concerning tax years 2004 and 2005 are not here in issue.

*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 to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

With regard to the sale now before us, 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. R.C. 5713.03 further 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 tax lien date, the auditor shall consider the sale 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 the best evidence of the property’s true value. *Conalco* and *Park Investment*, *supra*.

While the sale may be the “best evidence” of value, however, it is not the only evidence. Consequently, the Ohio Supreme Court 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. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4. In *Cincinnati*, *supra*, the court held that, by recognizing the rebuttable presumption

that the sale price accurately reflects true value, a consequent presumption exists that the sale has met all the elements that characterize true value. As a result, the burden rests with the challenging party to rebut the presumption that the sale price reflects true value by submitting reliable evidence that either the sale was not arm's length in nature or, due to circumstances related to the sale, the price was not indicative of the true value of the subject as of tax lien date. *Id.* at 327.

Here, the conveyance fee statement establishes that the property transferred on October 23, 2003 for \$500,000. Both the deed and the conveyance fee statement contain a certification from the county auditor indicating that the sale was arm's length. S.T. at Exhibit A. We have previously held that evidence of a sale exhibited through a deed or conveyance fee statement, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported. A review of the documentation in the record discloses no association or condition that would impact the validity of the sale at issue.

We must conclude, in the absence of evidence to the contrary, that the \$500,000 sale price provides the most reliable indication of value as of tax lien date. Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2003:

Parcel 703-30-028	TRUE VALUE	TAXABLE VALUE
LAND	\$44,100	\$15,440
BUILDINGS	<u>\$ 7,900</u>	<u>\$ 2,760</u>
TOTAL	\$52,000	\$18,200

Parcel 703-30-029	TRUE VALUE	TAXABLE VALUE
LAND	\$ 35,300	\$ 12,350
BUILDINGS	<u>\$360,900</u>	<u>\$126,320</u>
TOTAL	\$396,200	\$138,670

Parcel 703-30-035	TRUE VALUE	TAXABLE VALUE
LAND	\$25,800	\$ 9,030
BUILDINGS	<u>\$ 3,500</u>	<u>\$ 1,220</u>
TOTAL	\$29,300	\$10,250

Parcel 703-30-036	TRUE VALUE	TAXABLE VALUE
LAND	\$19,500	\$6,830
BUILDINGS	<u>\$ 3,000</u>	<u>\$1,050</u>
TOTAL	\$22,500	\$7,880

The Auditor of Cuyahoga County 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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