

OHIO BOARD OF TAX APPEALS

Perry Local School District )  
Board of Education, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Stark County Board of Revision, )  
Stark County Auditor, and )  
1515 Management Company Inc., )  
 )  
Appellees. )

CASE NO. 2004-V-885

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

- For the Appellant BOE - Means, Bichimer, Burkholder & Baker Co., LPA  
Robert M. Morrow  
2006 Kenny Road  
Columbus, OH 43221-3502
- For the Appellee Property Owner - (no appearance)  
1515 Management Company Inc.  
17556 Lake Estates Drive  
Boca Raton, FL 33496
- For the County Appellees - John D. Ferro, Jr.  
Stark County Prosecuting Attorney  
110 Central Plaza S.  
Suite 510, P.O. Box 20049  
Canton, OH 44701-0049

Entered August 12, 2005

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

This cause is considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Perry Local School District Board of Education (“BOE”) from the final determination of the Stark County Board of Revision (“BOR”). The BOR determined the taxable value of the subject property owned by appellee 1515 Management Company, Inc. (“1515”) for tax year 2003.

This matter was submitted to the Board of Tax Appeals upon the notice of appeal, the hearing conducted before this board (“H.R.”), and the statutory transcript (“S.T.”) certified to this board by the BOR. Although the BOE appeared at hearing before this board, neither the county appellees nor a representative of the property owner appeared.

The subject property is located in the Massillon City-Perry Local School District taxing district, Stark County, Ohio, and appears on the Stark County Auditor’s (“auditor”) records as permanent parcel number 07-01446. On January 1, 2003, the subject property was vacant land. S.T., Ex. B, F.

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

| 07-01446 | <b>TRUE VALUE</b> | <b>TAXABLE VALUE</b> |
|----------|-------------------|----------------------|
| LAND     | \$84,200          | \$29,470             |
| BUILDING | <u>\$ 0</u>       | <u>\$ 0</u>          |
| TOTAL    | \$84,200          | \$29,470             |

The BOE filed a complaint against the valuation of the subject property for tax year 2003 with the BOR, requesting the subject’s true value be increased to \$2,000,000, based on the sale of the property on April 30, 2003. S.T., Ex. A. After conducting a hearing, where the BOE presented evidence of said sale, the BOR elected not to accept the sale price as the best evidence of value for tax year 2003, and left the auditor’s original values unchanged. S.T., Ex. G.

In its notice of appeal the BOE maintains that the BOR erred in not accepting the subject property’s 2003 sales price as the best evidence of value for 2003.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1997-Ohio-498 and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 1994-Ohio-501, wherein the Supreme Court of Ohio held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

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 that it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 1997-Ohio-212. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *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 the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

At hearing before this board, the BOE rested on the record from below consisting of the certified copy of the deed and conveyance fee statement evidencing the April 2003 sale of the subject. Because the evidence before us is limited to the statutory transcript, it is particularly important for this board to review the existing record 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.”).

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to “value”:

“Land and improvements thereon shall be taxed by uniform rule *according to value* \*\*\*.” (Emphasis added.)

R.C. 5713.03 further mandates that each separate tract be valued according to its “true value”:

“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 \*\*\* to be the true value for taxation purposes.” (Emphasis added.)

*In State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175

Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in *In Re Estate of Sears* [(1961)], 172 Ohio St. 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” *Id.* at 412.

See, also, *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.

There is a rebuttable presumption that the sale price reflects true value. *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687. The Supreme Court has recognized that a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn.*, supra. We find that the deed and conveyance fee statement included in the record evidence a sale and such evidence is competent and probative evidence upon which a BOR may increase value. *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Cincinnati Bd. of Edn.*, supra.

While the sale price of a property is probative evidence of value, the inquiry is not at an end. In *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, the syllabus provides, “[a]lthough the sale price is the ‘best evidence’ of true value of real property for tax purposes, it is not the only evidence. A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value.” The Supreme Court then identified factors that it believed affected the reliability of the sale price as an indicator of value:

“This court has never adopted an absolutist interpretation of this statute. Our decisions and those of other jurisdictions with similar statutes have approved of considering factors that affect the use of the sale price of property as evidence of its true value. Such factors might include: mode of payment, sale-lease arrangements, abnormal economic conditions and the like.” *Id.* at 61.

Based upon the record before us, the 2003 sale presented to the BOR is uncontroverted. We can find no evidence that was presented before the BOR to suggest that the sale was anything but arm’s length. Similarly, we can find no

evidence within the record to suggest that the sale taking place only four months after tax lien date was too remote, or that market conditions had changed within the time frame between tax lien date and the sale date. See *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44 (“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.”).

It is this board’s statutory duty to find taxable value herein. R.C. 5717.03. As such, we must determine the market value of the subject property based on the record before us. Based upon the foregoing, we find that appellees have failed to offer sufficient, probative evidence to rebut the presumption that the sales price for the subject property is the best evidence of value.

Accordingly, we find and determine the true and taxable values of the subject real property as of January 1, 2003 to be:

|          | <b>TRUE VALUE</b> | <b>TAXABLE VALUE</b> |
|----------|-------------------|----------------------|
| 07-01446 |                   |                      |
| LAND     | \$2,000,000       | \$700,000            |
| BUILDING | \$ <u>0</u>       | \$ <u>0</u>          |
| TOTAL    | \$2,000,000       | \$700,000            |

It is the decision and order of the Board of Tax Appeals that the Stark County Auditor shall list and assess the subject property in conformity with this decision.

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