

OHIO BOARD OF TAX APPEALS

North Olmsted City School)	
District Board of Education,)	
)	CASE NO. 99-E-1360
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and)	DECISION AND ORDER
C & C Realty,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant –	Robert A. Brindza Taft, Stettinius & Hollister LLP 3500 BP Tower 200 Public Square Cleveland, Ohio 44144-2302
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Courts Tower, 9 th Floor 1200 Ontario Street Cleveland, Ohio 44113
For C & C Realty -	George Glavinis Jr. 1965 East 6 th Street, Suite 507 Cleveland, Ohio 44114

ENTERED: October 19, 2001

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed by the North Olmsted City School District Board of Education (“BOE”) from a decision of the Cuyahoga County Board of Revision (“BOR”) wherein the BOR determined the taxable value of the subject property for tax year 1997.

The subject property is located in the North Olmsted taxing district. The value of the property determined by the Cuyahoga County Auditor and BOR as of January 1, 1997 is as follows:

Parcel No. 232-10-022, et al. ¹	TRUE VALUE	TAXABLE VALUE
LAND	\$ 64,600	\$ 22,610
BUILDINGS	\$ <u>52,110</u>	\$ <u>18,240</u>
TOTAL	\$116,710	\$ 40,850

The subject property is located at the northeast corner of Dewey and Lorain Roads in North Olmsted, Ohio. Parcel No. 232-10-022 is improved with a one-story office building containing 1,917 square feet. The structure was built in 1951. (S.T. Ex. I). The remaining parcels are unimproved. (S.T. Ex. F).

In support of its contention that the above-referenced values should be increased, the BOE relies upon an October 30, 1997 sale of the subject property for \$250,000. The BOE submitted to the BOR and to this Board copies of the conveyance fee statement and the general warranty deed related to the sale. (S.T. Ex. G, H; Ex. A, B). The BOE asserts these documents meet its burden of persuasion as to the proper value of the subject property.

C & C Realty (“C & C”) does not deny that the subject property was purchased for \$250,000. However, C & C counters that the BOR correctly determined value and argues that the sale price does not represent the value of the property because C & C is unable to use the property for the purpose for which it was purchased. Specifically, C & C purchased the parcel to build an automobile dealership on the property. (S.T. Ex. F).

¹ Parcel Nos. 232-10-023, 232-10-024 and 232-10-063 are listed with parcel no. 232-10-022.

C & C was aware prior to the purchase that its intended usage required a change in zoning from residential to retail business. An application for the zoning change was submitted to the City of North Olmsted Planning Commission on November 21, 1997. The requested change in zoning was denied by the Planning Commission on December 9, 1997. (S.T. Ex. F).

An evidentiary hearing was held in this matter.² Accordingly, this matter is submitted to the Board upon the notice of appeal, the statutory transcript certified by the county auditor (S.T.), the record of this Board's hearing (R.), the exhibits presented by the BOE at the hearing and the briefs of counsel.

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 a 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. 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. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn., supra*.

Furthermore we note that the issue on appeal is the true value of the subject property. Accordingly, this Board will seek to examine the available record and to

² C & C waived appearance at the hearing. No appearance was made or brief filed on behalf of the county appellees.

determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, 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.

It is axiomatic that the best evidence of "true value in money" of real property is established by an actual, recent sale of the property in an arm's-length transaction. *Conalco v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 120; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. An arm's-length sale is comprised of three elements: 1) the sale is voluntary; 2) it generally takes place in an open market; and 3) the parties act in their own self interests. *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption that the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements that characterize true value. It is then the burden of the party who claims that the sale is other than arm's-length to overcome such a presumption. However, the burden of persuasion does not change, as it is still upon the appealing party to establish, through the presentation of competent and probative evidence, a different value than that which was found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov.

28, 1997), B.T.A. No. 96-S-93, unreported. Further, if evidence is introduced which indicates that the sale price is not reflective of true value, then a review of other evidence, such as independent appraisals based upon factors other than sale price, is appropriate. *Cincinnati Bd. of Edn., supra; Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59.

Applying this rationale to the instant matter, it is clear that the burden of persuasion is on the BOE, as appellant; that is, the BOE has the burden of providing competent and probative evidence that demonstrates its right to the value sought. In order to meet this burden, the BOE submitted copies of the conveyance fee statement and general warranty deed evidencing that C & C purchased the subject property in October 1997 for \$250,000. At this point, a rebuttable presumption arose that the sale price reflects the true value of the subject property; and, consequently, a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn., supra*. Once this presumption arises, the appellees are required to rebut the presumption by submitting evidence that the sale was either not an arm's-length transaction, or, due to other circumstances surrounding the sale, that the sale price is not indicative of the true value of the subject property as of the tax lien date.

C & C contends that the sale price does not reflect the true value because the purpose for which it acquired the property became an impossibility. For the reasons that follow, the Board finds that C & C's contention is without merit.

The Board has had occasion to consider similar sale cases in the past wherein the purchaser's desired purposes for the subject property were ultimately frustrated. In *Jentgen-Klein Co. v. Franklin Cty. Bd. of Revision* (Feb. 9, 1988), B.T.A. No. 86-F-932, unreported,

the property owner purchased land with the intention to immediately develop the property. *Id.* at 5. At the time of purchase, the property owner mistakenly believed that the property was zoned for limited industrial purposes. Later the property owner discovered that the land was in fact zoned agricultural. *Id.* Before this Board, the property owner asserted that this mistake destroyed the arm's-length nature of the sale. *Id.* at 6. The Board disagreed and held that the property owner's mistake did not affect the arm's-length nature of the sale. *Id.* at 9. The Board then found the sale price to be the most reliable evidence of value. *Id.* at 10. See, also, *Schottenstein Holding Co. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), B.T.A. No. 94-K-1260, unreported (Purchaser was aware of zoning restrictions at time of purchase; thus, inability to develop entire parcel as originally planned does not diminish the true value of the property.) and *Westlake Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (May 29, 1992), B.T.A. No. 90-J-1616, unreported (Purchaser was aware of questionable zoning at time of purchase. Subsequent restrictions on development did not affect the true value of the parcel.).

The Board has rejected the sale price as the best indication of value only in harsh cases where events subsequent to the purchase prevented the planned development of the property. In *Westlake City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 6, 1995), B.T.A. No. 94-A-309, 94-A-310, unreported, Kmart sought land for the purpose of constructing a "Super Kmart." *Id.* at 6. After locating the site, Kmart discussed its plans with city officials in Westlake and received their assurances that the property was properly zoned to allow its planned retail development. *Id.* at 7. Kmart also obtained a written opinion from a Cleveland law firm to the same effect. *Id.* Kmart proceeded to purchase the

land and sought approval of its development plan from the Westlake City Planning Commission. *Id.* The commission took no action on the application and in response to public objection subsequently enacted ordinances prohibiting the construction of a retail store of the size planned. *Id.* Since the post-purchase action by the city that prohibited construction of its project could not have been known or anticipated by Kmart, the Board rejected the sale price as probative of the true value of the property. *Id.* at 8.

Likewise, in *Reynoldsburg City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 16, 2000), B.T.A. No. 98-S-1424, unreported, an error in the deed that failed to include an appropriation affecting the property of which the purchaser was unaware prior to purchase prevented the purchaser from developing the property as previously planned. Again, because of the extreme facts of *Reynoldsburg*, the Board found the sale price was not probative of true value. *Id.* at 7-8.

The facts in the present case do not rise to the extreme level found in *Westlake or Reynoldsburg, supra*. Rather, at the time of the purchase C & C was fully aware of the current zoning of the property and that such zoning would not permit the development it had planned. The fact that C & C purchased the property in anticipation of a zoning change that ultimately did not materialize does not establish that the sale was other than arm's-length.

Consequently, it is the finding of the Board that the October 1997 sale of the subject property was actual, recent, and consummated at arms-length within the meaning of the applicable law. Therefore, after considering the entire record, we conclude that the sale price represents the most reliable evidence of the true value of the parcel as of January 1, 1997.

Accordingly, it is the decision of the Board of Tax Appeals, based upon a preponderance of the evidence, that the true and taxable values of the subject property should be as follows for tax year 1997:

Parcel No. 232-10-022, et al. ³	TRUE VALUE	TAXABLE VALUE
LAND	\$ 64,600	\$ 22,610
BUILDINGS	<u>\$185,400</u>	<u>\$ 64,890</u>
TOTAL	\$250,000	\$ 87,500

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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³ Parcel Nos. 232-10-023, 232-10-024 and 232-10-063 are listed with parcel no. 232-10-022.