

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant on October 5, 1999, from a decision, dated September 8, 1999, of the Cuyahoga County Board of Revision (“BOR”), appellee.

The subject property is located in the Bedford taxing district of Cuyahoga County, Ohio, and further identified as Parcel No. 811-05-015.

The Cuyahoga County Auditor found the true and taxable values of the subject property for tax year 1997 to be as follows:

Parcel No. 811-05-015

	True Value	Taxable Value
Land	\$1,040,000	\$ 364,000
Building	\$7,810,000	\$ 2,733,500
Total	\$8,850,000	\$ 3,097,500

Upon consideration of the complaint filed by the appellee, ARV Assisted Living, Inc. (“ARV”), the BOR reduced the value of the subject property as follows:

Parcel No. 811-05-015

	True Value	Taxable Value
Land	\$1,040,000	\$ 364,000
Building	\$5,060,000	\$ 1,771,000
Total	\$6,100,000	\$ 2,135,000

Through its notice of appeal, the appellant, Bedford Board of Education (“BOE”), alleges that the Auditor’s values were correct and the BOR erred in reducing the value of the subject property.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal and the statutory transcript certified by the Cuyahoga County Auditor as secretary of the BOR. As the parties agreed that no

further evidence was to be brought forward, hearing was waived, but both the BOE and ARV provided legal argument by way of brief.¹

The subject property is a 188-unit assisted living facility located on approximately 20 acres of land in the City of Bedford, Cuyahoga County. The property's improvements were described as "Cardinal-type" construction, referring to a manufacturer of pre-fabricated, self-contained units of 288 square feet which could be attached to one another in a variety of configurations. Such modules were typically used in the construction of apartments and motels. The subject property contains a mix of efficiency apartments, one-bedroom, one-bath units, two-bedroom, two-bath units and units containing one-bedroom and a larger living area described as a great room. All units are multiples of the 288-square-foot modules.

The property was constructed for use as an assisted living, or congregate care, facility for residents generally over the age of 75. In addition to providing living space, the property provides services to its tenants. Services offered range from planned activities and transportation to providing meals and assisting residents with healthcare needs. The business operation employs a staff of 60 people.

The property sold on or about January 10, 1996 for a purchase price of \$8,850,000. At the time of sale, a conveyance fee statement was filed with the Cuyahoga County Auditor's office, which indicated a transfer amount equal to the total purchase price. On November 17, 1997, however, ARV re-recorded the Limited Warranty Deed previously recorded in January 1996 and submitted a new real property

¹ This matter's original briefing schedule was extended a number of times because of personal matters affecting the BOE's initial counsel. Ultimately, and for those personal reasons, counsel withdrew and the BOE obtained new counsel. Again, the date for the submission of the BOE's brief was extended. When yet another extension was requested, the attorney-examiner monitoring this appeal denied the request and assigned a final date for the submission of all argument. Both the BOE and ARV filed briefs by the assigned date. Seven days later ARV filed a "Response Brief" addressing the arguments made by the BOE. The BOE then filed a "Motion to Strike" ARV's response brief. That motion is denied. Had the BOE filed a brief within any of the dates provided prior to the final request, ARV would have had the opportunity to respond. The BOE's delay (and the Board's forbearance) should not deprive ARV of an opportunity it would otherwise have received.

conveyance fee statement to the Auditor indicating that \$2,850,000 of the consideration paid for the property was paid for items other than realty.

Both ARV and the BOE filed complaints before the BOR for the 1997 tax year and both relied upon the sale described above. ARV argued that the second filing of the deed and the removal of the personalty most accurately captured value and requested a decrease from the value assessed. The BOE argued that the original conveyance fee statement most accurately captured value and sought affirmance of the Auditor's values. Neither party relied solely upon their interpretations of the conveyance fee statement. Before the BOR, ARV presented the testimony and appraisal report of Mr. R. Terry Watson of the Commercial Property Group, Inc., who testified to a value for the subject of \$6,100,000. The BOE presented an appraisal analysis and the testimony of Mr. Sam Canitia, who testified to a value for the subject property of \$8,850,000. The BOR reduced value for 1997 to \$6,100,000 and the BOE appealed.

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 the burden to prove the 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 which 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 an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

It is axiomatic that the best evidence of “true value in money” of real property is revealed by an actual, recent sale of the property in an arm’s-length transaction. *Conalco v. 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 which characterize true value. It is then the burden of the party who claims that the sale is other than arm’s-length to meet 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; *Bd. of Edn. of the Columbus City School District 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.

For a sale price to be reflective of true value, not only must the sale meet the qualifications of an arm’s-length sale, but also the transfer must not include value for items other than realty. If the sale includes items other than realty, the ultimate purchase price may not reflect the value of the realty alone. *Bd. of Edn. of Kettering-*

Moraine v. Montgomery Cty. Bd. of Revision (Sept. 1, 2000), Montgomery App. No. 18223, unreported.

This Board recognized this principle specifically with reference to assisted living facilities in *ARV Assisted Living, Inc. v. Hamilton Cty. Bd. of Revision* (Nov. 9, 2000), B.T.A. No 98-A-168, unreported. In that case, a congregate care facility similar to the subject was sold in the Hamilton County area. In rejecting the recent sale and instead relying upon appraisal testimony to determine value, the Board held:

“*** [W]e are convinced that appellant purchased more than just the real property at issue herein when it purchased Amber Park, regardless of the amount set forth on the conveyance fee statement ***.”

The Ohio Supreme Court recognized that a congregate care facility serves more than the housing needs of its resident population in *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455 wherein it held:

“The property being valued is a congregate care center that comprises a combination of real estate and business activities. Dublin charges for such services as food and housekeeping; these are business activities. It also charges rental for the apartments; that is a real estate activity. Each activity has separate expenses. In a valuation of only the real estate, the two activities must be kept separate. The separation of the income and expenses is important not only when determining net income, but also when considering a comparison of the sale prices of comparable facilities. ***.” *Id.* at 460.

Clearly the same principle holds true when considering the transfer price of a congregate care facility -- a portion of the sales price must be paid for the business operated therein. Thus, when a sale of a congregate care business includes the business and the real property, a review of the purchase price must be made to attempt to extract value paid for the real property separate and apart from the value paid for the

ongoing congregate care business. In this regard, both the BOE and ARV attempted to make deductions to account for items other than realty. The BOE, through the testimony of its appraiser, Mr. Sam Canitia, recognized that a certain portion of the purchase price was paid for items of personalty located in the apartments themselves. Mr. Canitia testified that while a standard apartment unit would contain approximately \$400 of personalty, it would not be unreasonable to allocate \$2,000 per unit in assisted living facilities.

ARV, on the other hand, argues that much more than the personalty such as refrigerators and stoves was transferred in the sale. ARV points to additional services provided residents, as outlined in the appraisal submitted to the BOR. The business operators are compensated for those services through higher rental rates. We must agree with ARV that the value which the assisted living services brings to the facility was included in the sale of the property and adds greater value than that reflected by the personalty contained in the individual units.

We therefore reject the BOE's claim that only a minimal amount such as \$2,000 per unit should be deducted for items other than realty. Such minimal deductions would not fully take into account the business aspect of the 1996 transfer.

We now consider the appraisal testimony presented before the BOR. Mr. Watson surveyed the Cuyahoga County market and found four apartment complexes he believed to be similar to the subject property. Two were Cardinal apartment projects. Mr. Watson adjusted his market comparables and concluded to a per-square-foot value for the various unit types. Mr. Watson also concluded to a rental value of the "business profit centers" such as the food service operation and laundry area at \$.76 per square foot, or \$6,566 per month.

Multiplying the monthly rentals by the number of each unit type, Mr. Watson concluded to a potential gross annual income of \$1,209,017. Mr. Watson then reviewed the operating expenses of Cardinal apartment complexes throughout the state

as well as the expense information published for the Cleveland market to obtain a market-based expense figure. Concluding that the subject is identical to the Cardinal apartment complexes throughout the state, Mr. Watson placed more weight on his review of the Cardinal complexes than the Cleveland market. Mr. Watson concluded to a stabilized expense estimate of \$2.25 per square foot.

Mr. Watson's market comparables had very low vacancy. However, the subject itself reported approximately a 25 per cent vacancy rate. Considering both the market and the subject itself, Mr. Watson utilized a 10 per cent vacancy rate and deducted market expenses to conclude to a stabilized net operating income of \$797,163. Mr. Watson then concluded to a capitalization rate of 10.5 per cent and added a 2.076 tax additur. Applying his 12.58 per cent capitalization rate to his stabilized net operating income, Mr. Watson concluded to a value under the income capitalization approach of \$6,300,000.

Mr. Watson also concluded to value under the sales comparison approach. Mr. Watson reviewed the market and found sales of Cardinal-type properties he believed were similar to the subject and size and location. While none of the five sales considered was in Cuyahoga County, all were in northeast Ohio. The sales took place during 1994 through 1997. While the difference among the comparable sales' price-per-unit was significant, the comparable sales' price-per-square-foot were in a much closer range, from a low of \$32.12 per square foot for a property in Orrville, Ohio to a high of \$39.87 per square foot for a property in Wooster, Ohio. Mr. Watson adjusted the comparable sales and, after adjustments found a range of \$34 to \$40 per square foot. Mr. Watson concluded to a market valuation of \$36 per square foot, or a value under the sales comparison approach of \$5,900,000. Considering both approaches, Mr. Watson concluded to a final value for tax lien date 1997 of \$6,100,000.

The BOE challenges Mr. Watson's opinion, arguing that Mr. Watson did not properly take into account the special amenities found in an assisted living apartment complex, such as wider hallways and doors, and handrails, and attribute some value to such amenities. However, Mr. Watson suggested that very little modifications had been made to the modules themselves to account for the subject's use as an assisted living facility. Moreover, Mr. Watson argued that a comparison of the rental rates obtained by the Cardinal properties located next door to the subject were persuasive indicators of the rental income that could be attributed to the subject. We agree that the complex adjacent to the subject appears to have units identical to the subject as well as fewer amenities than traditionally associated with apartment living. Therefore, we find the use of the Cardinal properties as comparables sufficient even though no adjustments were made to account for assisted living amenities.

The BOE is also critical of Mr. Watson's values because he attributed residential rates to the rental of retail space. However, the BOE presented no evidence of rental rates at which such retail operations would lease. Therefore, we do not find Mr. Watson's rental conclusions unreasonable.

Finally the BOE is critical of Mr. Watson for not focusing on the Bedford area when reviewing the market. The BOE notes that in his operating expense analysis, none of the properties upon which Mr. Watson relies is in the greater Cleveland area. The BOE notes that while Mr. Watson relied upon two Cardinal projects adjacent to or very near the subject for rental rates, he did not similarly report the expenses of those properties. Again, the BOE's appraiser did not provide other evidence of market expenses. Instead, Mr. Canitia brought forth evidence of sales prices of other assisted living facilities in Cuyahoga County. However, we remain persuaded that at least a portion of the purchase price in each such comparable must be attributed to the business activities within the facility. *Dublin Senior Community, L.P.*,

supra. Therefore, we are persuaded that the record contains competent and probative evidence of value as reflected through Mr. Watson's appraisal.

In this matter we find that ARV presented sufficient competent and probative evidence of value to the BOR. The BOR also considered Mr. Canitia's evidence, but concluded that the property was overvalued. Considering the entire record before us, we must agree with the BOR's ultimate value conclusion. Therefore, upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 1997 was:

Parcel No. 811-05-015

	True Value	Taxable Value
Land	\$1,040,000	\$ 364,000
Building	\$5,060,000	\$ 1,771,000
Total	\$6,100,000	\$ 2,135,000

It is the order of the Board of Tax Appeals that the Auditor of Cuyahoga County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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