

IN THE SUPREME COURT OF OHIO

HIN, LLC)
)
 Appellee)
)
 vs.) Appeal from the Ohio
) Board of Tax Appeals
)
 CUYAHOGA COUNTY BOARD OF) Board of Tax Appeals
 REVISION, CUYAHOGA COUNTY) Case No. 2006-A-712
 AUDITOR)
)
 Appellees) **08-2408**
)
 and)
)
 BEDFORD BOARD OF EDUCATION)
)
 Appellant)

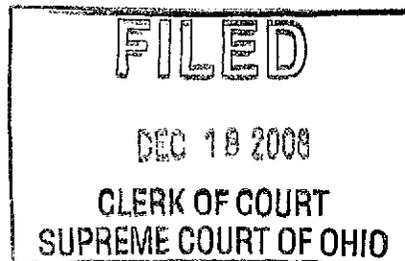
NOTICE OF APPEAL OF APPELLANT
BEDFORD BOARD OF EDUCATION

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5717.03 and 5717.04)

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Notice of Appeal of Appellant

Bedford Board of Education

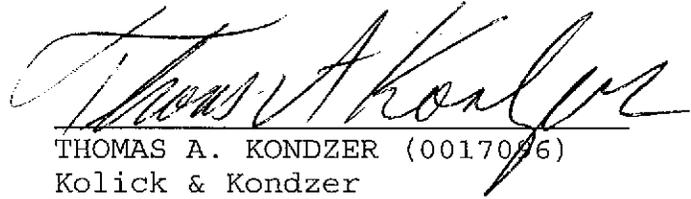
Appellant Bedford Board of Education hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in case number 2006-A-712 on November 18, 2008. A true copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

The Appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals erred when it rejected an April 2004 sale price of real property as the best evidence of value of the property as of the tax lien date of January 1, 2004 when the condition of the property did not change after January 1, 2004 and a lease upon which the sale price was negotiated and based was signed prior to January 1, 2004 and prior to the execution of the sales contract.
2. The Board of Tax Appeals erred when it accepted the sale price of a December 2003 transfer of a parcel of real property as the best evidence of value of the property as of the tax lien date of January 1, 2004 when the sale price of the December transfer was negotiated in September of 2003, prior to the negotiation and signing of a lease in November of 2003 which significantly increased the value of the property.
3. The Board of Tax Appeals erred by failing to find that the April, 2004 sale price of \$7,400,000 for the real property was the best evidence of value of the property as of January 1, 2004.
4. The Board of Tax Appeals erred in rejecting the April of 2004 sale price as the best evidence of the property's value as of the tax lien date of January 1, 2004 because of alleged changes in the market and improvements to the property after the tax lien date when the evidence established no such improvements or market changes.

5. The Board of Tax Appeals erred in finding that the December 2003 sale price was negotiated considering the value of the long term lease.
6. The Board of Tax Appeals erred when it found a value for tax year 2004 that was not supported by reliable and credible evidence.
7. The Board of Tax Appeals erred by issuing a final conclusion of value not supported by the evidence.
8. The Board of Tax Appeals erred by failing to comply with the ruling of the Ohio Supreme Court in *Berea City School Dist. Bd. of Education v. Cty. Bd. of Revision*, 106, Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, and its progeny.
9. The Board of Tax Appeals erred by acting contrary to law and its decision and order constitute an abuse of discretion.
10. The decision of the Board of Tax Appeals is unreasonable and unlawful.

Respectfully submitted,



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OHIO BOARD OF TAX APPEALS

HIN, LLC,

Appellant,

vs.

Cuyahoga County Board of Revision,
Cuyahoga County Auditor, and Bedford
Board of Education,

Appellees.

CASE NO. 2006-A-712

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered **NOV 18 2008**

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a

decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel to the appellant and appellee board of education.

First, in reviewing how this case came to us, we note that in March 2005, the property owner filed an original complaint against the valuation of real property with the Cuyahoga County Board of Revision seeking a decrease in the subject's total true value to \$5,000,000 for tax year 2004. S.T., Ex. A. Thereafter, in May 2005, the Bedford Board of Education ("BOE") filed a counter-complaint. S.T., Ex. B. On May 18, 2006, the BOR issued its decision for tax year 2004, maintaining the auditor's valuation of the subject. Thereafter, the appellant, HIN, LLC ("HIN"), appealed the BOR's determination to us.

Situated on approximately thirty-five acres, the subject real property, a 2-story, 78,500-square foot office building built in 1993, is located in the Bedford City School District taxing district. The value of the subject parcel, #812-16-005, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$3,793,400	\$1,327,700
Building	4,055,000	1,419,300
Total	\$7,848,400	\$2,747,000

Appellant contends that the auditor and the board of revision have overvalued the property in question by not assessing it based upon the \$4,900,000 price obtained in the sale of the subject in December 2003 and its supporting appraisal. The board of education contends that a second sale of the subject in April 2004 for \$7,400,000 is more reflective of the subject's value and should have been utilized in the determination of value for the subject.

Specifically, with regard to the first sale, US Bank originally sought to purchase the subject property and entered into a purchase contract with Tops Markets, LLC, the previous owner. Ultimately, US Bank determined that it only wanted to lease the subject, and it approached John B. Kuhn, a real estate developer, to see if his company, JBK Properties, Inc., would be interested in purchasing the subject and then renting it to the bank, along with a 20,000-square foot storage building to be built by JBK adjacent to the office building. Ex. 1 at 4-7. US Bank then assigned its previously negotiated purchase contract to JBK, and pursuant to the purchase agreement between JBK and Tops, the agreed-upon purchase price was \$4,900,000 for the approximate 36-acre parcel where the subject is located which, at the time, included two acres that would ultimately be split off, at closing, for the construction of the storage building. Ex. 1 at 9-10; Ex. 1 at Exs. 1-3. The sale was made contingent upon the execution of the lease with US Bank for the office building and the storage building to be built and the provision of incentives from the city of Bedford, Ohio, including annual job grant payments and payment for moving expenses. Ex. 1 at 6-8, 26. Ultimately, US Bank determined that it wanted to terminate the lease for the storage building before it was

ever built. Ex. 1 at 37. As a result, the lease for the office building was amended/restated and the office lease payments were increased. Ex. 1 at 13-16. Under the 15-year lease (with the option of two 5-year extensions), JBK [Cuyahoga Holdings, LLC, a limited liability company created for this project] also agreed to pay US Bank a \$739,470 tenant allowance. Ex. 1 at 11 and Ex. 4. The \$4,900,000 sale of the subject property closed on December 30, 2003. Ex. 1 at Exs. 6,7.

With regard to the second sale, JBK Cuyahoga Holdings, LLC was approached by a real estate broker who had a buyer that was involved in a 1031 exchange that was looking to buy a property. JBK entered into a purchase contract with Hannah Neumann [HIN, LLC] to purchase the subject property for \$7,400,000 and the adjacent property for \$110,000. Ex. 1 at 17-20. The sale closed on April 30, 2004. Ex. 1 at Exs. 9, 10.¹

In discussing the foregoing transactions, Mr. Kuhn indicated that between the time of his company's purchase of the property in December 2003 and the time his company sold it in April of 2004 there were no physical changes made to the property. The only difference in the property was the presence of the lease at the time of the April 2004 sale. Ex. 1 at 27.

We begin our analysis herein 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

¹ Mr. Kuhn, who testified about the sales in question via deposition, indicated that the recorder's stamps located on the certified copies of the recorded deeds incorrectly identified pertinent information about the sales, including the sale prices, parcel numbers, and/or grantor/grantee. Ex. 1 at 22-25. Arguably, the information was inadvertently transposed between the two parcels involved in the sale.

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.

As we consider HIN's position in this matter, we note the copies of the deeds in the record and the supporting testimony relating to the sales of the subject property. The sale documents indicate that the subject was first transferred on December 30, 2003, two days before the tax lien date in question, for \$4,900,000. The property was again transferred on April 30, 2004, some four months after tax lien date, for \$7,400,000. This board has previously held that a copy of a real property conveyance fee statement, or deed, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. See, e.g., *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Princeton City School Dist. v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported (holding that once a deed or conveyance fee

statement is introduced into evidence, the opposing party must introduce sufficient evidence to overcome the presumption that arises that the sales price is the true value of the property). Counsel for the property owner contends that the first sale of the subject constitutes a valid, recent,² arm's-length sale, and, as such, the transfer price should be considered the best evidence of the value of the subject property as of January 1, 2004. We agree.

R.C. 5713.03 provides, in pertinent part, that:

“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.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “that when the property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea*, at 5. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio

² In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. In this instance, the sale occurred within two days of the tax lien date in question, and, therefore, constitutes a “recent” sale.

St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that "encompasses bidding and negotiation in the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under coercion." In short, the court found an arm's-length sale to be characterized by these elements: "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self interest." *Id.* at 25.

In addition, generally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St. 3d 575; *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA No. 2006-H-2152, unreported; *Williams v. Columbiana Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 ("[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. *** This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here."). See, also, *Plazamill Ltd. Part. v. Franklin Cty. Bd. of Revision* (Jan. 11, 2008), BTA No. 2006-M-398, unreported; *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported. Thus, pursuant to this board's prior holdings, the

sale closest to tax lien date, the December 2003 sale when the property sold for \$4,900,000, shall serve as the basis of this board's valuation determination.

The board of education argues that the first sale cannot be relied upon as evidence of value because there is nothing in the record to establish that the sale was arm's length because the original terms of the sale were negotiated by US Bank, from which no evidence or testimony regarding such sale was received. We disagree. By virtue of JBK's agreement to the assignment of the purchase contract from US Bank, JBK accepted all of the terms and conditions negotiated therein as if it had negotiated them itself. Clearly, JBK was not required to accept any of the terms of the deal and could have walked away from the prospective purchase and not agreed to the assignment, including the purchase price, if it was not satisfied with it. Accordingly, without any evidence in the record to the contrary, we find that the December 30, 2003 sale was arm's length.

The BOE further argues that the purchase agreement for the first sale was entered into in September 2003, without the lease between US Bank and JBK Cuyahoga Holdings, LLC in effect. The BOE states "[b]y the end of the year, however, a long term lease had been executed by JBK and US Bank and JBK then sold the lease-encumbered property to HIN, LLC for \$7,400,000. Since the encumbrance which was the basis for the \$7,400,000 sale price was in existence as of January 1, 2004, the BOE submits that a sale price which did not encompass this encumbrance is not good evidence of value as of the relevant tax lien date." Brief at 12. The reality, however, is that although the sale was negotiated in September 2003, the sale did not

close until late December and the deed was not recorded until December 30, 2003. Further, the lease was entered into on November 1, 2003, amended and restated on December 11, 2003, and clearly provided in both versions that any obligations under the lease were contingent upon the subject sale closing. Ex. 1 at Ex. A, p. 22. Thus, while the property at the time of the first sale was not subject to an existing lease, the lease existed concurrently with the sale and arguably, the terms of the sale were negotiated with the prospective value of the lease taken into consideration. See Ex. 1 at Ex. 2, p. 2. Thus, it is our view that the amount paid for the subject property two days before the tax lien date more accurately reflected the property's value on tax lien date than the amount paid four months after tax lien date; what occurred in the market and/or in the property if the tenant made any enhancements in the intervening four months could have significantly affected the value of the subject. Ex. 1 at 11-12. See *Bd. of Edn. of Dublin Local Schools v. Franklin Cty. Bd. of Revision* (Oct. 12, 1989), Franklin App. No. 89AP-347, unreported.

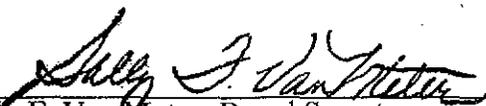
Because we find nothing in the record to dispute that the sale in question was arm's length in nature, this board finds that the best evidence of value of the subject property is its \$4,900,000 sale price paid on December 30, 2003. Accordingly, we need not consider any other evidence of value, including the property owner's appraisal or the second sale of the property. Thus, with no competent or probative evidence in the record rebutting the presumption that the December 2003 sale of the subject property constituted an arm's-length transaction, we find such sale price is the

best evidence of value of the subject parcel as of January 1, 2004. Such value shall be allocated as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$1,400,000 ³	\$ 490,000
Building	3,390,000	1,186,500
Total	\$4,790,000 ⁴	\$1,676,500

The Auditor of Cuyahoga County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

³ The board has adopted the value of the subject land, as set forth in the property owner's appraisal and which was not refuted, as the best evidence of its value. See *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454.

⁴ The \$110,000 value of the approximate two acres that were split off from the primary parcel at closing in December 2003 must be deducted from the sale price for purposes of valuing the primary parcel because as of January 1, 2004, it was no longer part of the subject property. The smaller parcel's value was determined by its recent sale price in April 2004. Ex. 1 at 20-23, 23-24.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "NOTICE OF APPEAL OF APPELLANT BEDFORD BOARD OF EDUCATION" has been served upon the following this 17 day of December, 2008 by United States certified mail delivery:

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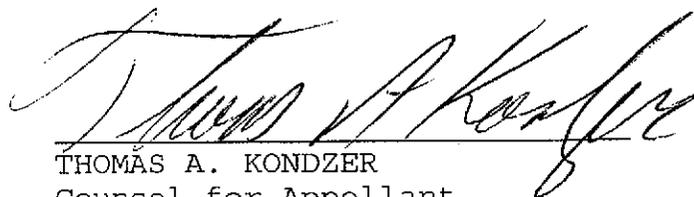
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