

OHIO BOARD OF TAX APPEALS

GROVEPORT MADISON LOCAL SCHOOLS,
(et. al.),

CASE NO(S). 2014-3607, 2014-3608

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

FRANKLIN COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s) - GROVEPORT MADISON LOCAL SCHOOLS
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

PUBLIC STORAGE/PUBLIC STORAGE BUSINESS TRUST
Represented by:
TODD W. SLEGGGS
SLEGGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Monday, August 3, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 185-000877-00, for tax years 2010 through 2013. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject's total true value was initially assessed at \$2,167,100 for tax year 2010, and \$1,700,000 for tax years 2011 through 2013. The appellee property owner, Public Storage, filed decrease complaints for 2010 and 2011, seeking a reduction to \$1,275,000 for each year. Appellant filed countercomplaints in support of maintaining the auditor's values. At the BOR hearing, Public Storage presented evidence



T5130-11 ✓

of its December 2010 purchase of the property, including testimony from the broker who sold it. The broker testified that it was marketed as any other sale would be, and that the lender approved the sale. Although Public Storage acknowledged that the sale was through a receiver due to pending litigation, it argued that the sale was arm's-length, as demonstrated through the broker's testimony regarding the sale and marketing efforts made leading up to the sale. Appellant argued that it was not an arm's-length transaction and that Public Storage had failed to meet its burden to show that the value should be reduced. The BOR issued a decision reducing the initially assessed valuation to \$1,275,000, indicating that it accepted the sale price for all four relevant tax years. From this decision, appellant filed the instant appeals.

On appeal, appellant argues that the auditor's values should be reinstated because the BOR's decision is not supported by the record, as the sale was forced and not an arm's-length transaction. Public Storage argues that the appellant failed to present any evidence on appeal that the sale was not arm's-length and that the BOR properly considered the sale price reflective of value, citing to *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. We note that Public Storage argued that this board should strike appellant's brief as having been submitted late. Legal argument is submitted for this board's benefit, and we decline to strike appellant's brief in this case.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, ***." Id. at ¶¶5-6. (Parallel citations omitted.)

The Supreme Court has reaffirmed that "when the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620 ("Northpointe"), ¶35. The Court further clarified, however, "[t]o be sure, if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 567, *** (2001) (the BTA errs by affirming a board of revision's reduced or increased valuation if 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR'). But the *Bedford [Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237] rule addresses circumstances in which the board of revision relies on specific and plausible evidence to reach a valuation different from that originally found by the auditor." Id. at ¶38. While holding that this board may not revert to the auditor's value when the BOR relied on competent evidence, the Court then distinguished the facts from *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, leaving the court's holding in that decision intact. Thus, the Court's recent ruling in *Northpointe* did not disturb its earlier edict that "the absence of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision." Id. at ¶21. (Emphasis sic.) Thus, even if some evidence tends to negate the auditor's original valuation, it is proper to revert to that valuation when a taxpayer has not

provided sufficient evidence to support a lower value and there is no evidence from which this board can independently determine value. *Id.* at ¶24.

It has long been held by the Supreme Court 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. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. Once the existence of a sale is established, “a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm’s-length character between a willing seller and a willing buyer are genuinely present for that particular sale.” *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating “[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm’s-length transaction.” (Emphasis sic.) Accordingly, the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property’s value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327.

In order for a recent sale to qualify as the best evidence of a property’s value, “a key consideration *** is whether the seller and buyer were both willing.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680, ¶28. In *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23, 25, the court held that “an arm’s-length sale is 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.” This board has previously found that a sale conducted through a receiver presumably proceeds at the direction and under the supervision of a court order, bringing such transaction within the scope of a forced sale which is not indicative of true value. See, e.g., *Nadler v. Cuyahoga Cty. Bd. of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported.

In the present matter, although the subject property transferred from David W. Ramsey of Guaranteed Receivership Services, LLC as the Court appointed Receiver to Public Storage on December 6, 2010 for \$1,275,000, we do not find such sale to be a reliable indication of value because the sale was a forced sale and not a reliable indication of value. We acknowledge that the Supreme Court has recently held that R.C. 5713.04, which provides that “[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value,” is not an absolute bar. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. The Court held that instead, R.C. 5713.04 is the codification of a rebuttable presumption that forced sales and auctions are not at arm’s length, which could be rebutted by the party relying upon the sale. *Id.* In the instant appeal, however, we find that the property owner has failed to present evidence that the subject sale was, in fact, arm’s-length, and therefore, we conclude that the sale, which was negotiated by a receiver, under the supervision of a court, was a forced sale and not indicative of the true value of the subject property. See *Nadler v. Cuyahoga Cty. Bd. of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported; *Bd. of Edn. of the Rolling Hills Local Schools v. Guernsey Cty. Bd. of Revision* (Sept. 25, 2012), BTA No. 2009-Q-3475, unreported; *Davis v. Lorain Cty. Bd. of Revision* (Dec. 11, 2012), BTA No. 2011-Q-3370, unreported.

In the absence of a qualifying sale, we are mindful of the Supreme Court’s longstanding pronouncement holding that while a qualifying sale typically provides “[t]he best method of determining value *** such information is not usually available, and thus an appraisal becomes

necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Justice Pfeifer’s concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930, echoes the court’s prior observations: “All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [I]f a[n appellant] wants to challenge a valuation, it should send a certified appraiser or other qualified expert, not an employee, however experienced. It is well known that the only nonexperts competent to testify as to valuation are owners. Finally, the best way to challenge a valuation is with a proper appraisal, which was not submitted in this case.” *Id.* at ¶28. In the absence of a qualifying sale, appellant was required, but failed, to provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue.

When the value of property is adjusted from that at which it was originally assessed, such adjustment, whether effected by this board or a board of revision, must be supported by sufficient competent and probative evidence. When a board of revision adjusts value which does not meet this criteria or the rationale for the value adopted cannot be discerned, it may be appropriate to reinstate the property’s original valuation. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385; *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶21 (“It is true that the absence of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision.”); *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 227, 2013-Ohio-3028, ¶35 (“The BTA correctly ruled out using the BOR’s reduced value, because it could not replicate it. This court has emphatically held that the BTA’s independent duty to weigh evidence precludes a presumption of validity of the BOR’s valuation.”). Accordingly, upon consideration of the existing record, we are constrained to conclude that there exists insufficient evidence to support the BOR’s reductions in value and, as a result, we must reinstate those values originally assessed by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2010, 2011, 2012, and 2013, were as follows:

TAX YEAR 2010

TRUE VALUE

\$2,167,100

TAXABLE VALUE

\$758,490

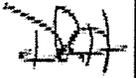
TAX YEARS 2011-2013

TRUE VALUE

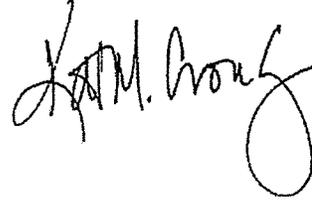
\$1,700,000

TAXABLE VALUE

\$595,000

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary