Supreme Court of Ohio Clerk of Court - Filed November 20, 2015 - Case No. 2015-1388

IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights City School District,	:	
Appellant,	:	Case No. 2015-1388
v.	:	
Montgomery County Board of Revision, Montgomery County Auditor, and Huber Heights ABG, LLC,	:	Appeal from Ohio Board of Tax Appeal - Case No. 2014-4891
Appellees.	:	

MERIT BRIEF OF APPELLANT BOARD OF EDUCTION OF THE HUBER HEIGHTS CITY SCHOOL DISTRICT

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STATEMENT OF THE CASE AND FACTS

This is an appeal from a decision of the Ohio Board of Tax Appeals which determined the value of a retail building located at 7611 Old Troy Pike in the city of Huber Heights for tax year 2013. In June 2012, Huber Heights ABG, LLC ("Huber ABG") purchased 11.496 acres of Parcel P70 04005 0056 ("parent parcel") for $550,000. After the sale, the 11.496 acres acquired by Huber ABG was split from the parent parcel and assigned parcel number P70 04005 0140 ("subject property"). The remaining 1.384 acres retained the original P70 04005 0056 parcel number. After acquiring the property for $550,000, Huber ABG spent approximately $200,000 and $254,650[1] on improvements to the property. The improvements were complete prior to the January 1, 2013 tax lien date.

Huber ABG filed a complaint with the Montgomery County Board of Revision ("BOR") contesting the Auditor's value of the 12.88 acre parent parcel for tax year 2012. This case was assigned Case No. 2282 and was ultimately settled by the parties at a value of $850,000. Subsequently, the Montgomery County Auditor valued the subject property, after the split and after the significant improvements were complete, at $2,199,700 for tax year 2013. Huber ABG filed a tax year 2013 complaint (Case No. 829), requesting that the agreed value for the parent parcel be applied to the subject property for tax year 2013. On October 14, 2014, the BOR conducted a hearing on the 2013 complaint. Matt Rentschler, an employee of Huber ABG, appeared at this hearing and argued that the 2012 agreed value of $850,000 for the parent parcel

[1] There is conflicting evidence in the record as to how much Huber ABG spent on improvements. The complaint states a value of $254,650 while the witness testified that $200,000 in improvements were made. In either case, the improvements were significant since the property owner spent 36% - 46% of the acquisition cost on such improvements within 6 months of acquiring the property.

should carry to the 2013 value of the subject property. Huber ABG did not submit any additional evidence to support its claimed value.

Recognizing that an agreed settlement for a previous tax year has no precedential value for future years and that the settlement in Case 2282 was for a different parcel than the property involved in this case, the BOR rejected Huber Heights ABG's arguments. However, despite the fact that the property owner failed to submit ANY competent probative evidence of value, the BOR reduced the 2013 value of the subject property to $1,282,740 based upon "location and condition as testified to." (BOR decision audio) The BOR did not provide any explanation as to how it arrived at this value.

The BOE appealed the BOR's 2013 decision to the BTA. The parties waived hearing and presented their legal arguments through briefs, relying on the record developed before the BOR. The BTA accurately summarized the arguments of the parties as follows:

> Appellant argues that the values determined by the BOR cannot be replicated, and that the evidence submitted by Huber ABG is not competent and probative evidence of value. Accordingly, the Appellant argues, the BOR's reduction was improper and the auditor's value should be reinstated. Though it acknowledges that there is no evidence to support the BOR's value determination, Huber ABG argues that the BOE did not present any affirmative evidence of value and this board should find value consistent with the value of the parcel P70 04005 0056 for tax year 2012.

The BTA agreed with the parties that there was insufficient evidence in the record to support the BOR's value determination. However, rather than reinstating the auditor's value, the BTA determined that the value of the subject property as of January 1, 2013 was $550,000, the price paid in the June 2012 sale of the property.

LAW AND ARGUMENT

Introduction

In deciding this case, the BTA properly reversed the decision of the BOR, since there is no evidence in the record to support the BOR's value determination and the BOR's value conclusion cannot be replicated. However, since Huber ABG failed to meet its initial burden of producing competent and probative evidence of value and since there is no competent evidence in the record to negate the Auditor's value or to enable the BTA to independently determine value, the Auditor's original value should have been reinstated for tax year 2013.

Proposition of Law No. 1:

> **A complainant bears the initial burden of producing competent probative evidence to establish its right to an increase or decrease in value.**

The law in Ohio is clear - a property owner who seeks a decrease in value must prove its right to the requested reduction with competent and probative evidence. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 1994 Ohio 498, 626 N.E.2d 933; *Crow v. Cuyahoga Cty. Bd. of Revision*, 50 Ohio St.3d 55, 552 N.E.2d 892 (1990); *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision*, 37 Ohio St.3d 318, 526 N.E.2d 64 (1988). In this case, Huber ABG clearly failed to meet this burden. Huber ABG failed to present any competent probative evidence to demonstrate that a departure from the Auditor's value is warranted. The only "evidence" in the record consists of Mr. Rentschler's testimony before the BOR. As stated above, Mr. Rentschler testified that the parties previously settled a prior year case relating to the value of the parent parcel. Mr. Rentshcler's sole argument was that the prior settlement value for the parent parcel should be carried to the 2013 value of the subject property. The BOR correctly determined

that Mr. Rentschler's testimony did not constitute competent probative evidence of value.

Proposition of Law No. 2:

> **When a board of revision adjusts the value from that originally assessed by the Auditor, the BOR's value determination must be based upon competent probative evidence.**

In this case, the BOR properly determined that Huber ABG failed to present competent probative evidence to support its claimed reduction in value. However, despite the complete lack of competent probative evidence, the BOR erroneously reduced the value of the subject property from $2,199,700 to $1,282,740 due to its location and condition. Mr. Rentschler testified that Huber ABG spent $200,000 on improvements to the property ager the June 2012 sale and prior to January 1, 2013. According to Mr. Rentschler, no further improvements have been made to the property. This is the ONLY evidence in the record relating to the property's condition. Accordingly, there is nothing in the record to indicate how the BOR arrived at its value conclusion and the record is completely devoid of any specific evidence that the subject's location and condition are such that a reduction in value is warranted.

It is a well settled principle of law that when the BOR adjusts the value of a property from the value originally assessed by the Auditor, the adjustment must be supported by sufficient competent and probative evidence. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, 833 N.E.2d 271; *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, P21, 958 N.E.2d 131. In *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St. 3d 188, 2013-Ohio-3028, this Court held:

> 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. *Vandalia-Butler City Schools*, 130 Ohio St.3d 291, 2011 Ohio 5078, 958 N.E.2d 131, ¶ 13.

In this case, since the decision of the BOR cannot be replicated the BTA properly reversed the BOR's decision.

Proposition of Law No. 3:

> **When there in insufficient evidence in the record to support the board of revision's value determination, the Board of Tax Appeals must reinstate the auditor's original assessed value when there is no evidence in the record to affirmatively negate the auditor's value and there is insufficient evidence in the record to enable the BTA to independently determine value.**

Having determined that the property owner failed to meet its initial burden of producing competent and probative evidence of value and the BOR's value was unsupported by the record, the BTA was left to choose between (i) reverting to the auditor's valuation and (ii) determining an independent valuation based on the record. Because there is no evidence in the record to affirmatively negate the Auditor's original value and there is insufficient evidence in the record to permit the BTA to independently value the property, the BTA should have reinstated the Auditor's original value. Instead, the BTA reduced the value to $550,000; the price paid in the June 2012 sale before the split and before $200,000 - $254,650 in improvements were made to the property.

As a general rule, when the BTA reverses a decision of a board of revision, the BTA is justified in reverting to the Auditor's value with one exception - when there is evidence in the record that "affirmatively negates" the Auditor's value. In *Vandalia-Butler City Schools Bd. of*

Edn. v. Montgomery Cty. Bd. of Revision, 130 Ohio St.3d 291, 2011-Ohio-5078, this Court considered an appeal wherein the BOR rejected the value claimed by the property owner and instead assigned a value to the property based upon its own analysis. On appeal, the county argued that the evidence presented, though not relied upon by the BOR to establish value, "foreclosed reverting to the auditor's original valuation because it tended to negate that valuation." The Court rejected this argument, holding:

> Our decision in *Colonial Village* shows that the BTA and the county are mistaken. Even if some evidence tends to negate the auditor's original valuation, it is proper to revert to that valuation when the BTA finds that the owner has not proved a lower value *and there is otherwise "no evidence from which the BTA can independently determine value."* In *Simmons*, this court held that when a board of revision retained the auditor's valuation and the BTA rejected the owner's evidence of a lower value, the BTA could properly "approve the board of revision's valuation without the board of revision's presenting any evidence." (Citations omitted.) (Emphasis in original.)

This Court has defined a narrow exception to this general rule in cases where the record contains evidence that "affirmatively negates" the Auditor's value. However, in order to affirmatively negate the Auditor's value, the complainant's evidence must do more than simply contradict or call into question the Auditor's value – the evidence must establish that the Auditor's value is incorrect. See *Dublin City Schools v. Franklin Cty. Bd. of Rev.*, 139 Ohio St.3d 193, 2013-Ohio-4543 (evidence on the Auditor's property record card affirmatively negated the Auditor's value, because the property record card failed to prove that the Auditor correctly applied the completion percentage adjustment when valuing the condominiums); *Dayton-Montgomery Cty. Port. Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007 Ohio 1948 (actual costs submitted by the property owner, along with Auditor's cost estimates, negated application of 1.6 factor utilized by the Auditor). Simply put, in this case

there is absolutely no evidence in the record to negate the Auditor's value.

1. The BTA's duty to independently determine value is only triggered when there is sufficient competent, probative evidence in the record to enable the BTA to make an independent value determination.

It is well settled that the BTA has a duty to independently weigh the evidence and determine value when reviewing board of revision decisions. *Vandalia-Butler City Sch. Bd. of Educ. v. Montgomery County Bd. of Revision*, 130 Ohio St. 3d 291, 2011-Ohio-5078, 958 N.E.2d 131; *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011 Ohio 2258, 949 N.E.2d 1, ¶ 17, quoting *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 1996 Ohio 432, 665 N.E.2d 1098. However, the BTA's independent value determination must be based on competent probative evidence and the BTA's duty to independently determine value is only triggered when the record contains sufficient competent probative evidence to enable the BTA to determine value. In cases like the subject, where there is insufficient evidence in the record to enable the BTA to independently determine value, the BTA should revert to the Auditor's value.

In *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, 1998 Ohio 443, 689 N.E.2d 22, this Court held:

> Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."

In this case, there was insufficient evidence in the record to enable the BTA to make an independent determination of value and it was legal error for it to do so. There is absolutely no

evidence in the record to establish that the June 2012 sale of the subject property was an arm's length transaction sufficiently recent to the tax lien date. In fact, as set forth below, all evidence in the record militates against use of the June 2012 sale price as a reliable indicator of the value of the property as of January 1, 2013.

The transcript filed with this Court by the BTA includes a copy of the settlement statement for the June 2012 sale and a copy of the BOR's decision on Huber ABG's 2012 complaint on the parent parcel. It appears that these documents may have been attached to Huber ABG's 2013 complaint. However, a copy of these documents was never provided to the BOE, the documents were not discussed at the BOR hearing and the documents have never been admitted into evidence. Accordingly, these documents should not be included in the transcript and the BOE requests that they be stricken from the record. This Court has consistently held that evidentiary documents must be submitted at an evidentiary hearing in order to afford all parties the opportunity to question a witness as to the document's authenticity, as well as the reliability of the information contained in the documentation. Documents produced outside of hearing cannot be considered in evidence. See, *Columbus Bd. of Education v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 1996 Ohio 432, 665 N.E.2d 1098.

Generally, the submission of basic sale documentation, such as a deed and conveyance fee statement, gives rise to a rebuttable presumption that the sale is arm's length and indicative of value. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin County Bd. of Revision*, 125 Ohio St. 3d 485, 2010 Ohio 1921. However, in this case, there is no sale documentation in the record and, therefore, no presumption arises. The sole evidence in the record relating to the sale consists of Mr. Rentschler's testimony and a notation on the property record card.[2] As previously indicated

[2] In its decision, the BTA erroneously summarizes the evidence as follows: "(a)t the BOR

Mr. Rentschler testified that Huber ABG purchased the subject property in June 2012 for $550,000 and then made $200,000[3] in improvements to the property. Mr. Rentschler did not testify to the arm's length nature of the sale, or to the type of improvements made to the property.

On page 3 of its decision, the BTA erroneously states "(i)n the present matter, it is undisputed that the subject property transferred from Muriel Litt, et al, to Huber Heights ABG, LLC on or about June 25, 2012 for $550,000." However, there is absolutely no evidence in the record to support this statement. The property record card lists four sale transactions for the subject property, all dated July 5, 2012. The total sale price for the four transactions is $364,850. The seller of the property is not listed and was not discussed at the BOR hearing. Clearly, it is NOT undisputed that the subject he subject property transferred from Muriel Litt, et al, to Huber Heights ABG, LLC on or about June 25, 2012 for $550,000.

In addition, there is nothing in the record to support the BTA's conclusion that the June 2012 sale was sufficiently recent to the tax lien date in question given that the property was in a significantly different state on the tax lien date than it was at the time of sale. Again, since no sale documentation was submitted, there is no presumption that the June 2012 sale was sufficiently recent to the tax lien date in question. In this case, given the significant improvements made to the property after the sale, but prior to the tax lien date, the sale cannot be

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hearing, the appellee property owner, Huber Heights ABG, LLC ("Huber ABG"), relied on evidence of its June 2012 purchase of the property, a decision letter regarding an agreed-upon value for the larger parcel for a prior year, and the testimony of an employee, Matthew Rentschler." This statement is absolutely false. As stated above, while the settlement statement and decision letter may have been attached to Huber ABG's complaint, such documents were never presented at the hearing, were not provided to the BOE and were not admitted into evidence in this case. The ONLY "evidence" submitted by Huber ABG was the testimony of Mr. Rentschler. The record is completely devoid of evidence relating to the arm's length nature of the June 2012 sale and/or the specific improvements made to the property after the sale.

[3] The complaint indicates that $254,646 in improvements were made to the subject property.

considered "recent" to the tax lien date - the property was in a substantially different state on the tax lien date than it was at the time of the sale.

R.C. 5713.03 provides, in pertinent part:

> However, the sale price in an arm's length transaction between a willing seller and a willing buyer **shall not** be considered the true value of the property sold if subsequent to the sale:
>
> ***
>
> (B) An improvement is added to the property.

See, also, Ohio Adm. Code 5703-25-06(F). Mr. Rentschler's testimony clearly establishes that significant improvements were made to the subject property subsequent to the June 2012 sale of the subject, but prior to the relevant tax lien date. Accordingly, the 2012 sale price is not sufficiently recent to the January 1, 2013 tax lien date.

At no time during these proceedings did Huber ABG argue that the value of the subject property as of January 1, 2013 was $550,000. The BOE recognizes that the BTA is not bound by the values advocated by the parties. *Sapina*, ¶ 28. However, the arguments made by the parties tend to frame what evidence is presented, which explains why there is insufficient evidence in the record to support the BTA's conclusion that the June 2012 sale of the property was a recent arm's length transaction, since neither party advocated for such a result. It is difficult to fathom how the BTA could conclude that the property was in the same condition on January 1, 2013 it was on the sale date, when Huber ABG spent 36%-46% of the purchase price on improvements to the property. While the BTA relies upon this Court's decisions in *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 1996 Ohio 226, 661 N.E.2d 1095, and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St. 3d 299, 1997 Ohio 388, 681 N.E.2d 425, [10] for the proposition that a dollar for dollar increase in value for the cost of

improvements is inappropriate, those cases actually support the conclusion that there was insufficient evidence in the record to enable the BTA to make an independent determination of value herein.

In its BTA brief, ABG argues that the BTA could not have reverted to the Auditor's value in this case because the BOE did not submit evidence to support the Auditor's assessed value. However, it is well settled that additional evidence is not necessary to support the Auditor's value when there is insufficient evidence in the record to permit an independent valuation by the BTA. "[T]he auditor's initial determination of value for a given tax year possesses an increment of prima-facie probative force." *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, 929 N.E.2d 426, ¶ 31. Huber ABG's argument that the Auditor's value is not entitled to a presumption of validity is simply inaccurate. In this case, the BOR illegally changed value when Huber ABG did not meet its initial burden of proving that the Auditor overvalued the property and a lower value was justified, and the BTA improperly relied upon a sale price that was unsupported by the record rather than properly reverting to the Auditor's assessed value.

CONCLUSION

For the reasons set forth herein, the Board of Education respectfully requests this Court to reverse the decision of the Board of Tax Appeals and to determine that the Auditor's original appraised value of 2,199,700 was the correct true value of the property for tax year 2013.

Respectfully Submitted,

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I hereby certify that a true and complete copy of the foregoing merit brief was served on the following via email transmission this 20th day of November, 2015:

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APPENDIX

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IN THE SUPREME COURT OF OHIO

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Appellant	:	Case No. 15-1388
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NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOLS

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SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights City Schools	:	
Appellant	:	Case No. _____
v.	:	
Montgomery County Board of Revision, Montgomery County Auditor, and Huber Heights ABG, LLC	:	Appeal from the Ohio Board of Tax Appeals - Case No. 2014-4891
Appellees.	:	

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOLS

Now comes the Appellant, the Board of Education of the Huber Heights City School District, and gives notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of *Board of Edn. of the Huber Heights City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2014-4891, rendered on July 23, 2015, a copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,

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EXHIBIT A - STATEMENT OF ERRORS

(1) The Ohio Board of Tax Appeals (BTA) erred in accepting the June 2012 sale price of the subject property as its true value for tax year 2013 when the property has undergone $200,000 repairs prior to January 1, 2013.

(2) The BTA erred in failing to hold that repairs made to the subject property in excess of 36% of the properties acquisition price less than 6 months prior to tax lien day was sufficient to overcome the presumption of recency;

(3) The BTA erred by failing to hold that the subject property was physically different than it was on its date of purchase thereby rebutting the presumption of recency of the sale.

(4) The BTA erred by failing to hold that once evidence was submitted to rebut the recency of the sale price due to the costly repairs made to the subject property to prepare it for occupancy, the burden to proof shifted to the party asserting the sale to prove that the substantial repairs had no effect on the value of the subject property.

(5) The BTA erred in holding that the costly repairs made to the subject property prior to tax lien day did not substantially affect the value of the property when the repairs were made specifically for the occupancy of a new tenant and without such repairs, the tenant would not have occupied the property.

(6) The BTA misapplied the holdings in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997) in that those cases dealt with deductions for repairs that had not yet been made while the issue in the subject matter was the fact that the costly repairs made to the subject property were made specifically for the occupancy of the otherwise vacant property and were completed before tax lien day.

(7) The BTA erred by failing to accept the Auditor's original value as the default value of the subject property.

PROOF OF SERVICE ON THE OHIO BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.

Mark Gillis (0066908)
Attorney for Appellant

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served on the following by certified mail, return receipt requested, with postage prepaid, this 24th day of August, 2015.

Sarah Baker
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Assistant Prosecuting Attorney
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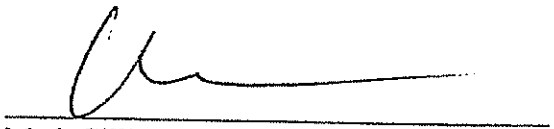


Mark Gillis (0066908)
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

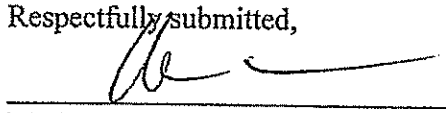
Board of Education of the Huber Heights City Schools	:	
Appellant	:	Case No. _____
v.	:	
Montgomery County Board of Revision, Montgomery County Auditor, and Huber Heights ABG, LLC	:	Appeal from the Ohio Board of Tax Appeals - Case No. 2014-4891
Appellees.	:	

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellant, who has filed a notice of appeal with the Supreme Court, makes this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *Board of Edn. of the Huber Heights City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2014-4891, rendered on July 23, 2015, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



Mark Gillis (0066908)
Rich & Gillis Law Group, LLC

Attorneys for Appellant Board of Education

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOLS, (et. al.),	CASE NO(S). 2014-4891
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOLS
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
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Represented by:
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WOOSTER, OH 44691

Entered Thursday, July 23, 2015

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number P70 04005 0140, for tax year 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject parcel was created for tax year 2013, after a larger parcel, number P70 04005 0056, was split following a 2012 sale of the portion that became the subject property. The subject's total true

value was initially assessed at $2,199,700. A decrease complaint was filed with the BOR seeking a reduction in value to $850,000. The appellant board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, the appellee property owner, Huber Heights ABG, LLC ("Huber ABG"), relied on evidence of its June 2012 purchase of the property, a decision letter regarding an agreed-upon value for the larger parcel for a prior year, and the testimony of an employee, Matthew Rentschler. Mr. Rentschler testified that Huber ABG purchased the subject in 2012 for $550,000 and then put approximately $200,000 into the property before January 1, 2013 to fit the property for the new occupant. Mr. Rentschler explained that since that work was finished, the subject's condition had not changed. Because there had been no change to its condition since the parties agreed to a value of $850,000 for 2012, Huber ABG contends, that value should have carried over into 2013 when the new parcel was formed. Appellant did not present any independent evidence of value, and moved to dismiss the complaint as a second filing in the interim period because Huber ABG filed a complaint for the prior year. Mr. Rentschler stated that Huber ABG had to file a new complaint because the parcel had just been created and the value did not carry forward. Mr. Rentschler also testified that the property is leased internally within the company and was unsure about the rate. The BOR issued a decision reducing the initially assessed valuation to $1,282,740, implicitly denying appellant's motion to dismiss the complaint. The BOR noted that it did not consider either the sale or the prior year's values in reaching its decision because the parcel split negated their utility. Instead, the BOR based its decision on the property's "location and condition as testified to." The Appraisal Notes in the transcript also include a comment stating the following: "The Court Decision was for parcel #0056 for TY 2011 & 2012 indicating that this was not a part lot value but for the whole parcel. The change in the property by the split means the court ruling is no longer relevant. A description of what was purchased is not provided. Adj. not per sale but for location & condition. Value Method shifted from cost to income." From this decision, appellant filed the instant appeal.

Appellant argues that the values determined by the BOR cannot be replicated, and that the evidence submitted by Huber ABG is not competent and probative evidence of value. Accordingly, appellant argues, the BOR's reduction was improper, and the auditor's values should be reinstated. Though it acknowledges that there is no evidence to support the BOR's value determination, Huber ABG argues that the BOE did present any affirmative evidence of value and this board should find value consistent with the value of parcel P70 04005 0056 for tax year 2012.

"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.)

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.

Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44, overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473 ("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."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens*, supra (recency factors include "changes that have occurred in the market").

In the present matter, it is undisputed that the subject property transferred from Muriel Litt, et al., to Huber Heights ABG, LLC on or about June 25, 2012 for $550,000. It is apparent from the record that the sale involved a portion of parcel number P70 04005 0056, and the portion that transferred was split to become the subject parcel. This split apparently enabled the sellers to retain ownership over the portion of parcel number P70 04005 0056 that it did not transfer during the sale, while reflecting the change in ownership over the part that it conveyed to Huber ABG.

We acknowledge that the Supreme Court has found that a parcel split may so change the character of a parcel that it rebuts the presumption of the recency of the sale. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439. In reaching this conclusion, however, the court clarified that it was based on the facts of that record and emphasized two key details, i.e., that the property owner testified that the purpose of the split was to increase value and that the auditor provided comparable sales evidence to support a higher valuation for subdivided parcels. Id. at ¶¶33-34. In the instant appeal, the facts are distinguishable. Nothing in the record shows that the purpose of splitting the parcels was to increase the value of the subject property, and neither appellant nor the county appellees provided any evidence to show that an increase in value was the result. Rather, the evidence more clearly indicates that the change in parcels was to more accurately reflect the ownership as it existed after the sale. We find that the change to the property took place when the ownership of the property transferred because it was the change in ownership that defined the new boundaries of the property, and the creation of the new parcel number for the subject property merely reflected that change. As such, we find that when the parcels split, it did not rebut the presumption of recency.

The record further shows that following the sale, approximately $200,000 in repairs were made to prepare the subject for the new occupant. Nothing was provided to show that any of the expenditures provided more than cosmetic updates or additional fixtures for the occupant's use. Taking into consideration all of the facts, and noting that dollar-for-dollar deductions for repairs have consistently

been rejected by this board, following the Ohio Supreme Court's holdings in *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, we find that although the cost of the repairs was considerable as compared to the sale price, no evidence has been offered to show that these changes substantially changed the property. As such, we find that the property did not undergo such considerable improvement to render the sale remote from the tax lien date.

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

TRUE VALUE
$550,000
TAXABLE VALUE
$192,500

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

5713.03 County auditor to determine taxable value of real property.

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. 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 may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Amended by 129th General AssemblyFile No.186, HB 510, §1, eff. 3/27/2013.

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

Related Legislative Provision: *See 129th General AssemblyFile No.186, HB 510, §3*

See 129th General AssemblyFile No.127, HB 487, §757.51.

5703-25-06 Equalization procedures.

(A) "True value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in the county on consideration of all facts tending to indicate the current or fair market value of the fee simple estate, as if unencumbered of property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The auditor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality.

(B) At least once each six-year period the county auditor of each county, in conformity with the provisions of section 5713.01 of the Revised Code, shall view and appraise each parcel of real property and the improvements thereon in the county and this appraisal shall reflect the one hundred per cent true value in money of each parcel appraised, and the auditor shall place each parcel of real property on the tax duplicate at its "taxable value" which is thirty-five per cent of its true value in money.

(C) In the update year the county auditor shall determine whether each parcel of real property and the improvements thereon is appraised at its true value in money, as defined in paragraph (A) of rule 5705-25-05 of the Administrative Code, as of tax lien date of said year. If the auditor finds that there has been either an increase or decrease in value, the auditor shall adjust the tax records to show the true value in money of each parcel and the improvements thereon as well as the "taxable value" thereof, which "taxable value" shall be thirty-five per cent of the true value in money thereof as redetermined by the county auditor as of tax lien date.

(D) In making this triennial update of the true value in money and the "taxable value" of each parcel of real property, the county auditor shall be guided by sales of comparable property for a like use; the sales ratio and other related studies compiled by the tax commissioner for the three calendar years immediately preceding the update year; by the increase or decrease in current building costs and changes in construction technique both after the proper application of depreciation and obsolescence; by the increase or decrease in the net rental income, expenses, and services for comparable property since the year in which the preceding sexennial reappraisal had been completed; and such other indications of increase or decrease in value as may be pertinent, such as test or sample appraisals on a current basis, where sales of real property are limited or in question.

(E) In implementing any increase or decrease in valuation of real property pursuant to this rule or ordered by the tax commissioner pursuant to section 5715.24 of the Revised Code, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with section 36, Article II and section 2, Article XII, Ohio Constitution, and sections 5713.03 and 5715.01 of the Revised Code, and this rule.

(F) In determining the true value in the year of the sexennial reappraisal or update year of any tract, lot, or parcel of real estate 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 may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(1) The tract, lot, or parcel of real estate loses value due to some casualty;

(2) An improvement is added to the property.

(G) The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first.

(H) When the county auditor revalues real property, notifications of the change in value shall be made as provided in section 5713.01 of the Revised Code.

Effective: 10/09/2014
Five Year Review (FYR) Dates: 07/25/2014 and 10/09/2019
Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 5713.01, 5715.01
Prior Effective Dates: 12/28/73, 11/1/77, 9/18/03