

## OHIO BOARD OF TAX APPEALS

27981 Euclid Company, LLC,	)	
	)	CASE NO. 2002-R-1688
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
Cuyahoga County Board of Revision,	)	
Cuyahoga County Auditor, and	)	
Euclid City School District	)	
Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	-	Argie, D'Amico & Vitantonio Louis A. D'Amico 6449 Wilson Mills Road Mayfield Village, OH 444143
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Eighth Floor 1200 Ontario Street Cleveland, OH 44113
For the Appellee Board of Education	-	Britton, Smith, Peters & Kalail David A. Rose Summit One, Suite 540 4700 Rockside Road Cleveland, OH 44131-6814

Entered June 4, 2004

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by 27981 Euclid Company, LLC ("27981"). 27981 appeals from a

decision of the Cuyahoga County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property, parcel number 648-30-003, for tax year 2000.

The Cuyahoga County Auditor and the BOR determined that the true and taxable values for the subject property for 2000 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
648-30-003		
Land	\$113,930	\$325,510
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$113,930	\$325,510

27981, however, contends in its notice of appeal that the true and taxable values of the subject property should be reduced to:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
648-30-003		
Land	\$ 48,060	\$137,314
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 48,060	\$137,314

The subject property consists of approximately 0.960 acres, or 42,000 square feet, that was as of the tax lien date unimproved. The property has approximately 329 feet of frontage along the north side of Euclid Avenue, Cleveland, Cuyahoga County, Ohio, in the Euclid taxing district.

The county auditor originally assessed the subject property at a market value of \$325,510 as of the tax lien date, January 1, 2000. 27981 purchased the subject property on March 8, 1999 for \$325,000. 27981 filed a complaint with the

BOR<sup>1</sup>, requesting that the true value of the subject property for 2000 be decreased to \$137,314, based on comparable property values for vacant land. The Euclid City School District Board of Education (“BOE”) filed a counter-complaint, requesting that the auditor’s value be retained. The BOR found that the auditor’s value, as originally determined, was the true value of subject property. It is from that final determination that 27981 now appeals.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, the record of the hearing before this board (“H.R.”), including exhibits (“Ex.”), and briefs of counsel. At the hearing before the board, the appellant was represented by counsel and presented the testimony and appraisal report of Mr. Julian Vanni, a real estate appraiser, on its behalf. The BOE was represented by counsel, but presented no additional witnesses or documentary evidence other than cross-examination. Despite notice, the BOR did not appear.

We begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Cleveland Bd. of Edn. 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 that

---

<sup>1</sup> Appellant’s complaint in the statutory transcript is file stamped as received on April 2, 2002. However, this must be in error as everything else in the statutory transcript indicates that the filing occurred in 2001.

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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value that it seeks. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

It is long established 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, at the syllabus; *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-interest. *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23.

Further, R.C. 5713.03 provides:

“\*\*\* 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 tax lien date, the auditor shall consider the sale price of such tract, lot or parcel to be the true value for taxation purposes.”

Thus, where there is an actual sale of real property, which is both recent and arm’s-length, the county auditor, as well as this board, must consider such a sale as the best evidence of the property’s true value. *Conalco and Park Investment, supra*. See, also, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

While a sale may be the “best evidence” of value, however, it is not the only evidence. Consequently, the Supreme Court of Ohio has held that there exists a rebuttable presumption that a recent, arm’s-length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61; *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4. The presumption that the sale price is the best evidence of value is rebutted when “another indicator is a more accurate representative of that value.” *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284, 286-287. If evidence is introduced that indicates that the sale price is not reflective of true value, then a review of other evidence, such

as an independent appraisal based upon factors other than sale price, is appropriate. *Pingue, Cincinnati School Dist. Bd. of Edn.*, and *Ratner, supra*.

Consequently, it is the burden of a party who claims that a sale is other than arm's-length to rebut the presumption ordinarily accorded the sale. However, the burden of persuasion does not change, as it is still on the appealing party to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. *Cincinnati School Dist. Bd. of Edn.*, *supra*; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

The following fact is undisputed. 27981 purchased the subject property on March 8, 1999 for \$325,000. However, the parties disagree as to whether this sale was an arm's-length transaction, and thus, indicative of fair market value for ad valorem tax purposes.

27981 asserts that the sale was not arm's-length and that there were circumstances surrounding the sale that prohibit it from reflecting the fair market value of the property. Mr. Eric Calabrese, one of the owners of 27981, testified at the BOR. Mr. Calabrese stated the property was listed with a real estate broker. However, the \$325,000 sales price of the subject property was inflated because the purchase was part of an assemblage. 27981 owned five acres adjacent to the subject property. Therefore, 27981 argues it was under duress to purchase the property at the inflated value for future development of its business. Mr. Julian Vanni, a real estate appraiser, testified at the hearing before this board and submitted a summary appraisal ("Ex. A").

Mr. Vanni opined that the fair market value of the subject property as of the tax lien date was \$109,000.

The BOE avers that the sales price does, in fact, reflect the fair market value of the subject property. The BOE maintains that there is nothing in the record to demonstrate that the sales price does not reflect the property's true value. None of the circumstances that establish economic duress have been proven, such as sale/leaseback arrangements, below-market interest, or bankruptcy transactions. Furthermore, the BOE states that Mr. Vanni's appraisal is so flawed, that it is not competent and is unreliable. Therefore, according to the BOE, the appellant has failed to meet its burden in proving that the sales price does not reflect true value and has failed to establish another value as fair market value.

The Supreme Court of Ohio has set forth several guidelines to be followed when determining whether a recent sale was conducted at arm's-length. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court held:

“We have never defined ‘arm's-length sale.’ \*\*\* In its opinion below, the BTA defined it as ‘\*\*\* one which encompasses bidding and negotiation on 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.’ According to Black's Law Dictionary (5th Ed. 179) 100, in an arm's-length transaction ‘\*\*\* each [party] acts in his or her own self interest \*\*\*.’ In sum, 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.” *Id.* at 25. (Footnote omitted.)

In considering the impact of duress on an arm's-length sale of real property, the Tenth District Court of Appeals held in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1992), Franklin App. No. 90AP-317, unreported, that a sale is not an arm's-length transaction "where a buyer is economically compelled to buy the property." *Id.* at 9. In determining whether a sale was the result of compulsion or duress, the subjective motives of the seller and buyer must be examined. The appeals court also noted that the property owner has the burden of proving that it was not a "willing buyer." *Id.* at 10.

In *Tele-Media*, *supra*, the Ohio Supreme Court held that a property owner has the burden to prove that the sale was not an arm's-length transaction.

"Thus, \*\*\*, a recent sale of the property is the best evidence of true value. In order to establish an alternate true value, the taxpayer has the burden of proving that the recent sale is not the best evidence of true value and that another indicator is a more accurate representative of that value." *Id.* at 286-287.

See, also, *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported, and *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 91AP-281, unreported.

In *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540, 1996-Ohio-175, the Supreme Court found economic duress to be present based on several factors. First, the sales price was non-negotiable. Second, the buyer felt compelled to purchase the property for the stated price. Third, the

property was not offered for sale on the open market. Fourth, the purchaser's primary lender would not finance the acquisition of the property. Fifth, failure to purchase the property would have resulted in the purchaser's bankruptcy. The court opined:

“The record clearly establishes that Lakeside never had any real choice but to purchase the property in question. The choice between Triton's survival on the one hand and swift and sure corporate death (bankruptcy) on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller.” *Id.* at 549.

In the present matter, there is nothing in the record to suggest that the parties were not negotiating in their own best interests. Although the record is not clear how much of an open market existed for the sale of the subject property, this fact does not necessarily prevent a sale from being classified as arm's length. *Bd. of Edn. of the Groveport Madison Loc. Schools v. Franklin Cty. Bd. of Revision* (Mar. 8, 2002), BTA No. 1999-R-2050, unreported. See, also, *Dublin City School Dist. Bd. of Edn.*, *supra*. In *Bd. of Edn. of Plain Loc. Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported, this board rejected the notion that sales must always occur in such a manner.

“The county appellees assert that this sale was not an arm's-length transaction because the property was not offered for sale on the open market. We disagree. While the lack of advertisement on the open market may have influenced the price paid for the subject property, it does not necessitate a finding that the subject sale was not arm's-length in nature.” *Id.* at 10.

See, also, *Heights Med. Bldg. LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 2004), BTA No. 2002-T-1260, unreported, and *Bd. of Edn. of the Westerville City School Dist. v. Franklin Cty. Bd. of Revision* (Jan. 11, 2002), BTA No. 2000-M-1840, unreported. Absent further evidence to the contrary, we can only infer that normal market forces affected the sale of the subject property.

Further, there is no evidence that 27981 would have ceased doing business if it had not purchased the subject property. There is nothing in the record to suggest that no alternative properties were available in the neighborhood suitable for 27981's use.

As this board stated in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 23, 1993), BTA No. 1991-P-1122, unreported,

“A distinction may be drawn between those subjective reasons that motivate an individual buyer or seller to enter into a given transaction – as opposed to those actual circumstances which constitute compulsion or duress, themselves. Parties to virtually every transaction are influenced by subjective factors and circumstances. These factors and circumstances motivate the parties to offer more or less money[, or] to raise or lower their asking price. These are normal occurrences in the negotiation process. The particular circumstances motivating an individual buyer or sell will be different, and will vary with each transaction. The fact that a buyer may be influenced by certain subjective factors or circumstances, alone, does not cause the sale price to be an unreliable measure of true value. Indeed, the sale price ultimately agreed upon by the parties after bargaining with each other, \*\*\*, may be viewed as the culmination of the process by which subjective motives and circumstances are transformed into market value. \*\*\*.

“\*\*\*

“Accordingly, a sale should not be disregarded merely because the parties are influenced by subjective factors or circumstances. \*\*\*, all parties are subject to subjective factors or circumstances of one kind or another.” Id. at 2-3.

In the instant matter, although the record is sparse, certain subjective motivations were surely present. 27981 wanted the property for future expansion of its business. Although these motivations unquestionably affected 27981’s purchase of the subject property, this board does not find that these factors rise to the level of duress. Therefore, the presumption that a recent sale is the best evidence of value is not rebutted.

When the sales transaction is found to be arm’s-length, and thus, the sales price is the best evidence of value, then this board need not consider appraisal evidence. *Pingue and Cincinnati School Dist. Bd. of Edn.*, supra. However, if appraisal evidence is utilized, then the appraiser must consider and place the proper weight on the sale, or the evidence can be rejected. *DePrie v. Hamilton Cty. Bd. of Revision* (Mar. 26, 2004), BTA No. 2003-M-337, unreported.

By finding that the sales transaction was arm’s-length, the board is not required to consider the appraisal testimony and report of Mr. Vanni. However, if the board were to have considered it, we would have found the report lacking as probative evidence of value because of numerous deficiencies. First, the appraiser failed to take into consideration the March 8, 1999 sale of the subject property at all. H.R. 26. Second, the appraiser presented a summary appraisal report, which is acceptable, but he

was unable to provide the necessary details, either through documentation or testimony, to supplement, amplify, or explain many of the statements summarized in his report. Third, the properties chosen as sales comparables were not located in the subject's neighborhood or vicinity. Fourth, the appraiser did not provide in his report, nor was he able to demonstrate through his testimony what adjustments were made for size, frontage, location, date of sale, etc. Fifth, the appraiser failed to establish that he adequately investigated whether the comparable sales were arm's-length or subject to favorable financing.

Therefore, based upon the foregoing, the Board of Tax Appeals finds the sales price of the subject property reflects its true value. Consequently, we find the taxable and true values of the subject property as of January 1, 2000 to be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
648-30-003		
Land	\$113,750	\$325,000
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$113,750	\$325,000

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

ohiosearchkeybta