

## OHIO BOARD OF TAX APPEALS

Board of Education of the	)	
Cleveland Municipal School District,	)	
	)	CASE NOS. 2002-R-2641
Appellant,	)	2002-R-2642
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Cuyahoga County Board of Revision,	)	DECISION AND ORDER
Cuyahoga County Auditor, and	)	
Vlaxos, LLC,	)	
	)	Affirmed on Appeal Dec. 21, 2005
Appellees.	)	Ohio Supreme Court

APPEARANCES:     107 Ohio St.3d 250, 2005-Ohio-6434

For the Appellant Board of Education	-	James H. Hewitt Co., LPA James H. Hewitt, III The Groh Mansion 3043 Superior Avenue Cleveland, OH 44114-4340
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 Property Owner	-	Todd W. Sleggs & Associates Todd W. Sleggs 820 West Superior Avenue, Suite 410 Cleveland, OH 44113

Entered June 4, 2004

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

The Board of Tax Appeals considers these matters pursuant to a notice of appeal filed by the Board of Education of the Cleveland Municipal School District

(“BOE”). The BOE 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 numbers 101-09-302 and 101-09-303, for tax year 2000.

The instant appeal is a continuation of matters earlier filed with this board, but dismissed upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 30, 2002), BTA Nos. 2002-R-260 and 2002-R-261, unreported.

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>
101-19-302		
Land	\$ 5,920	\$ 16,910
Building	<u>\$134,080</u>	<u>\$383,090</u>
Total	\$140,000	\$400,000
101-19-303		
Land	\$ 3,220	\$ 9,200
Building	<u>\$ 2,030</u>	<u>\$ 5,800</u>
Total	\$ 5,250	\$ 15,000

The BOE, however, contends that the true and taxable values of the subject property should be increased to:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
101-09-302		
Land	\$ 5,920	\$ 16,910
Building	<u>\$ 442,960</u>	<u>\$1,265,600</u>
Total	\$ 448,880	\$1,282,510

101-09-303

Land	\$ 3,220	\$ 9,200
Building	<u>\$ 20,400</u>	<u>\$ 58,290</u>
Total	\$ 23,620	\$ 67,490

The subject property is improved with a building that at the time was occupied by the Greek Isles Restaurant. The property is located at 408 West St. Clair Avenue, Cleveland, Cuyahoga County, Ohio, in the Cleveland city school taxing district.

The county auditor originally assessed the subject property at a market value of \$415,000 as of the tax lien date, January 1, 2000. Vlaxos, LLC (“Vlaxos”) then purchased the subject property on December 22, 2000 for \$1,350,000. The BOE filed a complaint with the BOR, requesting that the value of the subject property for 2000 be increased to the sales price. Vlaxos 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 the subject property. It is from that final determination that the BOE 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, and briefs of counsel. The parties waived hearing in this matter before this board.

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 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 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. 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. *Cincinnati School 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 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. Vlaxos purchased the subject property on December 22, 2000 for \$1,350,000. 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.

Vlaxos asserts that the sale was not arm's length and that there were "peculiar circumstances" surrounding the sale that prohibit it from reflecting the fair market value of the property. Mr. George Seventas, a principal member of Vlaxos, testified at the BOR on its behalf. Mr. Seventas stated that the asking price for the property was \$1,600,000 to \$1,800,000. However, after negotiation, the parties agreed to a sales price of \$1,350,000. Mr. Seventas claimed that the appellant had to purchase the property because the landlord was going to raise the rent significantly. Thus, Vlaxos submits that since the property was not offered on the open market, the buyer and seller were related parties, as lessee and landlord, and because of the economic

duress placed on the appellant by the landlord's exorbitant rent increase, Vlaxos was forced to purchase the property.

The BOE avers that the sales price reflects the fair market value of the subject property since it was a negotiated price. The BOE contests that the parties are related based upon their relationship of lessee and landlord. In fact, the BOE contends that there is nothing in the record to demonstrate that the sales price does not equal fair market value. There were no lower sales presented in the area. The BOE contends that none of the circumstances that have been found to establish that the sales price may not equal fair market value, such as sale/leaseback arrangements, below market interest, or bankruptcy transactions, are present here.

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*, supra, 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 claim of duress in 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 *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported, the appellant argued that the sale transaction was not arm's length because of the long-term landlord/tenant relationship between the parties. However, this board found that:

“While it is apparent that Georgesville considered the landlord-seller to be a difficult negotiator, a position of strength does not necessarily demonstrate that duress was a factor in the sale of the subject property.”

Furthermore, in that case the board found that despite a fifteen-year relationship, the sale was still arm’s length because the parties’ only relationship during that time was as landlord and tenant, there was no evidence of any collusion between the parties, negotiations did, in fact, occur, and it was apparent that both parties acted in their own self-interest.

Vlaxos relies heavily on *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540, 1996-Ohio-175. In *Lakeside*, 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, the record establishes that the sales price was negotiated. A buyer is not necessarily compelled to purchase a property where the

sales price had been voluntarily negotiated between a willing buyer and a willing seller. See *Lakeside Ave. and Cardinal Fed. S. & L. Assn.*, supra. Further, 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.

In the present matter, the record establishes that Vlaxos was able to obtain financing for the subject property, although personal commitments from the principals were also required.

Finally, there is no evidence that Vlaxos 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 suitable for Vlaxos' use. Further, an increase in rent, even a substantial one, is not enough to constitute economic duress. *Dublin City School Dist. Bd. of Edn.*, supra.

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 seller 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, certain subjective motivations were present. Vlaxos had invested time, effort, and money into this particular business location. Vlaxos was certain to experience a substantial increase in rent. These motivations unquestionably affected Vlaxos’ purchase of the subject property. However, 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.

Based upon the foregoing, the Board of Tax Appeals finds the value 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>
101-09-302		
Land	\$ 5,920	\$ 16,910
Building	<u>\$ 442,960</u>	<u>\$1,265,600</u>
Total	\$ 448,880	\$1,282,510
101-09-303		
Land	\$ 3,220	\$ 9,200
Building	<u>\$ 20,400</u>	<u>\$ 58,290</u>
Total	\$ 23,620	\$ 67,490

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.

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