

**OHIO BOARD OF TAX APPEALS**

Euclid City School District )  
Board of Education )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Cuyahoga County Board of Revision, )  
Cuyahoga County Auditor, and )  
185 Lakeshore, LLC, )  
 )  
Appellees. )

CASE NOS. 2002-R-2028  
2002-R-2029  
(REAL PROPERTY TAX)  
DECISION AND ORDER

Dismissed on Appeal April 14, 2004  
Cuyahoga County Court of Appeals

APPEARANCES:

For the Appellant Board of Education - Britton, McGown, Peters & Kalail  
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For the County Appellees - William D. Mason  
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For the Appellee Property Owner - Law Offices of Georg Abakumov  
Georg Abakumov  
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Entered December 19, 2003

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

These matters are before the Board of Tax Appeals upon notices of appeal filed by the Euclid City School District Board of Education (“BOE”). The BOE appeals a

final determination of the Cuyahoga County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 1998 based upon a complaint filed by the BOE.

The instant appeals are 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 *Euclid City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 25, 2002), BTA Nos. 2000-R-907 and 2000-R-908, unreported. In light of the fact that no party has objected, although given an opportunity to do so by order of this board dated March 21, 2003, and in the interest of administrative economy, this board will accept the previous record in the aforementioned dismissed board cases as probative of the issues in the current appeals.

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

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
641-10-119		
Land	\$ 5,250	\$ 15,000
Building	<u>\$ 25,940</u>	<u>\$ 74,110</u>
Total	\$ 31,190	\$ 89,110
641-10-120		
Land	\$ 4,970	\$ 14,200
Building	<u>\$ 54,810</u>	<u>\$156,600</u>
Total	\$ 59,780	\$170,800
641-10-121		
Land	\$ 35,460	\$101,310
Building	<u>\$ 99,990</u>	<u>\$285,690</u>
Total	\$135,450	\$387,000

641-10-122		
Land	\$ 5,640	\$ 16,110
Building	<u>\$ 3,460</u>	<u>\$ 9,890</u>
Total	\$ 9,100	\$ 26,000

641-10-123		
Land	\$ 6,650	\$ 19,000
Building	<u>\$ 2,030</u>	<u>\$ 5,800</u>
Total	\$ 8,680	\$ 24,800

The BOE, on the other hand, contends that the true and taxable values of the subject property should be:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
641-10-119		
Land	\$ 5,250	\$ 15,000
Building	<u>\$ 38,000</u>	<u>\$110,000</u>
Total	\$ 43,250	\$125,000
641-10-120		
Land	\$ 4,970	\$ 14,200
Building	<u>\$100,030</u>	<u>\$285,800</u>
Total	\$105,000	\$300,000
641-10-121		
Land	\$ 35,460	\$101,310
Building	<u>\$139,540</u>	<u>\$398,690</u>
Total	\$175,000	\$500,000
641-10-122		
Land	\$ 5,640	\$ 16,110
Building	<u>\$ 11,860</u>	<u>\$ 33,890</u>
Total	\$ 17,500	\$ 50,000
641-10-123		
Land	\$ 6,650	\$ 19,000
Building	<u>\$ 10,850</u>	<u>\$ 31,000</u>
Total	\$ 17,500	\$ 50,000

The subject property consists of five parcels, with approximately 3.14 acres of land. It is improved with a structure used as a new car dealership and service garage, with approximately 32,080 square feet of gross floor area. The building was built and remodeled from 1943 through 1987. The property is located at 531-553 East 185<sup>th</sup> Street, in Cleveland, Cuyahoga County, Ohio, in the Cleveland school taxing district.

These matters are now submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified to this board by the BOR (“S.T.”), the records of the evidentiary hearings (“R.”), including exhibits, and the briefs of counsel. At the hearing before this board, the BOE called Dean T. Smith, an MAI appraiser, who testified and presented a limited summary appraisal and update. Georg Abakumov acted as counsel and also testified on behalf of Lakeshore, as owner. Despite due notice, no one appeared on behalf of the county appellees.

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 the 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, 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 independent appraisals 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, in this case the board of education, 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 BOE contends that the BOR has undervalued the parcels in question by not relying upon the sale of the subject property on November 6, 1998, for \$1,025,000, as the indicator of its value. The property owner, 185 Lakeshore, LLC (“Lakeshore”), however, maintains that the sale price is not indicative of value because it was an allocation based upon business concerns other than the market value of the real property in that goodwill is included in the allocated sale price of the real estate. Further, Lakeshore claims that the subject property has environmental contamination, which further reduces the value.

It is clear that the burden of persuasion is on the BOE, as appellant. The BOE has the burden of providing competent and probative evidence that demonstrates its right to the value sought. In order to meet this burden, the BOE submitted the purchase agreements, the conveyance fee statements, and the warranty deeds, evidencing that Lakeshore purchased the subject property from Jackshaw Chevrolet in November 1998 for \$1,025,000. At this point, a rebuttable presumption arose that the sale price reflects the true value of the subject property, and consequently a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn.*, supra. Once this presumption arises, the appellees are required to rebut the presumption by submitted evidence that the sale was either not an arm’s length transaction, or, due to other circumstances surrounding the sale, that the sale price is not indicative of the true value of the subject property as of the tax lien date.

However, in the case before us, the arm's-length nature of the sale is uncontroverted. Georg Abakumov, owner of Lakeshore, testified that the sale was arm's-length. R. Apr. 24, 2002, 144. Mr. Abakumov did not know the seller, Steve Jackshaw. R. Apr. 24, 2002, 143. Mr. Abakumov stated in his reply brief that the property owner did not dispute the recent and arm's-length nature of the sale. See appellee's reply brief, p. 5.

This sale not only incorporated the real estate, which included the subject property, but it also encompassed two additional pieces of real estate, a truck dealership and a used car lot, as well as the business assets and the Chevrolet franchise. Each portion of the sale had its own purchase agreement.

Mr. Abakumov argues that although this is an arm's-length sale, the allocations of the sale price were dictated by Mr. Jackshaw, and Mr. Jackshaw had other business considerations for allocating most of the value to the real property. See appellee's reply brief, p. 1, 3. Lakeshore submits that the paltry \$170,000 allocated to the franchise indicates that \$500,000 of goodwill is included in the amount allocated to the real estate. R. Apr. 24, 2002, 131. However, Lakeshore did not call Steve Jackshaw to testify as to his motives for requiring the deal to be structured as it was, nor did Lakeshore present any evidence as to the value of dealership franchises.

In *Consolidated Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St.2d 410, 414-415, the Supreme Court of Ohio stated:

“The Board of Tax Appeals is not required, in every instance, and in all events, to accept as the true value in money of real property, an allocation of a portion of a lump-sum purchase price paid for a group of assets \*\*\*, and where it finds a proper allocation of the lump-sum purchase price of the property in

question is not possible it may consider all of the evidence which is before it in determining the true value in money of the property.”

See, also, *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450. However, the court also cautioned in *Conalco*, paragraph two of the syllabus:

“In valuing real property sold within three days of the tax lien date in an arm’s-length transaction, the best evidence of ‘true value in money’ is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale.”

This board finds that Lakeshore has not presented competent, probative, and reliable evidence to overcome the presumption that the sale price controls. In addition to the recent, arm’s-length sale of the subject property, the BOE presented the testimony of Dean T. Smith, an MAI appraiser. Mr. Smith testified that based upon the sale market approach, it was his opinion that the value of the subject property as of tax lien date, January 1, 1998, was \$1,270,000. R. Feb. 11, 2002, 61. Although Lakeshore maintains that the appraisal is flawed, the board finds that it is sufficient to support the sale price as indicative of value.

Lakeshore also argues that there was \$200,000 in environmental damage to the subject property. R. Apr. 24, 2002, 134. This amount was an estimate, which was then doubled, as a part of a lawsuit settlement. *Id.* Further, Lakeshore suggests that the board take a dollar-for-dollar reduction from the sale price for the costs of remediation. R. Apr. 24, 2002, 143.

The valuation of environmentally contaminated properties is an especially difficult task. *The Bentz Foundation v. Franklin Cty. Bd. of Revision* (July 7, 2000), BTA No. 1999-M-200, unreported. In *Chem-Masters Corp. v. Geauga Cty. Bd. of Revision* (Dec. 21, 1990), BTA No. 1988-J-994, unreported, this board held that the impact of environmental contamination is a factor that may be considered in the determination of true value. However, the board refused to rely solely on a dollar-for-dollar reduction from true value for the costs of clean up. Instead, the board suggested that an appraisal “which ascertains the effect the contamination has had upon the property” was necessary before the board would reduce value. *Id.* at 142. That method was approved by the *Clermont County Court of Appeals in Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 399, and the Supreme Court in *Gen. Motors Corp. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 513.

In the present appeal, \$100,000 was estimated for clean up costs of the subject property as part of a lawsuit. This amount was then doubled for settlement. R. Apr. 24, 2002, 134. Lakeshore suggests that the board take a dollar-for-dollar reduction from the sale price for the costs of remediation. R. Apr. 24, 2002, 143. Lakeshore presented no evidence of the diminution in value for the subject property due to the contamination. And, in fact, Mr. Smith stated that a certain amount of contamination is expected with any automobile dealership. R. Apr. 24, 2002, 95. Therefore, the board finds that Lakeshore is entitled to no reduction in the true value for environmental contamination.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds the value of the subject property as of January 1, 1998 to be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
641-10-119		
Land	\$ 5,250	\$ 15,000
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Total	\$ 17,500	\$ 50,000

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.

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