

OHIO BOARD OF TAX APPEALS

Strongsville Board of Education and City of Strongsville,)	
)	CASE NO. 2003-G-663
Appellants,)	
)	(REAL PROPERTY TAX)
vs.)	
)	
Cuyahoga County Board of Revision, Cuyahoga County Auditor, and Pearl Drake, LLC,)	DECISION AND ORDER
)	
Appellees.)	Dismissed on Appeal April 25, 2005 Ohio Supreme Court

APPEARANCE:

For the Appellants	- Kolick & Kondzer Daniel J. Kolick 24500 Center Ridge Road Suite 175 Westlake, Ohio 44145
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Ninth Floor, Courts Tower 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee Pearl Drake LLC	- Siegel, Siegel, Johnson & Jennings Co., L.P.A. Steven J. Vivarronda 30195 Chagrin Blvd. Suite 205 Cleveland, Ohio 44124

Entered February 25, 2005

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

The Board of Tax Appeals now considers this matter upon a notice of appeal filed herein by counsel for the appellants, Strongsville Board of Education and City of Strongsville (hereinafter "BOE"). BOE appeals from a decision of the

Cuyahoga County Board of Revision (“BOR”), wherein said BOR determined the taxable value of the subject real property for tax year 2001.

The Cuyahoga County Auditor and the BOR determined the true and taxable values to be as follows:

Parcel No. 394-25-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 36,300	\$12,700
Building	<u>93,400</u>	<u>32,700</u>
Total	\$129,700	\$45,400

Parcel No. 394-25-002	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$283,500	\$99,200
Building	<u>-0-</u>	<u>-0-</u>
Total	\$283,500	\$99,200

Parcel No. 394-25-003	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 20,500	\$ 7,200
Building	<u>100,600</u>	<u>35,200</u>
Total	\$121,100	\$42,400

Parcel No. 394-25-004	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 20,500	\$ 7,200
Building	<u>84,800</u>	<u>29,700</u>
Total	\$105,300	\$36,900

Parcel No. 394-25-008	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$166,500	\$58,300
Building	<u>-0-</u>	<u>-0-</u>
Total	\$166,500	\$58,300

Parcel No. 394-25-009	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 10,000	\$ 3,500
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 10,000	\$ 3,500

TOTAL	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$537,300	\$188,100
Building	<u>278,800</u>	<u>97,600</u>
Total	\$816,100	\$285,700

The appellants' notice of appeal claims that the correct values are as

follows:

Parcel No. 394-25-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$206,600	\$ 72,310
Building	<u>93,400</u>	<u>32,690</u>
Total	\$300,000	\$105,000

Parcel No. 394-25-002	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$283,600	\$99,260
Building	<u>-0-</u>	<u>-0-</u>
Total	\$283,600	\$99,260

Parcel No. 394-25-003	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 59,400	\$20,790
Building	<u>100,600</u>	<u>35,210</u>
Total	\$160,000	\$56,000

Parcel No. 394-25-004	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$215,200	\$ 75,320
Building	<u>84,800</u>	<u>29,680</u>
Total	\$300,000	\$105,000

Parcel No. 394-25-008	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$166,570	\$58,300
Building	<u>-0-</u>	<u>-0-</u>
Total	\$166,570	\$58,300

Parcel No. 394-25-009	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$210,000	\$ 73,500
Building	<u>-0-</u>	<u>-0-</u>
Total	\$210,000	\$ 73,500

TOTAL	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$1,141,370	\$399,480
Building	<u>278,800</u>	<u>97,580</u>
Total	\$1,420,170	\$497,060

The subject property is an assemblage of land, approximately 3.2646 acres, with an intended use of building a strip shopping mall and parking lot. Two of the parcels, specifically parcel nos. 394-25-002 and 394-25-008, were previously acquired by appellee, Pearl Drake LLC (“Pearl”). The remaining four parcels, the valuation of which is the subject of this appeal, were purchased on August 17, 2001.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county, and the briefs of counsel. The parties waived the hearing for this matter.

In support of its contention of value for the assemblage, the BOE relies upon the August 17, 2001 sale of the four parcels for \$970,000 plus the value of the previously acquired two parcels valued at \$450,000, for a total of \$1,420,000. The

BOE asserts that the sale price is the best evidence of the fair market value of the four parcels, therefore, meeting its burden of persuasion as to the proper value of the subject property.

Pearl does not deny it purchased the four parcels on August 17, 2001, for \$970,000. However, Pearl argues that the sale price may not be relied upon because (1) the sale was not made at arm's length due to coercion or duress and (2) the sale price does not reflect the value of the subject property. In Pearl's legal brief, it stated that it would not contest the price paid for parcels 394-25-003 and 394-25-004 as indicative of the fair market value of those parcels. Consequently, only the valuation of the parcels ending in -001 and -009 remain at issue. Pearl argues that it was compelled to pay a price that was above market value for these two parcels because they were vital to the completion of the shopping center. Pearl proposes in its brief that the value of the two parcels should be no greater than \$350,000 per acre, which equates to \$105,000 for parcel -001 (.03 acres), and \$70,000 for parcel -009 (.02 acres). On page 3 of Pearl's brief, a chart is set forth containing the revised figures which amount to a total value of \$1,135,000 for the six parcels.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has a burden to prove its right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336. Consequently it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which 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. Once appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn.*, supra.

Furthermore we note that the issue on appeal is the true value of the subject property. Thus, we will proceed to make an independent, de novo determination which is predicated upon the preponderance of the evidence. *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13. Accordingly, this board will seek to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, 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.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. 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, at the syllabus. See, also, *State ex. rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Accordingly, where there exists an actual sale of real property, which is both recent and arm's length, R.C. 5713.03 requires the county auditor to consider

such a sale as the best evidence of the property's true value. *Conalco*, supra; *Park Investment Co.*, supra. While the sale may be the "best evidence" of value, it is not the only evidence. Consequently, the Supreme Court has held 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. Where the inference is raised that the sale price does not reflect true value, we must at least consider and review other probative evidence of the subject property's true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, at 4. The burden of persuasion rests with the challenging party to present evidence to rebut the presumption that the sale price reflects true value. *Cincinnati Bd. of Edn.*, supra, at 327.

Pearl first contends the sale in question was not arm's length in nature because it was forced to purchase the subject property based on economic necessity. In short, Pearl claims economic duress or compulsion. Economic duress has been considered several times by the courts as well as by this board. In determining whether a sale is the result of compulsion or duress, the "subjective motives" of the buyer and seller must be examined. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 92AP-281, unreported; *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 93-T-1107, unreported, aff'd. (March 7, 1996), Franklin App. No. 95APH06-718, unreported. In making this determination, we are mindful that the person seeking to rely upon economic duress has the burden of establishing that he or she was not a

“willing buyer.” *Dublin*, supra. Cf. *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284.

For example, in *Lakeside Avenue L.P. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, the Supreme Court held that certain compelling business circumstances can establish either that a recent sale was not made at arm’s length or that the sale was not representative of value. The court found in *Lakeside* that the purchaser had no choice but to purchase the property because its business was dependent upon a railroad ramp located on the property. The purchaser could not simply move to another location, as it had to remain where the railroad tracks, and thus its business, were located. The court noted the purchaser faced the loss of a significant portion of its business that would have resulted in the purchaser’s bankruptcy: “The choice between *** survival on one hand and swift and sure corporate death on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller.” Id. at 549.

Considering the record in this matter, we are unable to find sufficient competent and probative evidence to conclude that Pearl was required to purchase the property under compelling business circumstances. *Lakeside*, supra. There was no business on the property which would suffer irreparable financial harm if the parcels were not purchased. Pearl had the choice of seeking a new location for the shopping center, especially since the auditor had a nominal value on the two parcels it owned prior to the August 17, 2001 sale.

Pearl's purchase of the two parcels in question was based upon its motivation to complete the assemblage for its shopping center. Although the seller may have been a difficult negotiator, a position of strength does not necessarily demonstrate that duress was a factor in the sale of the two parcels. It is evident that Pearl considered the parcels to be worth the purchase price since a new location was apparently not considered; nevertheless, this does not make Pearl the target of economic duress. *Lakeside* and *Dublin*, supra. See, also, *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported.

Pearl also asserts that the price paid for the two parcels was not made at arm's length because of the per acre price paid for the other two parcels purchased in August 2001. We find this argument to be without merit. Parcel -001 is a corner parcel and both -001 and -009 contain smaller acreage. Therefore, the price per acre could logically be different from the other two parcels. Further, although this board is cognizant that an appraisal performed for purposes other than tax valuation may not provide the most reliable indication of true value, we note the record reflects that parcel -001 was appraised at \$350,000 for estate purposes. We find that this amount supports the sale price of \$300,000. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that "encompasses bidding and negotiation in 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." In short, the court found an arm's-length sale to be 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.

Upon review of the evidence before us, and our finding that the sale did not take place under compulsion or duress, with both parties acting in their own best interest, we must conclude that the sale was arm’s length. The sale was executed to complete an assemblage. That fact does not, in and of itself, render the sales price unreliable. See *Beachcliff Properties, Ltd. Part. v. Cuyahoga Cty. Bd. of Revision* (Feb. 22, 2002), BTA Nos. 2000-K-1348 and 2000-K-1351, unreported.

In conclusion, we find that the BOE has proven, by competent and probative evidence, that the August 17, 2001 sale of the subject property was made at arm’s length and that the sale price provides the most reliable indication of value as of tax lien date. Pearl has not presented credible and probative evidence sufficient to rebut the sale price.

Based upon consideration of the entire record, we must conclude that the BOE has presented this board with credible, probative evidence sufficient to persuade us that a change in the value of the subject property should be granted. *Cincinnati*, *supra*; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property as of January 1, 2001 are as follows:

Parcel No. 394-25-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$206,600	\$ 72,310
Building	<u>93,400</u>	<u>32,690</u>
Total	\$300,000	\$105,000

Parcel No. 394-25-002	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$283,600	\$99,260
Building	<u>-0-</u>	<u>-0-</u>
Total	\$283,600	\$99,260

Parcel No. 394-25-003	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 59,400	\$20,790
Building	<u>100,600</u>	<u>35,210</u>
Total	\$160,000	\$56,000

Parcel No. 394-25-004	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$215,200	\$ 75,320
Building	<u>84,800</u>	<u>29,680</u>
Total	\$300,000	\$105,000

Parcel No. 394-25-008	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$166,570	\$58,300
Building	<u>-0-</u>	<u>-0-</u>
Total	\$166,570	\$58,300

Parcel No. 394-25-009	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$210,000	\$ 73,500
Building	<u>-0-</u>	<u>-0-</u>
Total	\$210,000	\$ 73,500

TOTAL	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$1,141,370	\$399,480
Building	<u>278,800</u>	<u>97,580</u>
Total	\$1,420,170	\$497,060

The Auditor of Cuyahoga County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

ohiosearchkeybta