

Thornwood argues that the current true value of the subject property should be \$785,000.¹

The subject property is identified in the Delaware County Auditor's records as permanent parcel numbers 25-319-110-01-023-000, 25-319-110-01-023-001, and 25-319-110-01-022-000 and is comprised of approximately 34.043 acres of land. The land is improved with a residential structure that was erected in 1999 and is approximately 2,608 square feet in size. The subject is also improved with a lake that is approximately 1.0 acre in size.

This matter came before the BOR pursuant to an increase complaint filed by the Olentangy Board of Education on the subject's 2001 valuation and an original decrease complaint filed by Thornwood on the subject's 2002 valuation. In each instance, Olentangy argued before the BOR that the correct value for the subject was \$1,325,000 based upon an October 10, 2001 sale of the subject. Thornwood admits that it purchased the subject on October 10, 2001 for \$1,325,000. Nevertheless, Thornwood counters that the sale was not made at arm's length due to duress.

At this board's merit hearing, Thornwood offered the testimony of Robert Yoakam, Sr., a member of the LLC. Mr. Yoakam testified that over the past two decades, he has acquired property around the subject for the purpose of creating a "family compound" where he and his six children could build homes and reside. Over

¹ This matter is a refiling of BTA No. 2002-T-775, which was dismissed on October 23, 2002 for lack of jurisdiction under *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. The prior record established in BTA No. 2002-T-775 is hereby incorporated into the present record.

the years, the compound had grown to approximately 240 acres. The compound is horseshoe in shape, with the subject property jutting into the middle of the compound. Mr. Yoakam testified that for several years he had attempted to purchase the subject property from its owner, John Yiamouyiannis, in an attempt to finish the compound. Although Mr. Yoakam and Mr. Yiamouyiannis apparently had an agreement that Mr. Yiamouyiannis would offer Mr. Yoakam a right of first refusal should he decide to sell, Mr. Yiamouyiannis maintained that he had no interest in selling the subject.

Sometime in 2001, Mr. Yiamouyiannis died, and title to the subject passed to his widow, Gail. According to Mr. Yoakam's testimony, he approached Mrs. Yiamouyiannis to inquire into the possibility of purchasing the subject property. He stated that Mrs. Yiamouyiannis subsequently responded with an offer to sell the subject for \$1,500,000. Mrs. Yiamouyiannis also indicated that a developer had shown interest in the property, and she showed Mr. Yoakam a drawing, which laid out a residential development of approximately twenty homes.

Mr. Yoakam declined the \$1,500,000 offer, and Mrs. Yiamouyiannis countered later with an asking price of \$1,325,000. Mr. Yoakam testified that he felt he had no negotiating power despite the fact that he had years of experience in buying and selling property for development. He represented that he was faced with the possibility that Mrs. Yiamouyiannis would sell the subject to a third party, who would develop the subject as a residential subdivision. This meant that areas of the compound would be divided and that any potential development would interfere with the intent and ambiance of the family compound. As a result, Mr. Yoakam agreed to the \$1,325,000 asking price.

In addition to the above testimony, Thornwood has offered the testimony and report of Thomas Horner, a real estate appraiser. Mr. Horner opined value for the subject of \$785,000 as of January 1, 2002.

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* (1994), 68 Ohio St.3d 336; *Crow 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 which 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.

With regard to the sale now before us, 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. R.C. 5713.03 further 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*.

While the sale may be the “best evidence” of value, however, it is not the only evidence. Consequently, the Ohio Supreme Court 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. In *Cincinnati*, *supra*, the court held that, by recognizing the rebuttable presumption that the sale price accurately reflects true value, a consequent presumption exists that the sale has met all the elements that characterize true value. As a result, the burden rests with the challenging party to rebut the presumption that the sale price reflects true

value by submitting reliable evidence that either the sale was not arm's length in nature or, due to circumstances related to the sale, the price was not indicative of the true value of the subject as of tax lien date. *Id.* at 327.

Thornwood contends the sale in question was not arm's length in nature because it was forced to buy the subject to preserve the nature of the Yoakam family compound. In short, Thornwood claims duress or compulsion. Assertions of 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* (Sep. 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. 1993-T-1107, unreported, affirmed (Mar. 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.

However, *Dublin*, supra, involved a situation in which the owner of an automotive dealership had leased the location of the dealership for over ten years. At the conclusion of the lease, the dealer and the landlord entered into negotiations to either renew the lease or sell the property to the dealer. The dealer ultimately purchased the property but argued that he paid more than market value because the landlord, knowing of the dealer's desire to remain at the current location, had pressured him to pay more than market value. In short, the dealer argued that if he did not purchase the property for a higher amount, the landlord would have forced a substantial increase in rent upon him. We declined to find duress. We acknowledged that the dealer's motivations clearly affected his decision to purchase the property; however, we concluded that the factors did not rise to the level of compulsion or duress. We further found that the record lacked support for the dealer's claims that failure to purchase would result in economic harm.

In the instant matter, we are unable to find sufficient competent and probative evidence to conclude that Thornwood was required to purchase the property under compelling circumstances. While Mr. Yoakam was motivated by personal reasons, most investors seek to acquire assets that will be valuable to them and will fulfill the investor's own needs, whatever those needs may be. Such motivations are

not extraordinary, nor do they necessarily destroy the arm's-length nature of the sale. *Dublin*, supra. We find Thornwood's motivation to purchase the subject property to be such a choice.

In addition, the finding of duress is premised upon economic harm. We acknowledge that Thornwood's purchase was motivated in part by a desire to preserve the character of the area. However, it appears from our review of the record that the purchase was also motivated by Mr. Yoakam's "vision" of what he wanted for the family compound. Thornwood purchased the subject to prevent its development. While the subject property added to the compound, no evidence has been presented that establishes that the absence of the subject's acreage would have detracted from either the character or the value of the surrounding compound. There is no indication that the value of the compound's land would have been devalued without the subject or by any potential development to the subject by a third party. It is also evident from the record that Thornwood continued to enjoy the benefits of the compound despite the fact that other property around it was being developed for residential subdivisions. That the purchase of the subject was advantageous to Thornwood and that Thornwood may have been motivated by its subjective view of circumstances to purchase the subject property, we do not deny; nevertheless, this does not make Thornwood the target of duress. *Lakeside* and *Dublin*, supra.

Additionally, we can find nothing in the record that would lead us to otherwise conclude that the October 2001 sale was not arm's length. 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.

Thornwood represents that the subject property was not exposed to the open market and that the seller forced a higher price by refusing to negotiate. We note, first, that there is a discrepancy in the record concerning whether the subject was offered on the open market. During the BOR hearing, Mr. Yoakam testified that Thornwood learned from another person that the subject property was being offered for sale:

“Mr. Yokum [sic], I just want to understand your testimony. You have indicated that you heard through the grapevine that this property was for sale?

“[Mr. Yoakam] Yes.

“Q. And can you recall who you heard that from?

“A. One of my kids told me. I believe it was my daughter, but I’m not sure because when I found out, I knocked on her [Mrs. Yiamouyiannis’] door and asked her and she said yes she was selling it.

“Q. And I gather from your testimony that other people knew the property was for sale because the seller told you that she contacted a developer?

“A. I have no idea who she contacted or whatever. I have no idea, but I did see the drawing ***.” S.T., BTA No. 2003-T-1456, BOR Hearing Record, at 170.

Thus, we are unable to find that the subject was not exposed to the open market in some fashion. Even if we were to assume that the property was not offered on the open market, negotiations did occur, resulting in a price lower than that originally offered. See *Dublin*, supra; *Bd. of Edn. of the Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported. The seller had asked an original price of \$1,500,000 for the subject property, which Thornwood rejected. The \$1,325,000 price was agreed to sometime later. The record discloses no evidence of any unusual financing, or similar abnormal arrangements, affecting the sale price. Financing for the purchase was conventional and made through a local bank. We acknowledge that there may have been another potential buyer interested in the subject, which motivated Thornwood to take action. While Thornwood has called into question the validity of the other offer, Mr. Yoakam clearly considered it as a legitimate potential in determining to make the purchase. Competition over real property is not uncommon and does not necessarily alter the arm's length nature of the sale. It is apparent that Thornwood considered the seller to be a difficult negotiator. However, a position of strength does not necessarily demonstrate that duress was present or that the sale was not at arm's length. *Dublin*, supra, at 16. Because the parties engaged in negotiations, however short, and because the parties acted in their own best interests, and not in collusion, we find the sale to be arm's length in nature.

Next, Thornwood has offered appraisal evidence in support of its claim of value. In *Cincinnati*, supra, the court held that those who seek to overcome the

presumption in favor of a sale price for purposes of receiving either an increase or decrease in value must satisfy a two-step process:

“In *Ratner, supra*, we held in the syllabus: ‘A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value.’ The burden of persuasion at the BTA was always on the BOE, as appellant, to prove its right to an increase in value. See *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, 527 N.E.2d 874, and *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 626 N.E.2d 933. To prove its right to an increase in value the BOE had to prove two points. First, the BOE had to prove that the sale price did not reflect true value. To prove that point the BOE attempted to prove that the sale was not an arm's-length sale. If the BOE had proven the first point, it next had to establish the increased valuation. In this case the BOE never got beyond the first point. Thus, consideration of the auditor's appraisal never became an issue.” *Id.* at 328-329.

See, also, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62 (holding that it “is only when the purchase price does not reflect true value that a review of independent appraisals based upon other factors is appropriate.”). Having failed to demonstrate that the sale price was not arm’s length in nature, either due to duress or other circumstances, we must conclude that the sale price is the best evidence of value before this board. As such, consideration of the appraisal evidence is not appropriate.

In conclusion, we find that the October 10, 2001 sale of the subject property is arm’s length and that the \$1,325,000 sale price thus provides the most reliable indication of value as of tax lien date. Thornwood has not presented credible and probative evidence sufficient to rebut the presumption in favor of the sale price.

Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property should be as follows for tax years 2001 and 2002:

Parcel 319-110-01-023-000	TRUE VALUE	TAXABLE VALUE
LAND	\$123,000	\$43,050
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$123,000	\$43,050

Parcel 319-110-01-023-001	TRUE VALUE	TAXABLE VALUE
LAND	\$23,000	\$ 8,050
BUILDINGS	\$ <u>-0-</u>	\$ <u>-0-</u>
TOTAL	\$23,000	\$8,050

Parcel 319-110-01-022-000	TRUE VALUE	TAXABLE VALUE
LAND	\$ 923,900	\$323,370
BUILDINGS	\$ <u>255,100</u>	\$ <u>89,290</u>
TOTAL	\$1,179,000	\$412,660

Total (All Parcels)	\$1,325,000	\$463,760
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The Auditor of Delaware 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.

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