

Local School District (“BOE”), on August 26, 2004 from a decision, dated July 27, 2004, of the Lorain County Board of Revision (“BOR”).

The subject property is located in the Avon City taxing district of Lorain County, Ohio, and is further identified as Parcel No 04-00-010-113-032. The Lorain County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. 04-00-010-113-032

	True Value	Taxable Value
Land	\$ 27,900	\$ 9,770
Building	\$ -0-	\$ 0-
Total	\$ 27,900	\$ 9,770

Upon consideration of the complaint filed by the BOE and the testimony and other evidence presented at the hearing before that body, the BOR determined the true and taxable values of the subject property for tax year 2003 were as follows:

Parcel No. 04-00-010-113-032

	True Value	Taxable Value
Land	\$ 191,000	\$ 66,850
Building	\$ -0-	\$ 0-
Total	\$ 191,000	\$ 66,850

Through its notice of appeal, the BOE claims that the BOR’s values should be increased to reflect a sale of the subject property taking place on or about October 31, 2003, which would have the effect of increasing the value of the subject property to the sale price of \$250,000.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcript certified by the Lorain

County Auditor as secretary of the BOR, and the testimony and other evidence submitted at the hearing before this board. At that hearing, Mrs. Carole Putkonen, who with her husband currently owns the subject property, testified. Representatives for both the BOR and the BOE informed the board that they did not intend to appear. The BOE sought an opportunity to submit legal argument, which was received by the board and considered in this determination.

The subject property is comprised of a small parcel of vacant land located adjacent to the Putkonens' animal hospital. The Putkonens opened their animal hospital in the early 1970s and had periodically sought to purchase the subject property from the then current owner. In 2002, the neighbor offered the property to the Pukonens for \$250,000. Mrs. Pulkonen testified that the amount appeared excessive to her.

At the same time the property was offered to them, Mrs. Putkonen and her husband were informed by city council members that Detroit Road was going to be widened and the animal hospital was going to lose the area in front of the building that was currently used for parking approximately six cars. With this information, the Pukonens seriously entertained the offer to purchase made by the neighbor.

In researching the value of the adjacent property, the Putkonens learned that the property was in the path of runoff from a buried abandoned gasoline storage tank that had not been properly removed. The Ohio Environmental Protection Agency believes the contaminants flow through the subject property to French Creek. Mrs.

Putkonen testified that she and her husband were advised by attorneys and real estate appraisers not to purchase the property because the environmental contamination would cause the resale of a property under “EPA watch” to potentially be difficult.

The Putkonens also had an appraiser value the property prior to their purchase. A copy of that appraisal, dated September 27, 2002, was introduced at hearing. As of that date and under the assumption that the property does not lie within a flood plain and contaminants did not exist, the appraiser provided a value of \$125,000.

Because the Putkonens believed that the animal hospital’s business would be devastated if it were left without any parking, despite the appraisal and information obtained regarding the potential environmental hazards attendant to the property, the Putkonens purchased the subject property on October 31, 2003 for \$250,000. Mrs. Putkonen argues, however, that because of the problems with the land and because their business was dependent upon parking, she and her husband were compelled to purchase the subject property, and, as a result, the sale price was not indicative of the true value of the subject. Mrs. Putkonen testified at hearing that she believed the Lorain County BOR’s value assessment of \$191,000 was fair, given the circumstances. The BOR also had before it an appraisal of the property, this time valuing the subject as of July 6, 2004, for \$132,000. However, the record does not provide an explanation as to why the value of \$191,000 was found by the BOR.

A party who asserts a right to an increase or decrease in the value of real property has the burden to prove the 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 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 an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. The BOE contended before the BOR that the property was subject to a valid, recent arm's-length sale when Mr. and Mrs. Putkonen purchased the property on or about October 31, 2003 for \$250,000. As such, the BOE claims that the price received was the best evidence of the value of the subject property as of January 1, 2003.

R.C. 5713.01 provides, in part:

“The auditor shall assess all the real estate situated in the county *** at its true value in money ***.”

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 the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.”

Case law supports the contention that an arm's-length sale generally represents the best evidence of true value. In interpreting the meaning of “true value” as set forth above, the Supreme Court has consistently held that the best evidence of a property's fair market value or “true value in money” for tax purposes is the amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co., v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *In Re Estate of Sears* (1961), 172 Ohio St. 443. In the later case of *Conalco v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, the court further expounded upon its view of the use of a sale to establish the fair market value of real property. In paragraph one of the syllabus, the court stated:

“The best evidence of the ‘true value in money’ of real property is an actual, recent sale of the property in an arm's-length transaction.”

The court again stressed that the sale price represents the best indication of value in *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543. Therein, the court stated:

“Nevertheless, we have always insisted that the sale price of an arm's-length transaction occurring within a reasonable time of the tax lien date was the value of the property as of the tax lien date.” (Citation omitted.)

“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.” *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 25. Both before the BOR and before this board, Mrs. Putkonen has brought forth testimony intending to support a finding that her purchase did not meet the elements that characterize an arm’s-length sale. However, the board cannot agree.

Mrs. Putkonen claims that the widening of Detroit Road and the loss of potential parking was the impetus for the purchase of the land at an above-market price. In making such an argument, Mrs. Putkonen attempts to bring her factual situation under the ambit of *Lakeside Avenue Ltd. Partnership. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540. Therein, the Supreme Court determined that a sale upon which a county board of revision relied to value a property was not arm’s length since the property was purchased “under compelling business circumstances,” basically, to prevent the property owner’s bankruptcy. The Franklin County Court of Appeals, in *Columbus Bd. of Edn. v. Grange Mut. Cas. Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, unreported, also found that a property owner was compelled to purchase a particular parcel. In that case, the necessary parcel was the final piece needed to complete a development and no other parcel met the development’s requirements. As these cases indicate, when determining whether a sale is the result of compulsion or duress, the “subjective motives” of the purchaser and seller must be examined. *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. To be successful in a claim of compulsion to purchase, the person seeking to rely upon economic duress has the burden of establishing that she was not a “willing buyer.” *Dublin*, supra. See, also, *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284.

In *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported, the property owner presented similar factual arguments to those made in the present matter. In that appeal, a business owner/tenant, faced with higher rental payments and little time in which to find an alternate location, purchased the building in which the business was located for a purchase price the owner believed was not supported by the market. In addressing the business owner’s claim that she was compelled to purchase the property, this board held:

“Considering [the business owner]’s testimony, we are unable to find sufficient competent and probative evidence to conclude that Georgesville was required to purchase the property under compelling business circumstances. *Lakeside*, supra. While Georgesville believed it made good business sense to buy the subject and remain in operation at its current location, Georgesville has provided no corroboration for its claim that it would suffer irreparable financial harm if it did not purchase the subject property. ***

“It is uncontroverted that Georgesville was faced with the prospect of higher rent and that a considerable amount of goodwill was attributed to Georgesville’s location. Georgesville’s purchase of the subject was based upon its motivation to make the best possible

decision for the continued success of the bar. These subjective motivations unquestionably affected Georgesville's purchase of the subject property. However, testimony suggests that other parcels located near the subject were available for Georgesville's use, and Georgesville has presented no evidence to support its claim that a significant and unavoidable loss to Georgesville's business would occur.

“While it is apparent that Georgesville considered the landlord-seller a difficult negotiator, a position of strength does not necessarily demonstrate that duress was a factor in the sale of the subject property. [The business owner]'s testimony suggests that, ultimately, she determined that it would be cheaper to buy the subject than to move the business. It is evident that Georgesville considered the subject to be worth the purchase price. Georgesville may have been motivated by its subjective view of circumstances to purchase the subject rather than relocate; nevertheless, this does not make Georgesville the target of economic duress. *Lakeside and Dublin, supra.*” Id. at 7- 8.

We find our prior holding applicable herein. Mrs. Putkonen claimed that the animal hospital's business would be devastated without parking was not accompanied by testimony as to why the animal hospital could not have been moved to a location with necessary parking available. There is no issue of immediacy, as Mrs. Putkonen testified that as of the hearing date, nearly two years after the purchase of the property, the widening of Detroit Road had not yet begun and parking was still available in front of the animal hospital. Thus, we must conclude that the decision to remain at the present location and purchase additional land was one made by the Putkonens after weighing the pros and cons of staying versus moving.

We also do not find that the property's value was diminished because of

the environmental issues. First, it is a generally held proposition that a recitation of defects attendant to a property, without more, does not assist the trier of fact in determining a lower value. *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227; *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. More damaging to a finding of diminished value, however, is that the Putkonens were willing to purchase the property knowing of the environmental issues and despite the advice received. This action raises an inference that the property had value and its value was the purchase price.

As we have found that the sale price controls, we do not consider the appraisals presented either before the BOR or before this board. However, had we considered the appraisals, we would have placed little weight upon opinions presented for dates other than the tax lien date. See *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26.

The board wishes to recognize Mrs. Putkonen's true belief that she and her husband overpaid for the subject property. We also note her testimony regarding the comparison of her property to newly constructed retail environments located very near her property but certainly of a distinct character and quality. However, the preponderance of competent and probative evidence leads this board to a conclusion that the purchasers were well aware of both the positives and negatives surrounding their purchase, and, after weighing both, concluded that the property was worth their negotiated price. Therefore, and upon consideration of the existing record and the

applicable law, the Board of Tax Appeals finds and determines that the value of the subject property as of January 1, 2003 was:

Parcel No. 04-00-010-113-032

	True Value	Taxable Value
Land	\$ 250,000	\$ 87,500
Building	\$ -0-	\$ -0-
Total	\$ 250,000	\$ 87,500

It is the order of the Board of Tax Appeals that the Auditor of Lorain County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward to the new triennium in accordance with the law.

Mr. Dunlap dissents.

I respectfully dissent. The appellant BOE presented evidence before the BOR, which was accepted only in part. Thereupon, the BOE appealed the BOR's decision to this Board of Tax Appeals. However, the BOE then waived appearance at this board's scheduled evidentiary hearing. The appellee property owners elected to appear and submit evidence and testimony tending to refute appellant's allegation in its notice of appeal that the values found by the BOR were erroneous. Accordingly, without an effective affirmative response, i.e., going forward with competent and probative evidence contravening the property owner's presentation to this board, the existing record does not support the appellant's challenge to the values found by the BOR.

I would affirm the Lorain County Board of Revision's determination.

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