

# OHIO BOARD OF TAX APPEALS

Columbus City Schools	)	
Board of Education,	)	
	)	CASE NO. 99-E-2048
Appellant,	)	
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor, and	)	DECISION AND ORDER
James J. Ryan Jr., et al,	)	
	)	
Appellees.	)	

## APPEARANCES:

For the Appellant –	Jeffrey A. Rich Rich, Crites & Wesp 20 East Broad Street Columbus, Ohio 43215
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney By: Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215-6310
For the Property Owners -	Robert E. Albright Jill S. Tangeman Lucas, Prendergast, Albright, Gibson & Newman 600 South High Street Columbus, Ohio 43215

**ENTERED:** October 19, 2001

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

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed by the Columbus City Schools Board of Education (“BOE”) from a decision of the Franklin County Board of Revision (“BOR”) wherein the BOR determined the taxable value of the subject property for tax year 1998.

The subject property is located in the Columbus taxing district. The value of the property determined by the Franklin County Auditor and BOR as of January 1, 1998 is as follows:

Parcel No. 010-13648	TRUE VALUE	TAXABLE VALUE
LAND	\$ 37,900	\$ 13,270
BUILDINGS	\$ <u>51,400</u>	\$ <u>17,990</u>
TOTAL	\$ 89,300	\$ 31,260

The subject property is comprised of approximately .49 acres of land improved with three structures. One building is a former residential structure that was converted to office use and on tax lien date was leased to a landscape company. The other two structures are garages, one of which on tax lien date was leased to a tenant for use as an auto repair shop, the other was used by the tenant of the office space. After expiration of the leases, the property owners planned to use the property to park trucks used in their business. (S.T. audio tape).

In support of its contention that the above-referenced values should be increased, the BOE relies upon an April 2, 1998 sale of the subject property for \$210,000. The BOE submitted to the BOR copies of the conveyance fee statement and the general warranty deed related to the sale. (S.T.). The BOE asserts these documents meet its burden of persuasion as to the proper value of the subject property.

The property owners do not deny that the subject property was purchased for \$210,000. However, the property owners counter that the BOR correctly determined value and argue that the sale price may not be relied upon because (1) the sale was not made at arm's-length due to the owners' need to acquire this parcel in order to park the trucks used

in their business; (2) the property was not advertised on the open market; and (3) the sale price was non-negotiable.

Although an evidentiary hearing was held in this matter, the parties stated that all factual information necessary for the Board to make a determination was contained in the statutory transcript of the BOR hearing. Accordingly, this matter is submitted to the Board upon the notice of appeal, the statutory transcript certified by the county auditor (S.T.) and the briefs of counsel.<sup>1</sup>

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 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. Once the 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. 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

---

<sup>1</sup> No brief was filed by the county appellees.

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), B.T.A. No. 98-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.

Applying this rationale to the instant matter, it is clear that the burden of persuasion is on the BOE, as appellant; that is, 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 copies of the conveyance fee statement and general warranty deed evidencing that the property owner purchased the subject property in April 1998 for \$210,000. 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 submitting 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.

The property owners first contend the sale in question was not arm's-length in nature because the purchase of the subject property was necessary to providing parking facilities for the trucks used in their business. In short, the property owners claim necessitous business circumstances or economic duress. 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, 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. See, also, *United One, Ltd. v. Summit Cty. Bd. of Revision* (May 4, 2001), B.T.A. No. 99-A-1591, unreported (purchase of parcel because location considered critical to business plan does not establish sale is not arm’s-length) and *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), B.T.A. No. 99-T-1808, unreported (rejecting duress argument despite claims of higher rents, loss of business if moved to a different location and cost of relocation).

Considering the record before this Board, we are unable to find sufficient competent and probative evidence to conclude that the property owners were required to purchase the property under compelling business circumstances as defined by *Lakeside, supra.* Mr. James J. Ryan, one of the owners, testified before the BOR regarding the

circumstances of the purchase. (S.T. audio tape). The property owners were in need of a property zoned to permit the parking of trucks and located close to their homes. The previous owner of the subject parcel was not looking to sell and the property was not advertised or placed on the market. When Mr. Ryan approached the previous owner regarding purchase of the property a non-negotiable price of \$210,000 was given. Although Mr. Ryan believed this amount was more than the fair market value of the property, the four property owners thought that it made sense to purchase the property because of the parcel's proximity to each of the owner's homes and the M zoning that allows truck parking. Indeed, Mr. Ryan stated that the convenience afforded by the subject property made the property worth the purchase price to them. (S.T. audio tape). The property owners may have been motivated by their subjective view of circumstances to purchase the property because of its convenient location and zoning; nevertheless, this does not make the owners the target of economic duress. *Lakeside* and *Dublin supra*.

Next, the property owners assert that the sale was not made at arm's-length because the subject property was not offered for sale on the open market. 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.

While an arm's-length sale generally occurs in an open market, this Board has previously held that, although the lack of advertisement on the open market may influence the price paid for the subject property, it does not necessitate a finding that the subject sale was not arm's-length in nature. *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-S-361, unreported; *Dublin City School District Bd. of Edn., supra*. Accordingly, merely because the subject property was not openly advertised as being for sale does not mandate a finding that the sale was other than arm's-length.

Nor does the property owners' contention that the sale did not involve the negotiation process establish that the sale was not arm's-length. The fact that a seller's price is non-negotiable does not necessarily prevent the transaction from qualifying as an arm's-length transaction. *Plain Local Schools Bd. of Edn., supra*.

Finally, the property owners claim that the comparable sales compiled by John Mollica and presented to the BOR establish that the sale price is not the true value of the property. Mr. Mollica did not testify at the BOR regarding this information and the letter attached to the property owners' brief merely states that Mr. Mollica is a licensed residential real estate appraiser. This Board is unable to determine the competence or probity of appraisal information submitted without the complete qualifications of the author. *Meadowood Apartments of Wellsville Ltd. v. Columbiana Cty. Bd. of Revision* (Aug. 23, 1996), B.T.A. No. 95-A-1045, unreported at 5.

Further, the document prepared by Mr. Mollica merely provides information on the sale of four commercial properties located near the subject property. He makes no comparison between the sale properties and the subject property and declines to offer a

value due to the restrictions on his residential appraisal license. This Board has rejected reports where the report is sketchy regarding the comparability of the sales to the subject property and the author did not testify. *Birnbaum v. Cuyahoga Cty. Bd. of Revision* (Dec. 10, 1999), B.T.A. No. 97-B-693, unreported at 7. Therefore, the Board accords no evidentiary value to the sales offered by Mr. Mollica.

In conclusion, we find that BOE has proven, by competent and probative evidence, that the April 2, 1998 sale of the subject property was made at arm's-length, and that the \$210,000 sale price provides the most reliable indication of value as of tax lien date. The property owners have not presented credible and probative evidence sufficient to rebut the sale price. Upon review of all of the foregoing, 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 should be as follows for tax year 1998:

Parcel No. 010-13648	TRUE VALUE	TAXABLE VALUE
LAND	\$ 37,900	\$ 13,270
BUILDINGS	\$ <u>172,100</u>	\$ <u>60,235</u>
TOTAL	\$ 210,000	\$ 73,505

The Auditor of Franklin 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.