

# OHIO BOARD OF TAX APPEALS

Tranor Co., Ltd.,	)	CASE NO. 97-N-712
	)	
Appellant,	)	REAL PROPERTY TAX
	)	
vs.	)	
	)	
Cuyahoga County Board of	)	Decision and Order
Revision, Cuyahoga County	)	
Auditor and Orange City	)	
School District Board of	)	
Education,	)	
	)	
Appellees.	)	

## APPEARANCES:

Appeal filed by-

Arthur G. Merriman, Jr.  
Tranor Co., Ltd.  
7185 Chagrin Road  
Chagrin Falls, Ohio 44023

For the County-  
Appellees

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Cuyahoga County Prosecuting  
Attorney  
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For the Orange City-  
School District  
Board of Education

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Entered: March 17, 2000

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

This matter is before the board of tax appeals upon a notice of appeal filed

on behalf of the property owner, Tranor Co., Ltd. ("Tranor"), from a decision of the Cuyahoga County Board of Revision ("BOR"), in which the BOR determined the value of the subject real property for tax year 1995. The matter is now submitted upon the notice of appeal, the statutory transcript (S.T.) certified by the county auditor, the evidence presented at hearing and the post-hearing brief on behalf of the BOE.

The notice of appeal and the statutory transcript (S.T. Exhibits A-G) identify the subject real property as located in Cuyahoga County, being parcel number 912-05-002, upon the auditor's records. The subject property consists of a 17.4 acre parcel improved with a residential home. ( S.T. Exhibit D)

The values as determined by the Auditor for the tax year 1995 are as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 107,910	Land \$ 37,770
Building	<u>251,600</u>	Building <u>88,060</u>
Total	\$ 359,510	Total \$ 125,830

The BOE's complaint against valuation alleged a recent sale of the subject property occurring May 30, 1995 with a sale price of \$925,000. After an evidentiary hearing at which Tranor did not appear, the BOR adjusted the values for tax year 1995, as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 673,400	Land \$ 235,690
Building	<u>251,600</u>	Building <u>88,060</u>
Total	\$ 925,000	Total \$ 323,750

The BOE has established that the subject property was purchased by Tranor with a purchase price of \$925,000., in a recent arm's-length sale. As a result

there is a rebuttable presumption that the transaction satisfies all requirements of an arm's-length sale and the purchase price reflects true value of the property. *Cincinnati School District Bd. of Edn v. Hamilton Cty. Bd. of Revision* (1997), 788 Ohio St.3d 325.

At the hearing before this board, Tranor contends that the property is unusable due to action taken by the Village of Moreland Hills. Tranor claims a valuation of approximately \$600,000. (R. 13) This amount was arrived at by subtracting expenses in improving the property from the price paid for the property.

Mr. Arthur G. Merriman, Jr., identified as a member of the limited liability company and a residential builder for almost forty years, testified the subject property was purchased from the individual living in the residence on the property. It was purchased for \$925,000 with the expectation of a residential development, consisting of a seven lot subdivision. Mr. Merriman acknowledged that he determined the property was worth \$925,000 when he purchased it. (R. 5) Tranor provided plans and a plat to the Village of Moreland Hills, and the planning commission and council unanimously approved the subdivision subject to the engineer's approval. Mr. Merriman attended the council meeting with his engineer because of a concern about the capacity of the sewer plant. According to his testimony, "[I]t was thoroughly discussed and approved." (R. 10) Mr. Merriman contends that "I had a bona fide agreement with Moreland Hills to develop the property in a certain way." (R. 5)

Work was started during the summer of 1995, and 90 to 95% of the work was completed by the end of the year. The only major item left to be done was putting the final surface on the road, which had to be done one year after the road was otherwise completed. The sewer lines are in from each lot, and tied into the sewer main. All that was needed were the permits for the homes to be built. (R. 10) Lots were then placed on the market for sale, expecting that they could immediately be used for residential building. (R. 5) Two of the seven lots sold in March of 1996.

In June of 1996, the newly elected mayor of Moreland Hills called Mr. Merriman into his office, and told him the subdivision could not tie into the sewage plant until it was expanded, although Mr. Merriman claims this issue was thoroughly discussed at the June 1995 council meeting and “put to rest.” (R. 6, 10) Mr. Merriman claims this action by the mayor made the property of no use for a period of time. He was told by the mayor that the previously accepted plans were no longer acceptable. A new drainage system was necessary, requiring new engineering and extra construction work. Mr. Merriman stated “I may not do everything right, but I’m not stupid enough to put that kind of money in the ground if I didn’t honestly think that it was usable.” (R. 10) Mr. Merriman also testified the village’s engineer who approved Tranor’s original plans was fired by the new mayor. The mayor requested additional fees of \$50,000 plus an additional \$5,000 for each of the seven lots, for a total of \$85,000. (R. 20) While Mr. Merriman told the mayor he could not handle those fees, he testified at the hearing, “In retrospect I would have been smart to come up with that. But I didn’t feel that that was the way you play the game.” (R. 21)

The lots could not tie into the sewer, nor could the lots be served by septic tanks. (R. 23, 27) Consequently, the person owning one of the purchased lots contacted Mr. Merriman, insisting that Tranor repurchase his lot. The purchaser of the other lot sold his to a third party.

In April, 1998, Mr. Merriman met with two councilmen authorized to negotiate the completion of the subdivision, and an agreement between Merriman and the councilmen was reached. Appellant’s Exhibit A contains a proposed agreement resolving the problems in completing the subdivision as proposed by the village law director, which presumably has not been signed by the parties. However, Mr. Merriman was told later that several items would again be changed, and as of the hearing before the board of tax appeals, it was still not resolved.

Mr. Merriman testified that because of the agreement regarding development being unilaterally altered, the costs to develop the project soared, changing the value of the investment. Increased costs include interest expense, costs associated with upkeep of the existing home, and costs for the changes in plans mandated by the city. Mr. Merriman summarized Tranor's position by stating, "So insofar as the tax situation goes, it would be my claim that I bought a property in good faith, for a simple and direct use in a business I had been involved in for nearly forty years, that the rules have been altered and thereby the value has been temporarily diminished significantly." He stated that if he could go back to May of 1995, Tranor would not have purchased the property for \$925,000, and would not have purchased it at all. (R. 9) He later testified, "I absolutely would not touch the property for any price if I could go back to May of '95." (R. 35) He further stated "It will be worth that (referring to the price paid) when it's ultimately completed, because the neighborhood – so it's a matter of timing, but the taxes march on and it seems to me equitable that they should be held at the lower rate until the property is usable." (R. 14)

Counsel for the BOE submitted the applicable deed and conveyance fee statement, documenting the sale on May 30, 1995, for \$925,000. Also submitted were a document whereby Tranor mortgaged the property, and a survey map of the subject. Although acknowledging that "Mr. Merriman is facing some difficulty with the city – with the Village of Moreland Hills ..." counsel argued that the problems encountered by Tranor were ordinary in the industry, and were no reason for reducing the taxable value of the property. Counsel also stated that the issues raised by Mr. Merriman relate to later years than tax lien date, perhaps being relevant to 1997, but not 1995. (R. 19) The BOE submitted a brief arguing that the May 30, 1995 sale was arm's-length and represented the fair market value of the property, and that Tranor presented

no competent and probative evidence the value was otherwise. The board finds that the testimony given by Mr. Merriman was not refuted by the BOE.

In considering the appeal before us, we note that a party appealing a decision of a county board of revision has the burden of coming forward with evidence proving its right to the value asserted. Once competent and probative evidence of true value is presented, other parties asserting a different value then have the corresponding burden of providing evidence rebutting appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St. 3d 493; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 47 Ohio St. 3d 318, 319.

We further note the issue in an appeal from a board of revision is the true value of the property, and this Board will proceed to make an independent determination of true value predicated upon the preponderance of the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St. 3d 120, 122. In so doing, this Board 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, 19-20.

Based upon the uncontroverted evidence before us, we find this appeal should be resolved in accordance with our decision in *Westlake City School District Board of Education v. Cuyahoga Cty. Bd. of Revision, et al.* (Oct. 6, 1995), B.T.A. Case Nos. 94-A-309, 94-A-310, unreported. In *Westlake*, the BOE claimed a value for the property based upon an arm's-length sale. The owner, Kmart, maintained that the purchase price did not reflect true value because its intended use for the property was the construction and operation of a large super market store. According to the evidence, the intended use of the property was first discussed with city officials.

Kmart secured an opinion letter from a local law firm that the land was properly zoned for retail use. Kmart then purchased the property..

After acquiring the property, Kmart filed an application for the approval of its development with the city planning commission. The commission took no action because of public outcry against the planned construction of a large retail store. The city council then passed several ordinances so that a store of its intended size could not be legally built. Thereafter the Kmart application was denied by the planning commission. In addressing Kmart's contention that the value of the property was diminished because its purpose for the purchase was unfulfilled, this Board held:

“This Board has had occasion to consider similar sale cases in the past wherein the purchaser's desired purposes for the subject property were ultimately frustrated. However, we find the extreme factual pattern as cited herein to be distinguishable from anything we have heretofore considered. In the instant matter, a governmental body took legal action and passed ordinances to ultimately frustrate the purchaser's known and intended building purposes. This change in zoning could not have been known or anticipated by the purchaser, Kmart, especially since city officials had given what appeared to be, their approval on the venture. [Cases cited.] Accordingly, we will consider other evidence of value. \*\*\* ”

We specifically found that the events subsequent to the purchase must be considered in the determination of value:

“ \*\*\* The events which occurred subsequent to the sale of the subject property are unique and cannot be disregarded when placing a value thereon. While appellant would have us use the sale price paid for the subject some fourteen months after the tax lien date as the value to be

assigned, they would also urge us not to consider any of the ensuing events which deprived Kmart of their ability to build their proposed store. While this Board will consider the sale of the subject in our valuation efforts, we will also consider all of the events that transpired after said sale which have so negatively affected Kmart's intended use of the property."

Compare, *Jentgen-Klein Company v. Franklin Cty. Bd. of Revision, et al.* (Feb. 9, 1988), B.T.A. Case No. 86-F-932, unreported; *Lockland Development Company, Ltd. v. Hamilton Cty. Bd. of Revision, et al.* (May 9, 1997), B.T.A. Case No. 96-S-949, unreported.

Returning to the captioned appeal, prior to the purchase, Mr. Merriman discussed with the city the intended development, and received assurances this was acceptable. Mr. Merriman provided minutes of the June 14, 1995 council meeting, which include the statement, "The Rydalwood Subdivision was reviewed and a motion was made by Mr. McFarland and seconded by Mr. Mellen to approve the subdivision subject to the Engineer's letter dated June 14, 1995, and subject to the developer paying appropriate fees." (Appellant's Exhibit A) This was unanimously approved.

The uncontroverted evidence is that Tranor undertook the development, and by the end of 1995 had completed everything except the final coat of blacktop. Two lots were then sold in March of 1996. A new mayor took office in January of 1996, and in June of 1996 he called Mr. Merriman to his office, and told him the project could not tie into the sewer. Although there have been negotiations between the parties attempting to resolve the matter, three years after the purchase of the

property, the matter is not resolved. The uncontroverted facts clearly establish the frustration of the purchaser's purpose in development of the property for which we gave relief in *Westlake City School District Bd. of Edn.*, supra. Accordingly, we will disregard the purchase price for the property and consider other evidence of value.

The BOE contends the sale price is indicative of value, and provided no other evidence of value. Mr. Merriman asserted the property might be valued at the purchase price, less the costs incurred due to the project not being completed in a timely manner. These costs include primarily interest and upkeep for the home existing on the property at purchase date, as well as the additional requirements that trickled in from the city. However, upon careful consideration, this method is too speculative, and we choose not to accept this method of valuation.

The BOR valued the property at the sale price. The only evidence adduced by the BOE consists of the sale price of the property by Tranor. Having determined the sake price is not indicative of the subject property's true value, the only other evidence of value before us is the value determined by the county auditor for the subject property improved with the single residence which was its use as of the tax lien date. Although Tranor sought to improve the property by creation of a residential subdivision, the frustrastion of the development by the Village of Moreland hills, results in no addition to the value of the property.

Therefore, the board of tax appeals finds, from the preponderance of the evidence, the true value and taxable values of the property to be as follows for January 1, 1995:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 107,910	Land	\$ 37,770
Building	<u>251,600</u>	Building	<u>88,060</u>
Total	\$ 359,510	Total	\$ 125,830

The Auditor of Cuyahoga County is hereby ordered to list and assess the subject property in conformity with this board's decision and order. It is further ordered that such value shall be carried forward as required by law.                      ohiosearchkeybta