

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE COLUMBUS )  
CITY SCHOOLS, )

Appellee, )

vs. )

FRANKLIN COUNTY BOARD OF )  
REVISION, COUNTY AUDITOR, )  
AND TAX COMMISSIONER OF THE )  
STATE OF OHIO, )

Appellees, )

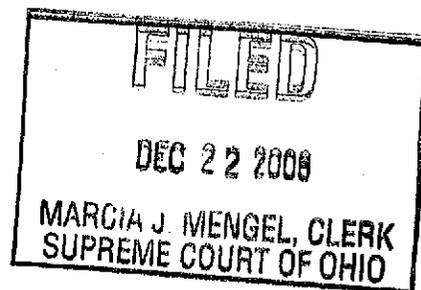
and )

2100 MAPLE CANYON PLAZA LLC, )

Appellant. )

SUPREME COURT CASE NUMBER  
06-1429

BOARD OF TAX APPEALS  
CASE NUMBER 2005-A-381



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## **STATEMENT OF THE CASE**

This case comes to the Court from a decision and order of the Ohio Board of Tax Appeals under Revised Code Section 5717.04. A complaint for the tax year 2003 was filed by the Appellee, Board of Education of the Columbus City School District (hereinafter Appellee and/or Board of Education) in connection with the commercial retail property that is the subject of this appeal. A counter-complaint was not filed by the Appellant since service of notice of the complaint was never successfully affected by the Appellee Franklin County Auditor on the Appellant. The basis for the Appellee's complaint was a July 1, 2003 sale of the property to the Appellant. Supplement to the Briefs (hereinafter Supp.) at page 1.

The Franklin County Board of Revision conducted a hearing on the complaint on February 17, 2005 and issued a decision on March 16, 2005 wherein the County Auditor's assessment of the property was reduced to a fair market value of \$1,000,000. Supp. at page 142. The Appellee appealed the decision of the Franklin County Board of Revision to the Ohio Board of Tax Appeals under Revised Code Section 5717.01.

When this matter came on for hearing before the Ohio Board of Tax Appeals the parties agreed to waive the hearing scheduled by the Board and submit the case based upon the Record before the Franklin County Board of Revision as allowed under Revised Code Section 5717.03. In its decision and order the Ohio Board of Tax Appeals rejected the appraisal evidence submitted by the Appellant and relied upon by the Board of Revision in its decision and assessed the property based upon the July 1, 2003 sale of the property. Board of Tax Appeals decision and order at page 8. The Record in this appeal is as follows.

## **STATEMENT OF THE FACTS**

The Complaint giving rise to this appeal was filed by the Appellee Board of Education. In their complaint the Appellee listed the owner of the property and their address as 2100 Maple

Canyon Plaza, LLC, CVS 05436-01, One CVS Drive, Woonsocket, RI 02895. Supp. at page 1. This is not the address of the property owner. The address listed in the Board of Education's complaint does not appear in any of the documentation filed in connection with the sale of the property upon which the Board of Education's complaint is based. Exhibit 12 "A" in the Transcript on Appeal (hereinafter Transcript) is a copy of the deed filed with the Franklin County Recorder in connection with the transfer of the property to the Appellant. Supp. at pages 2-4. The tax mailing address listed in that document is 3127 LaBalme Trail, Fort Wayne, Indiana 46804. This document was submitted by the Appellee as evidence in support of its complaint before the Board of Revision. A copy of the conveyance fee statement filed in connection with the transfer also confirms the address for the property owner and is Exhibit 12 "B" in the Transcript on Appeal. Supp. at page 5. This document was submitted by the Appellee as evidence in support of its complaint before the Board of Revision.

In spite of the error in the Board of Education's complaint the County Auditor did attempt to serve notice on the Appellant in accord with the conveyance information. See Transcript, Exhibits 2 and 3. The County Auditor never succeeded in giving notice under Revised Code 5715.19 to 2100 Maple Canyon Plaza, LLC. See Transcript, Exhibits 2 and 3. It was only after the subject property sold in July of 2004 that the County Auditor obtained service on the new owner (Ted and Maria's Plaza, LLC) of the filing of the Board of Education's complaint (See Supp. at pages 6 and 7) even though the County Auditor did not use the tax mailing address of the new property owner. See Exhibit A (DTE Form 100 for the July 15, 2004 sale of the property) attached to Appellant's brief before the Ohio Board of Tax Appeals. The County Auditor used the Guarantee's address on DTE Form 100 not the tax mailing address in its notices to the new owner (See Supp. at pages 6, 7 and 142).

The County Board of Revision issued notice of their decision to the new owner (Supp. at page 142) at the grantee's address in DTE Form 100 and the Board of Education listed the new owner's (Ted and Maria's Plaza, LLC) tax mailing address in its notice of appeal to the Ohio Board of Tax Appeals. Supp. at page 141.

## LAW AND ARGUMENT

### PROPOSITION OF LAW NO. 1

#### **PROPERLY IDENTIFYING THE ADDRESS OF THE PROPERTY OWNER AT THE TIME A REAL PROPERTY TAX ASSESSMENT COMPLAINT IS FILED RUNS TO THE CORE OF PROCEDURAL EFFICIENCY AND IS THEREFORE A JURISDICTIONAL REQUIREMENT.**

This proposition of law addresses the following:

#### ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals finding that the listing of the property owner's address on a complaint filed with a Board of Revision (County Auditor) is not a jurisdictional requirement is unreasonable and unlawful.

#### ASSIGNMENT OF ERROR NO. 2.

The Board of Tax Appeals finding that the Appellee Board of Education's complaint properly established jurisdiction with the Board of Revision is unreasonable and unlawful.

This Court and other courts have recognized that for a complaint to be valid, it must include all information that goes to the core of procedural efficiency. Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (1998), 80 Ohio St.3d 591; See also The Stanjim Co. v. Bd. of Revision (1974), 38 Ohio St.2d 233; and Public Square Tower One v. Cuyahoga Cty. Bd. of Revision (1986), 34 Ohio App. 3d 49. Implicit in these decisions is the requirement that the information be accurate.

At page 4 in its decision and order the Board of Tax Appeals cites Revised Code Section 5715.19(c) to support their argument that an address for a property owner may not be known and as a result the address of the property owner is not “essential.” That is not the case in this appeal. The deed and conveyance fee statement that served as the basis for the Appellee’s complaint before the Board of Revision clearly identified the address of the Appellant. See Supp. at pages 2 and 4. Inexplicably the Appellee did not use the address in filing out DTE Form 1, the complaint form. Supp. at page 1. The Board of Tax Appeals states at page 4 in their decision that “the property owner obviously received notice of the filing of the BOE’s complaint and the BOR proceedings, as it was represented at the BOR hearing by counsel and offered the testimony of its appraiser. Accordingly, we find that the BOE’s complaint property established jurisdiction with the BOR.” Board of Tax Appeals decision and order at page 4. This finding ignores the fact that the Appellee’s initial filing was defective. It was only after the Board of Revision got service of the notice of the complaint on the buyer (Ted and Maria’s Plaza, LLC) who subsequently bought the property from the Appellant that the Appellant got any notice of the Appellee’s complaint. This should not have happened. The Appellee should have used the mailing address for the Appellant contained in the conveyance information that served as the basis for its complaint. This is a reasonable means to comply with the legal requirements of Revised Code Section 5715.19. The Board of Tax Appeals finding that the inclusion of the correct address for the owner of the property was not “essential” to jurisdiction in this case is unreasonable and unlawful. The Board of Tax Appeals has made similar findings in other cases. See Knickerbocker Properties Inc. XLII v. Delaware County Board of Revision, et. al., Board of Tax Appeals Case No. 2005-B-730, Order (Denying Motion for Remand), dated July 7, 2006, Slip op. (retaining jurisdiction where property owner’s address not correctly listed in complaint); Rose Hill Securities and Rose Hill Burial Park Association v. Summit County Board of

Revision, et. al., Board of Tax Appeals Case Nos. 2004-M-1163,1164 and 1165, Order (Retaining Jurisdiction and Consolidating Appeals), dated October 28, 2005, Slip. op. (allowing correction of incorrect property owner name in an appeal by substitution of the real party in interest). The Appellant submits that where a complaint is filed based upon a sale of the property that the tax mailing address on the deed and DTE Form 100 (the conveyance fee statement) should be used in the complaint and notices required under Revised Code Sections 5715.19 and 5715.12.

The Appellee's failure to list the property owner's address on their complaint form goes to the core of procedural efficiency in this matter. The County Auditor never successfully served notice of the Board of Education complaint, the hearing notice, and the Board of Revision decision on 2100 Maple Canyon Plaza, LLC. For these reasons, the decision and order of the Board of Tax Appeals should be reversed and remanded to the Board of Tax Appeals with instructions to remand the case to the Franklin County Board of Revision with directions to dismiss the Board of Education's complaint and reinstate the County Auditor's value. In the alternative, the Appellant submits the following on the valuation issue in this appeal.

## **PROPOSITION OF LAW NO. II**

**TRUE VALUE IN MONEY IN OHIO INCLUDES THE CONCEPT OF THE THEORY OF SUBSTITUTION WHICH HOLDS THAT A PARTY WOULD NOT PAY MORE FOR A PROPERTY THAN IT WOULD COST TO ACQUIRE A REPLACEMENT PROPERTY.**

### **ASSIGNMENT OF ERROR NO. 3.**

The Board of Tax Appeals decision and [order] taxes the leased fee value of the property, not the fee simple value, and is unreasonable and unlawful.

### **ASSIGNMENT OF ERROR NO. 4.**

The Board of Tax Appeals decision and order rejecting the fee simple appraisal of the property adopted by the County Board of Revision is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals decision and order does not value the property at its true value in money and is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6.

The Board of Tax Appeals decision and order overturning the Board of Revision's assessment of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7.

The Board of Tax Appeals Decision and Order valuing the property in excess of its replacement cost new is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8.

The Board of Tax Appeals abused its discretion, acted unreasonably, unlawfully and arbitrarily in its decision and order.

ASSIGNMENT OF ERROR NO. 9.

The decision and order of the Board of Tax Appeals is unreasonable and unlawful and is contrary to the laws of Ohio and the Ohio Constitution.

ASSIGNMENT OF ERROR NO. 10.

The decision of the Board of Tax Appeals violates Article XII, Section 2 Ohio Constitution that property should be taxed by uniform rule according to value.

ASSIGNMENT OF ERROR NO. 11.

The decision of the Board of Tax Appeals violates the right of "equal protection" under Article I, Section 2, and Article II, Section 26, Ohio Constitution and Amendment XIV, Section I United States Constitution in that it treats the Appellant different from other property owners for purposes of taxation.

The Board of Tax Appeals decision and order does not discuss in any detail the appraisal submitted by the Appellant before the Franklin County Board of Revision which justifies the reduction in the assessment evidenced in the Board of Revision's decision that is at issue in this appeal. The Appellant submitted the appraisal report and testimony of Robin M. Lorms, MAI to the Franklin County Board of Revision. Supp. at pages 26-140. Mr. Lorms' appraisal values the fee simple interest in the property at a fair market value of \$1,000,000 as of January 1, 2003. Supp. at pages 28 and 29.

The complaint filed by the Board of Education was based upon a July 1, 2003 transfer of the property for \$2,900,000. Supp. at page 1. Exhibit 12 (1) in the Transcript on Appeal contains an affidavit from the lessee of the property and summarizes the lease terms in effect at the time of the July 1, 2003 transfer and a subsequent sale of the property on July 16, 2004. Supp. at pages 14-25. Robin Lorms discussed the transfers at page 3 in his appraisal (Supp. at page 33) and for the reasons discussed at pages 44 - 46 in his report he did not rely on them as part of the fee simple valuation of the property in his appraisal. Supp. at pages 74-76. These facts take this case outside the scope of Berea City School Dist. Bd. of Ed. v. Cuyahoga Cty. Bd. of Revision (2005), 16 Ohio St. 3d 269 (hereinafter Berea) cited by the Board of Tax Appeals at pages 7 and 8 in its decision and order. As stated on page 45 in Mr. Lorms' appraisal "[s]ales of properties subject to build-to-suit leases [d]o not reflect the obsolescence of the real estate created by the tenant's design requirements." Supp. at page 75. When the property sold on July 1, 2003 it was sold subject to a build-to-suit lease. Supp. at pages 14-25 and 33. Mr. Lorms further commented on this issue in his testimony before the Franklin County Board of Revision where he stated that there is no speculative activity (development) in the 10,000 to 15,000 square foot market, it is all build to suit properties and this fact impacts the fee simple value of the sites.

See Tape of Board of Revision hearing in Transcript on Appeal, Exhibit 16. This fact is also discussed at page 52 in his appraisal. Supp. at page 82.

In his testimony before the Board of Revision Mr. Lorms explained that the property was acquired along with two adjacent buildings that sold in separate transactions. See Transcript, Tape of Board of Revision hearing, Exhibit 16, and Supp. at page 9. In his appraisal report and testimony before the Board of Revision Mr. Lorms described the property, valued the land, and valued the land and building under the three appraisal methodologies recognized by the appraisal profession and the Ohio Administrative Code (the cost, income and sales comparison approaches to value). Supp. at page 32. As noted by Mr. Lorms in his testimony before the Board of Revision, sale number 4 at page 56 of his appraisal sheds a lot of light on the valuation question at issue in this appeal. Supp. at page 86. Specifically, that cost or book value does not equal market value and a lease rate designed to amortize booked costs that do not equate to market value cannot be used to determine the true value in money of the fee simple interest in real estate. That is why the July 1, 2003 transfer of the property does not equate to the fee simple value of the property. True value in money (market value) in Ohio is the fee simple value of the property. See Alliance Towers, Ltd., infra, at page 23. The fee simple value standard ensures that all real property in the State is valued by uniform rule according to the market value of the fee simple estate in the real estate, not its book value (cost), value in use, or some other non-uniform standard.

**A. Ohio law and the theory of substitution preclude an assessment for real property that exceeds the replacement cost new of the property.**

The cost approach to value for real property tax purposes is defined by Rule 5705-3-01(D) of the Ohio Administrative Code. In his appraisal Mr. Lorms concluded “that continued freestanding retail use is maximally productive as improved and therefore the highest

and best use of the site as improved.” Supp. at page 72. There is no evidence in the record to contradict this conclusion. The difference between the Franklin County Board of Revision decision in this case and the Board of Tax Appeals decision and order is that the Board of Revision decision does not run afoul of the theory of substitution. The Board of Tax Appeals decision and order rejecting the Board of Revision decision based on the appraisal in favor of the July 1, 2003 sale of the property violates the theory of substitution and is unreasonable and unlawful.

Rule 5705-3-02(A) of the Ohio Administrative Code states that the true value in money of property is to be determined, in the first instance by the County Auditor giving consideration to, among other things, the properties cost. Similarly, Rule 5705-3-03(E) of the Ohio Administrative Code provides that the cost approach is generally an appropriate first step in the valuation of real property for tax purposes. The Appellant’s appraisal of the property followed this approach and should have been used by the Board of Tax Appeals in this case. Leased fee sales of property that exceed the replacement cost new of property cannot be used for assessment purposes in Ohio. It is the existence of the build-to-suit lease based on the booked costs that exceed the replacement cost new of the property (see Supp. at pages 79-81) that takes this case outside of the Berea case cited by the Board of Tax Appeals at pages 7 and 8 in its decision and order. In Berea the sale of property occurred at an amount below the appraised fee simple value of the property (i.e. below the replacement cost of the property) and as a result the theory of substitution was not implicated in that case. The valuation of the Appellant’s property by giving weight to the cost approach is consistent with prior decisions of the Board of Tax Appeals. See Dublin City School District v. Franklin County Board of Revision, et al., Ohio Board of Tax Appeals Case No. 89-A-622, decided February 22, 1991, Slip op.; Board of Education of South-Western City Schools and the Columbus Board of Education vs. Franklin County Board of

Revision and Palmer C. McNeal, Auditor of Franklin County, and Consolidated Stores International Court, Ohio Board of Tax Appeals Case Nos. 87-A-1303, et al., decided October 7, 1988, Slip op.; Board of Education of Reynoldsburg City Schools vs. Board of Revision of Franklin County, et al., Board of Tax Appeals Case No. 88-D-749, decided November 24, 1989, Slip op.; Board of Education of Reynoldsburg City Schools vs. Board of Revision of Franklin County, et al., and Wyndel Heximer and Mark Haemmerie and Richard Harvy and Thomas C. Lipp, Ohio Board of Tax Appeals Case No. 88-D-930, decided February 9, 1990, Slip op.; and Southwestern City School Board of Education vs. Board of Revision of Franklin County and Luxury Inns of Deerfield Beach, L.P., Ohio Board of Tax Appeals Case No. 89-F-445, decided November 2, 1990, Slip op. These cases indicate that the Boards of Revision and Board of Tax Appeals give serious consideration to the cost approach in determining value.

The facts and holding in Berea do not infringe on the theory of substitution under the cost approach since the property at issue in that appeal sold for less than the appraised fee simple value. Here, the property sold for \$2,900,000 on a leased fee basis when the uncontested appraisal evidence in the case showed the replacement cost new of the property (before depreciation) to be \$1,716,810. Supp. at pages 33, 79-81. This value corresponds very closely with the County Auditor's value of \$1,760,000 for the property. Supp. at page 10.

The cost approach to valuing real property has been specifically approved by this Court. See Dinnerbell Meats, Inc. vs. Cuyahoga Cty. Bd. of Revision (1984), 12 Ohio St. 3d 270, 271 at footnote 1, See also Amsdell v. Cuyahoga Cty. Bd. of Revision (1994), 69 Ohio St. 3d 572, 575 (wherein the Court found that "the evidence before the Board of Tax Appeals established that the true value of the subject property was no more than its acquisition and construction costs of

\$1,305,771.”)<sup>1</sup> The Record in this appeal does not contain any evidence to support the valuation of the subject property in excess of its replacement cost new. A prudent purchaser would pay not more for the real estate than the cost to acquire land in the area and build an identical structure. This fact is not addressed by the Board of Tax Appeals in reconciling its use of the sale of the property when the replacement cost new analysis in the record in this appeal showed a significantly lower value. If the Board of Tax Appeals had addressed the issue it is probable that their decision and order would not have run afoul of the theory of substitution since they would have had to answer the question why someone would pay \$2,900,000 for a property when they could replace it in the market for \$1,716,810 (before the consideration of any depreciation). One reason why the Board of Tax Appeals did not reach this question is the Court’s decision in Berea cited by the Board of Tax Appeals at pages 7 and 8 in its decision and order as discussed above. The Berea case did not involve the theory of substitution since the property in that appeal sold for less than the fee simple value in the appraisals in the case. But in Meijer, Inc. v. Montgomery Cty Bd. of Revision (1996) 75 Ohio St.3d 181, 187 (hereinafter Meijer), citing Dinner Bell Meats Inc. v. Cuyahoga Cty. Bd. of Revision (1984), 12 Ohio St.3d 270, at 272, the Court noted that the cost approach “is based on the proposition that the informed purchaser would pay no more than the cost of producing a substitute property with the same utility as the subject property.”

The property in this appeal has been appraised under the replacement cost new (before depreciation) at \$1,716,810. Supp. at pages 79-81 (showing a land value of \$620,000 and a total replacement cost new for the property of \$1,094,810). The cost

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<sup>1</sup> On remand from this Court the Board of Tax Appeals found the value of the property in Amsdell to be \$1,305,770. Robert J. Amsdell, Trustee v. Cuyahoga Cty. Bd. of Revision, et al., Board of Tax Appeals Case No. 91-M-254, decided September 2, 1994, Slip op.

approach ordinarily creates the ceiling of value for a property, and the primary principle upon which the cost approach is founded is the economic principle of substitution, i.e., a prudent buyer will pay no more to purchase a property than the amount it would cost to acquire a similar site and construct improvements of equivalent utility without undue delay. See The Appraisal of Real Estate, Twelfth Edition, at 350. See also, Meijer, supra. Based upon this theory, the property could have been replaced for \$1,716,810 (before deduction of any depreciation) on a fee simple basis versus the leased fee sale of the property on July 1, 2003 for \$2,900,000 (and subsequently on July 15, 2004 for \$4,200,000). Supp. at pages 79-81 and 33. The failure of the Board of Tax Appeals to address this issue in its decision and order is unreasonable and unlawful.

**B. For Real Property Tax Purposes Property is to be Valued on an Unencumbered Fee Simple Basis.**

In Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St.3d

16, 23 (hereinafter Alliance Towers, Ltd.) this Court stated:

It is the fair market value of the property in its unrestricted form of title which is to be valued. It is to be valued free of the ownerships of the lesser estates such as the *leasehold interests*, deed restrictions, and restrictive contracts, with the government. *For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.* (Emphasis added).

Alliance Towers, Ltd. was followed by the Supreme Court in New Winchester Gardens, Ltd. v.

Franklin Cty. Bd. of Revision (1997), 80 Ohio St.3d 36 (hereinafter New Winchester).

In New Winchester the Board of Tax Appeals relied on a sale of the property in its decision and order. The property in New Winchester was an apartment project that was subject to a government subsidy. In reversing the Board of Tax Appeals decision and order relying on the sale this Court determined:

Failure to consider the effects of the government contracts when determining the value of subsidized housing will lead to a lack of uniformity not only in valuing

subsidized housing versus nonsubsidized housing, but also as between subsidized housing projects. For instance, assume two identical subsidized housing projects are to be valued. Assume both projects are ten years old, except one has been sold in an arm's-length transaction a few months prior to the valuation date at a price which reflects both the real estate and the government subsidies. To achieve uniformity, the recently sold project should be valued for tax purposes on an unencumbered basis as would the other property. If the sale price includes a value that can be determined for the government subsidies, then that portion of the sale price should be deducted in arriving at the true value of the real property; alternatively, the property should be valued without consideration of the encumbrances.

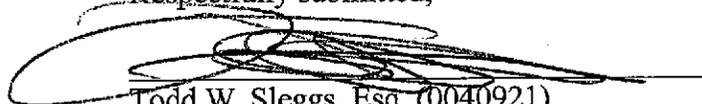
Id. at page 45.

The Board of Tax Appeals decision and order in this case sets up this same inequality and lack of uniformity in the assessment of similar properties by valuing the subject property using a build-to-suit leased fee sale of the property that exceeds the replacement cost new (before depreciation) of the property. The property was sold on a leased fee basis which exceeded the replacement cost new of the property. Supp. at pages 33, 79-81. The Appellant purchased and subsequently sold the real property and the leasehold interest in the property. Supp. at pages 33, 14-25. In order to ensure uniformity of assessment in Ohio a leased fee sale that exceeds the replacement cost new of the property cannot be used to value real property for assessment purposes in Ohio. Uniformity of taxation as defined by this Court requires that real property be valued on an unencumbered fee simple basis in Ohio. The Board of Tax Appeals decision and order violates this principle and is unreasonable and unlawful.

CONCLUSION

For the foregoing reasons the Appellant, 2100 Maple Canyon Plaza, LLC respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and issue an order remanding the appeal to the Board of Tax Appeals with directions to the Board to remand the case to the Franklin County Board of Revision with instructions to dismiss the complaint filed by the Board of Education of the Columbus City School District and reinstate the County Auditor's value for the property. In the alternative, the Appellant respectfully requests that the Court reverse and remand the case the Board of Tax Appeals with instructions to determine the true value in money of the property based upon the appraisal evidence in the record.

Respectfully submitted,



Todd W. Sleggs, Esq. (0040921)  
COUNSEL OF RECORD  
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Cleveland, OH 44113  
(216) 771-8990

ATTORNEY FOR APPELLANT  
2100 MAPLE CANYON PLAZA, LLC

**CERTIFICATE OF SERVICE**

A copy of the foregoing Brief of Appellant 2100 Maple Canyon Plaza, LLC was mailed via regular U.S. mail postage prepaid, the 21<sup>st</sup> day of December, 2006 to the following: Paul M. Stickel, Assistant County Prosecutor, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio 43215, Attorney for the Appellees Franklin County Board of Revision and County Auditor; Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for the Appellee Board of Education of the Columbus City Schools; and James Petro, Ohio Attorney General, State Office Tower, 17<sup>th</sup> Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for the Appellee Tax Commissioner of the State of Ohio.



Todd W. Sleggs, Esq. (0040921)

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOLS,

Appellee,

v.

FRANKLIN COUNTY BOARD OF  
REVISION, FRANKLIN COUNTY  
AUDITOR, AND TAX COMMISSIONER  
OF THE STATE OF OHIO,

Appellees,

and

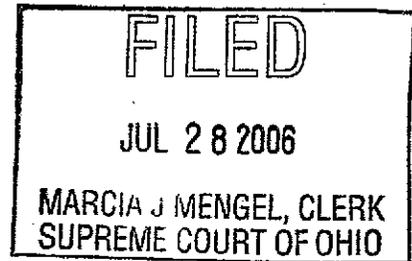
2100 MAPLE CANYON PLAZA LLC,

Appellant,

SUPREME COURT CASE  
NUMBER

**06-1429**

BOARD OF TAX APPEALS  
CASE NUMBER 2005-A-381



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NOTICE OF APPEAL

---

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REVISION AND COUNTY  
AUDITOR

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ATTORNEY FOR APPELLEE  
BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOLS

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE	)	SUPREME COURT CASE
COLUMBUS CITY SCHOOLS,	)	NUMBER: _____
	)	
Appellee,	)	
	)	
v.	)	
	)	
FRANKLIN COUNTY BOARD OF	)	BOARD OF TAX APPEALS
REVISION, FRANKLIN COUNTY	)	CASE NUMBER 2005-A-381
AUDITOR, AND TAX COMMISSIONER	)	
OF THE STATE OF OHIO,	)	
	)	
Appellees,	)	
	)	
and	)	<u>NOTICE OF APPEAL TO THE</u>
	)	<u>SUPREME COURT OF OHIO</u>
	)	<u>PURSUANT TO SECTION</u>
2100 MAPLE CANYON PLAZA LLC,	)	<u>5717.04 REVISED CODE</u>
	)	
Appellant,	)	

The Appellant, 2100 Maple Canyon Plaza LLC, by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 30<sup>th</sup> day of June 2006, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit

B" which are incorporated herein by reference.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA



Todd W. Sleggs, Esq. (0040921)

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ATTORNEYS FOR APPELLANT

2100 MAPLE CANYON PLAZA LLC

OHIO BOARD OF TAX APPEALS

RECEIVED JUL 0 3 2006

Board of Education of the Columbus )  
 City Schools, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Franklin County Board of Revision, )  
 Franklin County Auditor, and 2100 Maple )  
 Canyon Plaza LLC, )  
 )  
 Appellees. )

CASE NO. 2005-A-381  
 (REAL PROPERTY TAX)  
 DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
 Mark H. Gillis  
 300 East Broad Street, Suite 300  
 Columbus, Ohio 43215

For the County Appellees - Ron O'Brien  
 Franklin County Prosecuting Attorney  
 Paul M. Stickel  
 Assistant Prosecuting Attorney  
 373 South High Street, 20<sup>th</sup> Floor  
 Columbus, Ohio 43215

For the Appellee Property Owner - Sleggs, Danzinger & Gill Co., LPA  
 Todd W. Sleggs  
 820 West Superior Avenue, Suite 400  
 Cleveland, Ohio 44113

Entered JUN 30 2006

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

Exhibit "A"  
(10 of 9)

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2003.

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 board of revision, and the briefs filed by counsel to the appellant BOE and appellee property owner in lieu of appearing at a hearing before this board.

The subject real property, a freestanding drugstore, is located in the city of Columbus on approximately 1.368 acres, in the Columbus City School District taxing district, Franklin County, Ohio. The value of the parcel, #010-147408, as determined by the auditor and by the board of revision, is as follows:

		AUDITOR	
		TRUE VALUE	TAXABLE VALUE
Land	\$	354,000	\$ 123,900
Bldg		1,406,000	492,100
Total	\$	1,760,000	\$ 616,000

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		TRUE VALUE	TAXABLE VALUE
Land	\$	354,000	\$ 123,900
Bldg		646,000	226,100
Total	\$	1,000,000	\$ 350,000

Appellant contends that the board of revision has undervalued the parcel in question by not relying upon the sale of the subject as an indicator of its value. Appellee property owner 2100 Maple Canyon Plaza LLC ("Maple Canyon") purchased the parcel in question on July 1, 2003, for \$2,900,000.

At the outset, before considering the merits of this matter, we must address a jurisdictional issue raised by Maple Canyon. Specifically, Maple Canyon contends that the appellant BOE listed the address of the property owner incorrectly on the increase complaint it filed with the board of revision and that consequently, this matter must be remanded to the BOR for purposes of dismissing the original complaint. Specifically, the BOE listed a Rhode Island address for the property owner which Maple Canyon claims was incorrect. The BOE attached documentation to its brief to support its position that at the time of filing its complaint, it, in fact, used the address as contained in the records of the Franklin County Treasurer. However, attachments to a brief do not rise to the level of evidence upon which this board may rely, and therefore, such documents will not be considered. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported; *ARV Assisted Living, Inc. v. Hamilton Cty. Bd. of Revision* (Interim Order, July 30, 1999), BTA No. 1998-N-168, unreported; *Bd. of Edn. of the Hilliard City School Dist. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-R-1430, unreported.

Although we cannot consider the information provided by the BOE outside the hearing, there is nothing in the record to establish what the correct address for the property owner was at the time the complaint was filed. Regardless, we do not find that the listing of the property owner's address on a complaint filed with a BOR

runs to the core of procedural efficiency. See *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10; *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591. In the instant matter, it appears, for purposes of providing notice to a property owner of a pending complaint or of an upcoming BOR hearing, that the BOR does not necessarily utilize the property owner address listed on the complaint. S.T. at Ex. 2-6. Arguably, then, the address listed on the complaint is not "essential," as the BOR is not required to use it, and in this instance, did not utilize it. Further, statutory language acknowledges that the property owner's address may not be known, e.g., in R.C. 5715.19(C) wherein it states that "[e]ach board of revision shall notify any complainant and also the property owner, *if the property owner's address is known*, when a complaint is filed \*\*\*."(Emphasis added.) Finally, the property owner obviously received notice of the filing of the BOE's complaint and the BOR proceedings, as it was represented at the BOR hearing by counsel and offered the testimony of its appraiser. Accordingly, we find that the BOE's complaint properly established jurisdiction with the BOR.

Turning to the merits of the instant matter, since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. A review of the statutory transcript indicates this appeal originated at the board of revision with the Board of Education of the Columbus City Schools ("BOE") filing an original complaint against the valuation of the subject

property with the Franklin County Board of Revision, seeking to increase the subject's value to reflect its recent sale price. No counter-complaint was filed, although the appellee property owner was represented by counsel and offered the appraisal report and testimony of Robin M. Lorms, MAI, CRE, a state-certified general real estate appraiser, at the hearing before the board of revision. The board of revision decreased the valuation of the subject property to \$1,000,000, reflecting the value opined by the property owner's appraiser.

The BOE, dissatisfied with the BOR's decision, appealed such determination to this board. As we consider the foregoing, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, 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; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision*

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(1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "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 County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's length to meet such presumption. However, the burden of persuasion does not change, as it is still on the appealing party [the board of education], to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of sale of the subject, specifically, the deed and conveyance fee statement, which indicate a sale price of \$2,900,000 in July 2003, as well as a lease abstract. S.T. at Ex. 12. It is the property owner's contention that the recent sale price does not reflect the subject's true value because the sale reflects the value of the leased fee. However, there has been no

representation from the property owner that the sale was anything but arm's length, and there is certainly nothing in the record from which that could be inferred.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. However, regardless of the arm's-length nature of the transaction, the property owner would have us disregard the sale price as not reflective of market value, claiming that "[s]ales of properties subject to build-to-suit leases [d]o not reflect the obsolescence of the real estate created by the tenant's design requirements." Property Owner's Brief at 4.

As we consider the property owner's position, we are mindful that in *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, the syllabus provides, "although the sale price is the 'best evidence' of true value of real property for tax purposes, it is not the only evidence. 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 Supreme Court then identified factors that it believed affected the reliability of the sale price as an indicator of value:

"This court has never adopted an absolutist interpretation of this statute. Our decisions and those of other jurisdictions with similar statutes have approved of considering factors that affect the use of the sale price of property as evidence of its true value. Such factors might include: mode of payment, sale-lease arrangements, abnormal economic conditions and the like." *Id.* at 61.

However, the Supreme Court recently decided *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, and therein overruled *Ratner*, *supra*. Specifically, the court overruled *Ratner* and its

successor case, *Ratner v. Stark Cty. Bd. of Revision* (1988), 35 Ohio St.3d 26, “to the extent that they [*Ratner I* and *Ratner II*] direct the board of revision and the BTA to ‘consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing[.]’” *Berea*, supra, at ¶ 13. The court went on to “hold that when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea* at 5.

Thus, based upon the court’s pronouncement, we find that the price paid by the appellee property owner for the subject property on July 1, 2003, is the true value of the property for tax year 2003. The property owner has not met its burden of proving that the sale was not arm’s length, and, as such, the value<sup>1</sup> of the subject for tax year 2003 is that which the board of education sought, based upon the sale of the subject, specifically:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 580,000	\$ 203,000
Bldg	2,320,000	812,000
Total	\$ 2,900,000	\$ 1,015,000

It is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this

<sup>1</sup> The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject’s initial valuation.

decision.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
\_\_\_\_\_  
Julia M. Snow, Board Secretary

9  
c o p y

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals finding that the listing of the property owner's address on a complaint filed with a Board of Revision (County Auditor) is not a jurisdictional requirement is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals finding that the Appellee Board of Education's complaint properly established jurisdiction with the Board of Revision is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals decision and taxes the leased fee value of the property, not the fee simple value, and is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order rejecting the fee simple appraisal of the property adopted by the County Board of Revision is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals decision and order does not value the property at its true value in money and is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals decision and order overturning the Board of Revision's assessment of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals Decision and Order valuing the property in excess of its replacement cost new is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8

The Board of Tax Appeals abused its discretion, acted unreasonably, unlawfully and arbitrarily in its decision and order.

ASSIGNMENT OF ERROR NO. 9

The decision and order of the Board of Tax Appeals is unreasonable and unlawful and is contrary to the laws of Ohio and the Ohio Constitution.

ASSIGNMENT OF ERROR NO. 10

The decision of the Board of Tax Appeals violates Article XII, Section 2 Ohio Constitution that property should be taxed by uniform rule according to value.

ASSIGNMENT OF ERROR NO. 11

The decision of the Board of Tax Appeals violates the right of "equal protection" under Article 1, Section 2 and Article II, Section 26 Ohio Constitution and Amendment XIV, Section 1 United States Constitution in that it treats the Appellant different from other property owners for purposes of taxation.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to Paul M. Stickel, Assistant Prosecuting Attorney, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio 43215, Attorney for Appellees, Franklin County Board of Revision and County Auditor; Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for Appellee Board of Education of the Columbus City Schools and James Petro, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 27<sup>th</sup> day of July 2006.

  
Todd W. Sleggs, Esq. (0040921)

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OHIO BOARD OF TAX APPEALS

RECEIVED JUN 03 2006

Board of Education of the Columbus )  
 City Schools, )  
 )  
 Appellant, )  
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 vs. )  
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 Franklin County Board of Revision, )  
 Franklin County Auditor, and 2100 Maple )  
 Canyon Plaza LLC, )  
 )  
 Appellees. )

CASE NO. 2005-A-381  
 (REAL PROPERTY TAX)  
 DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
 Mark H. Gillis  
 300 East Broad Street, Suite 300  
 Columbus, Ohio 43215

For the County Appellees - Ron O'Brien  
 Franklin County Prosecuting Attorney  
 Paul M. Stickel  
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 373 South High Street, 20<sup>th</sup> Floor  
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For the Appellee Property Owner - Sleggs, Danzinger & Gill Co., LPA  
 Todd W. Sleggs  
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Entered JUN 30 2006

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Appellant contends that the board of revision has undervalued the parcel in question by not relying upon the sale of the subject as an indicator of its value. Appellee property owner 2100 Maple Canyon Plaza LLC ("Maple Canyon") purchased the parcel in question on July 1, 2003, for \$2,900,000.

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property with the Franklin County Board of Revision, seeking to increase the subject's value to reflect its recent sale price. No counter-complaint was filed, although the appellee property owner was represented by counsel and offered the appraisal report and testimony of Robin M. Lorms, MAI, CRE, a state-certified general real estate appraiser, at the hearing before the board of revision. The board of revision decreased the valuation of the subject property to \$1,000,000, reflecting the value opined by the property owner's appraiser.

The BOE, dissatisfied with the BOR's decision, appealed such determination to this board. As we consider the foregoing, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

When determining value, 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; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision*

(1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "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 County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's length to meet such presumption. However, the burden of persuasion does not change, as it is still on the appealing party [the board of education], to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of sale of the subject, specifically, the deed and conveyance fee statement, which indicate a sale price of \$2,900,000 in July 2003, as well as a lease abstract. S.T. at Ex. 12. It is the property owner's contention that the recent sale price does not reflect the subject's true value because the sale reflects the value of the leased fee. However, there has been no

representation from the property owner that the sale was anything but arm's length, and there is certainly nothing in the record from which that could be inferred.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. However, regardless of the arm's-length nature of the transaction, the property owner would have us disregard the sale price as not reflective of market value, claiming that "[s]ales of properties subject to build-to-suit leases [d]o not reflect the obsolescence of the real estate created by the tenant's design requirements." Property Owner's Brief at 4.

As we consider the property owner's position, we are mindful that in *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, the syllabus provides, "although the sale price is the 'best evidence' of true value of real property for tax purposes, it is not the only evidence. 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 Supreme Court then identified factors that it believed affected the reliability of the sale price as an indicator of value:

"This court has never adopted an absolutist interpretation of this statute. Our decisions and those of other jurisdictions with similar statutes have approved of considering factors that affect the use of the sale price of property as evidence of its true value. Such factors might include: mode of payment, sale-lease arrangements, abnormal economic conditions and the like." *Id.* at 61.

However, the Supreme Court recently decided *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, and therein overruled *Ratner*, *supra*. Specifically, the court overruled *Ratner* and its

successor case, *Ratner v. Stark Cty. Bd. of Revision* (1988), 35 Ohio St.3d 26, “to the extent that they [*Ratner I* and *Ratner II*] direct the board of revision and the BTA to ‘consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing[.]’” *Berea*, supra, at ¶ 13. The court went on to “hold that when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea* at 5.

Thus, based upon the court’s pronouncement, we find that the price paid by the appellee property owner for the subject property on July 1, 2003, is the true value of the property for tax year 2003. The property owner has not met its burden of proving that the sale was not arm’s length, and, as such, the value<sup>1</sup> of the subject for tax year 2003 is that which the board of education sought, based upon the sale of the subject, specifically:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 580,000	\$ 203,000
Bldg	2,320,000	812,000
Total	\$ 2,900,000	\$ 1,015,000

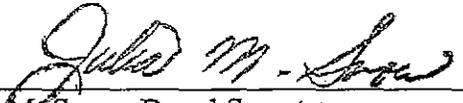
It is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this

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<sup>1</sup> The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject’s initial valuation.

decision.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
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Julia M. Snow, Board Secretary

# Board of Revision

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Franklin County • Ohio

March 16, 2005

Ted. & Marias Plaza, LLC  
13931 Carroll Way #A2  
Tustin, CA 92780

Complaint No: BOR 03-900926 A&B  
Parcel: 010-147408  
Hearing Date: February 17, 2005

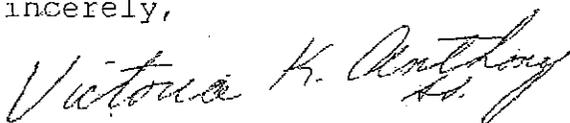
After Consideration of the above Complaint, it is the decision of the Board of Revision that a decrease of valuation in the amount of \$760,000 is warranted. This change is effective as of tax lien date January 1, 2003 and carried forward.

The property's new fair market value is \$1,000,000. The new taxable value is 35% or \$350,000.

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C. 5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such appeals must be filed within 30 days after the mailing of this notice.

Please call (614) 462-3913 if we can be of further assistance.

Sincerely,



Victoria K. Anthony, Clerk  
Franklin County Board of Revision

VKA/bn

Cc: Jeffrey A. Rich, Esq.  
Todd W. Sleggs, Esq.

Arlene Shoemaker  
Commissioner

Richard Cordray  
Treasurer

Joseph W. Testa  
Auditor

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Victoria K. Anthony  
Clerk

## OHIO BOARD OF TAX APPEALS

Knickerbocker Properties Inc. XLII,	)	CASE NO. 2005-B-730
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	ORDER
	)	
Delaware County Board of Revision	)	
Delaware County Auditor and	)	(Denying Motion for Remand)
Olentangy Local Schools Board of	)	
Education,	)	
	)	
Appellees.	)	

## APPEARANCES:

For the Appellants	-	Todd W. Sleggs & Associates Todd W. Sleggs 820 W. Superior Avenue Suite 410 Cleveland, Ohio 44113
For the County Appellees	-	David Yost Delaware Co. Prosecuting Attorney 140 N. Sandusky Street Delaware, Ohio 43015
For the Appellee Board of Education	-	Rich, Crites & Wesp, LLC Jeffrey A. Rich Kelley A. Gorry Mark H. Gillis 300 East Broad Street Suite 300 Columbus, Ohio 43215

Entered JUL - 7 2006

This matter is now considered upon a motion for remand filed by counsel for Knickerbocker Properties Inc. XLII, appellant herein. Appellant moves for an order remanding this appeal to the Delaware County Board of Revision ("BOR")

with instructions to dismiss the complaint filed by the Olentangy Local Schools Board of Education ("BOE").

Appellant contends, in its memorandum, that the BOE used the wrong mailing address for the taxpayer-owner of the subject property on its complaint and that for a complaint to be valid it must include the correct address as this information goes to the core of procedural efficiency since the Delaware County Auditor ("auditor") could not give appellant herein an opportunity to file a counter-complaint and to receive timely notice of scheduled hearings.

In its memorandum contra, the BOE points out that it utilized the proper name of the owner, correct parcel numbers and property address and stated its opinion of value for the subject property.

Based upon the record before this board, we conclude that the BOE's complaint was sufficient to establish jurisdiction with the BOR pursuant to R.C. 5715.19. The BOE's complaint correctly named the owner, the parcel number and property location, and the basis for the value sought. The BOE's complaint form complied with the core jurisdictional requirements set forth in R.C. 5715.19. See *Bd. of Education of the Delaware County Schools v. Delaware Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1997-L-871, unreported. See also: *Bd. Of Education of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 30, 2006), BTA No. 2005-A-381, unreported.

Appellant's motion to remand is denied.

OHIO BOARD OF TAX APPEALS

Rose Hill Securities and	)	CASE NOS. 2004-M-1163
Rose Hill Burial Park Association, <sup>1</sup>	)	2004-M-1164
	)	2004-M-1165
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	ORDER
Summit County Board of Revision,	)	
Summit County Auditor, and the	)	(Retaining Jurisdiction and
Copley-Fairlawn City School District	)	Consolidating Appeals)
Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

3.	For the Appellant	- Roetzel & Andress Amie L. Bruggeman 222 South Main Street Akron, Ohio 44308
01.	For the County	- Sherri Bevan Walsh Summit County Prosecuting Attorney
02.	Appellees	Milton C. Rankins Assistant Prosecuting Attorney 220 South Balch Street Suite 118 Akron, Ohio 44302-1606
3.	For the Appellee	- Britton, Smith, Peters & Kalail Co., L.P.A.
4.	Copley-Fairlawn	David A. Rose
5.	City School Dist.	David H. Seed
6.	Board of Education	Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-6814

Entered October 28, 2005

<sup>1</sup> The board sua sponte corrects the case caption in this matter to accurately reflect the parties' capacity.

The Board of Tax Appeals considers this matter pursuant to a "motion to dismiss" filed in BTA No. 2004-M-1165, and, as the same issue is present in BTA No. 2004-M-1164, sua sponte with regard to that appeal.

The Summit County Board of Revision ("BOR") determined the value of the Rose Hill Burial Park for tax year 2003. The burial park comprises six parcels of property and straddles two school districts. Most of the burial park is located in the Copley-Fairlawn City School District with a small portion located in the Fairlawn-Revere Local School District.

Portions of the property are owned by two separate entities. Rose Hill Securities Co. is the owner of parcel no. 78-00003, located in the Fairlawn-Revere Local School District. The valuation challenge for that parcel is companion case no. 2004-M-1163. Rose Hill Burial Park Association, Inc. is the owner of parcel nos. 78-00001 and 78-00002, also located in the Fairlawn-Revere Local School District. These parcels are the subjects of BTA No. 2004-M-1164. Rose Hill Burial Park Assoc., Inc. is also the owner of parcel nos. 09-02749, 09-2750, and 09-02753. These three parcels are located in the Copley-Fairlawn City School District and are the subjects of BTA No. 2004-M-1165.

Complaints were filed on all six parcels with the BOR. The complaints properly identified the owners of the individual parcels owned. A single hearing was held.

The matters were considered by the BOR and determinations were made. Appeals were filed with this board from determinations made by the BOR.

However, the appeals for parcels owned by Rose Hill Burial Park Association, Inc. were filed in the name of Rose Hill Securities, Inc. Counsel for the Copley-Fairlawn City School District Board of Education ("BOE") filed a motion to dismiss. As the same issue arises with regard to the property owned by Rose Hill Burial Park Association, Inc., located in Fairlawn-Revere School District, the board considers the issue sua sponte with regard to that appeal:

Counsel for the BOE addresses the question of standing. Counsel points out that Rose Hill Securities Co. did not file the underlying complaints before the BOR; the complaints were filed in the name of the property owner, Rose Hill Burial Park Association, Inc. By not filing the complaints before the BOR, counsel argues, Rose Hill Securities does not fall within the group of persons prescribed by R.C. 5717.01 who are authorized to file a notice of appeal challenging the actions of a board of revision. Without standing, counsel argues, any appeal filed by Rose Hill Securities fails to vest jurisdiction in this board.

It is well established only complainants<sup>2</sup> before the board of revision have standing to take an appeal to the Board of Tax Appeals. *Bd. of Edn. v. Bd. of Revision* (1973), 34 Ohio St.2d 231, overruled on other grounds in *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142; *Lindbloom v. Bd. of Tax Appeals* (1949), 151 Ohio St. 250. *Bd. of Edn.* addressed the situation in which a school board, which had not filed a complaint before a board of revision,

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<sup>2</sup> An exception to this general rule was crafted by the Ohio Supreme Court in *Columbus Apartments Assoc. v. Bd. of Revision* (1981), 67 Ohio St.2d 85 where the court held "The right of a property owner to appeal

attempted to participate in an appeal filed with the Board of Tax Appeals by a proper owner. In *Bd. of Edn.*, the court held:

"A 'hearing' is a proceeding of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have a right to be heard; an 'appeal' is a complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed. Black's Law Dictionary (4 Ed.). It is fundamental, therefore, that under ordinary circumstances only those who are parties at a hearing have a right of appeal. To hold otherwise would be to destroy the very purpose of the hearing, *i.e.*, to collect all relevant evidence, and would permit an interested person, such as appellant herein, to not participate in the hearing, hoping for favorable results, and then, if the results were unfavorable, to become a party to an appeal and present additional evidence at the appellate level." *Id.* at 233, 234.

The board has relied upon *Bd. of Edn.* to support a conclusion that a notice of appeal failed to vest jurisdiction to consider the valuation of a particular property.<sup>3</sup> For example, in *Shumaker, Loop & Kendrick v. Lucas Cty. Bd. of Revision* (Feb. 24, 1995), BTA No. 1994-D-1479, unreported, the board held that a notice of appeal filed in the name of a property owner's attorney failed to vest jurisdiction with this board. In that appeal, however, the board specifically found that the law firm had not participated at the board of revision level, either by filing a complaint on behalf of the property owner or participating in the appeal. In *Travis v. Montgomery Cty. Bd. of Revision* (June 18, 2004), BTA No. 2003-G-

Footnote contd.

the determination of a board of revision, where a complaint has been successfully pursued by a third party, does not depend upon the owner having filed a complaint pursuant to R. C. 5715.19." *Id.* at 90.

<sup>3</sup> The board has also relied upon *Bd. of Edn.* in cases where both the notice of appeal and the complaint before a board of revision fail to name the owner. See, e.g., *Real Estate Value Consultants v. Hamilton Cty. Bd. of Revision* (June 8, 1990), BTA No. 1989-E-398, unreported.

1623, unreported, a complaint was originally filed with a board of revision by a board of education. The property owner did not participate before the board of revision, either by filing a counter-complaint or attending the hearing. Once the board of revision's decision was issued, a notice of appeal was filed with the Board of Tax Appeals challenging the value determination made. The notice of appeal listed an individual shareholder of the corporate property owner as the "owner." This board concluded, under the authority of *Bd. of Edn.*, supra, and *Shumaker, Looper & Kendrick*, supra, that the notice of appeal failed to vest jurisdiction. Had the board made the opposite finding, the BOR's hearing would have been circumvented.

In the present matter, however, the property owner, Rose Hill Burial Park Association, Inc., did file a complaint with the BOR and participated in the hearing before that body. Thus, this is not a case of a non-participant attempting to circumvent a lower tribunal. Thus, the board does not find the holding in *Bd. of Edn.*, supra, to be applicable.<sup>4</sup>

While the BOE's counsel compares the failure to identify the owner on a notice of appeal with the failure to identify the owner of property on a complaint filed with a board of revision, such comparison is not perfect. A

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<sup>4</sup> The board acknowledges that it has issued other cases regarding misnamed appellants on a notice of appeal. However, in each of those cases, the error was first made upon the complaint or counter-complaint. See, e.g., *Bd. of Edn. for the Washington Local Schools v. Lucas Cty. Bd. of Revision* (Nov. 3, 2000), BTA Nos. 1997-V-1066, et seq., unreported (where the board corrected the representation of facts made by counsel for the Board of Education of the Washington Local Schools to reflect that the original counter-complaint was improperly filed.); *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (Jun. 21, 1996), BTA Nos. 1995-A-1093 and 1995-A-1202, unreported (underlying complaint filed in the name of wrong board of education).

properly filed complaint with a board of revision imposes certain duties upon the auditor. A valid complaint must include all information that goes to the core of procedural efficiency. Anything that would affect the auditor's ability to provide notice as is statutorily required runs to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 1998-Ohio-179. As the auditor is statutorily obligated to notify the owner that a challenge to the property value has been made, the owner of a subject property must be listed on the face of a complaint. *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported.

The obligations placed upon this board when a notice of appeal is filed are not the same as those placed upon the auditor when a complaint is filed. In *GAMED Investment Co. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 1994), BTA Nos. 93-G-285, 93-D-1167, unreported, the board considered the validity of a notice of appeal which did not use the Department of Tax Equalization form prescribed for appeals to this board. In that matter, the board determined that, along with a copy of the board of revision's determination letter, the critical information to be presented to this board is as follows:

- \*\*\*\* 1) Complaint number assigned by the Board of Revision; 2) Parcel number of the subject property; 3) The date of the Board of Revision's decision; 4) Taxing year; 5) Taxable values of the property as determined by the Board of Revision."

This board concluded that the above-identified information was sufficient for this board to inform all interested parties of the substance of appellant's appeal.<sup>5</sup> The identification of the owner was not found to be information which ran to the core of procedural efficiency.

When the complaint was properly filed, but the notice of appeal identified one other than the owner, this board has held that the misnomer can be corrected by a substitution of real party in interest. *Upper Arlington City Schools v. Franklin Cty. Bd. of Revision* (May 17, 2002), BTA No. 2001-N-1356, unreported; *Gammarino v. Hamilton Cty. Bd. of Revision* (Jan. 3, 1997), BTA No. 1996-K-280, unreported; *Ashcroft v. Stark Cty. Bd. of Revision* (Oct. 16, 1992), BTA No. 1990-K-603, unreported; *Bd. of Edn. of the Mentor Exempted Village School Dist. v. Lake Cty. Bd. of Revision* (Interim Order, Feb. 16, 1990), BTA No. 1989-J-992, unreported. The board finds it appropriate to do the same in this appeal. The captions shall be corrected to identify Rose Hill Burial Park Association. Further, the matters shall be consolidated with BTA No. 2004-M-1163 for hearing and disposition purposes.

Given the foregoing, the board finds that R.C. 5717.01 has been satisfied and jurisdiction has properly vested. The matters will be set in the ordinary course of the board's business.

ohiosearchkeybta

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<sup>5</sup> In later decisions, the board held that even less information is required to be included on a notice of appeal. *Leach v. Hamilton Cty. Bd. of Revision* (Aug. 21, 1998), BTA Nos. 1998-M-44, et seq., unreported (concluding that in an appeal from a decision of a county board of revision, it is sufficient to simply state that the appellant is appealing such decision - no other information is necessary).

[§ 133-860]

Sec. 5715.07. Public inspection of documents relating to assessments.—All files, statements, returns, reports, papers, or documents of any kind relating to the assessment of real property which are in the office of a county auditor or county board of revision or in the official custody or possession of such officer or board shall be open to public inspection.

[§ 133-880]

Sec. 5715.08. Minutes of meetings; preservation of minutes and evidence.—The county board of revision shall take full minutes of all evidence given before the board, and it may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate records of all minutes and documentary evidence offered on each complaint.

[§ 133-900]

Sec. 5715.09. Organization of county board of revision; meetings; record.—Each county board of revision shall organize annually on the second Monday in January by the election of a chairman for the ensuing year. The county auditor shall be the secretary of the board. He shall call the board together as often as necessary during any year; keep an accurate record of the proceedings of the board in a book kept for the purpose, and perform such other duties as are incidental to the position.

[§ 133-925]

Sec. 5715.10. Valuation of real property; county board of revision may summon and examine persons as to property.—The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

(As amended by S.B. 361, Laws 1953, effective October 1, 1953.)

[§ 133-945]

Sec. 5715.11. Duty of county board of revision to hear complaints.—The county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may

increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.

[§ 133-965]

Sec. 5715.12. Duty to give notice before increasing valuation; service.—The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard. Such notice shall describe the real property, the tax value of which is to be acted upon, by the description thereof as carried on the tax list of the current year, and shall state the name in which it is listed; such notice shall be served by delivering a copy thereof to the person interested; by leaving a copy at the usual place of residence or business of such person; or by sending the same by registered letter mailed to the address of such person. If no such place of residence or business is found in the county, then such copies shall be delivered or mailed to the agent in charge of such property. If no such agent is found in the county, such notice shall be served by an advertisement thereof inserted once in a newspaper of general circulation in the county in which the property is situated. Notices to the respective persons interested in different properties may be united in one advertisement under the same general heading. Notices served in accordance with this section shall be sufficient.

[§ 133-985]

Caution: The Ohio Supreme Court determined in Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision (2001) [403-001 and Rubbermaid, Inc. v. Wayne Cty. Auditor et al. (2002), [403-118 that R.C. 5715.13 and R.C. 5715.19, as amended by Sub. H.B. No. 694, violate Sec. 28, Article II of the Ohio Constitution. CCH.]

Sec. 5715.13. Application for decrease in valuation.—The county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made. (As amended by H.B. 694, Laws 1998, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections [5715.13 or 5715.19] respecting valuations for tax year 1994, 1995, 1996, or 1997, and to complaints filed for tax years 1998 and thereafter.)

[§ 134-005]

Sec. 5715.14. Action certified to auditor; correction of tax lists.—The county board of revision shall certify its action to the county auditor, who shall correct the tax list and duplicate according to the deductions and additions ordered by the board.

§ 5715.14 ¶ 134-005

Sec. 5715.19. Complaints tender of tax determination of common level of assessment. (A) As used in this section, "member" has the same meaning as in section 1205.01 of the Revised Code.

101405

(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

- (a) Any classification made under section 5713.041 of the Revised Code;
- (b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;
- (c) Any reapportionment charge levied under section 5713.35 of the Revised Code;
- (d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;
- (e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county, such a person's spouse, an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the Institute for Professionals in Taxation, the national council of assessing officers, or the international association of assessing officers; a public accountant who holds a permit under section 4701.30 of the Revised Code; a general or residential real estate appraiser licensed or certified under Chapter 4763 of the Revised Code; or a real estate broker licensed under Chapter 4733 of the Revised Code, who is retained by such a person, if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person if the person is a trust, a trustee of the trust, the board of county commissioners, the prosecuting attorney or treasurer of the county, the board of taxing trustees of any taxing district within the county, the board of education of any school district with any territory in the county, or the mayor or legislative authority of any municipality in cooperation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code

applies and each subsequent tax year until the tax year in which that section applies again. No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

- (a) The property was sold in an arm's length transaction, as described in section 5713.05 of the Revised Code;
- (b) The property lost value due to some casualty;
- (c) Substantial improvement was added to the property;
- (d) An increase or decrease of at least twenty percent in the property's occupancy has had a substantial and economic impact on the property; or
- (e) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.19 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the plaintiff was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by the decrease in valuation or the party's intent or the person owning taxable real property in the county or in a taxing district with territory in the county may file the complaint notwithstanding division (A)(2) of this section.

(A) Within thirty days after the last date such complaints may be filed, the auditor shall promulgate the amount of the total amount of the overvaluation, undervaluation, discrimination, illegal valuation, or incorrect determination of the value of each parcel, in at least seventeen thousand five hundred dollars, to each property owner whose property is affected by the complaint if the complaint was not filed by the owner or the owner's spouse, and, in cases of an education whose school district may be affected by such notice, a board of education, a property owner, the owner's spouse, an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the Institute for Professionals in Taxation, the national council of property tax assessors, or the international association of assessing officers, a public accountant who holds a permit under section 4701.30 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763 of the Revised Code, or a real estate broker licensed under chapter 4733 of the Revised Code, who is retained by such a person, or, if the property owner is a firm, company, association, partnership, limited

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liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount ten-

dered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 1, Laws 1961; H.B. 337, Laws 1965; S.B. 428 and H.B. 931, Laws 1971; S.B. 423,

Laws 1974; H.B. 920, Laws 1976; H.B. 1, Laws 1977; H.B. 648, Laws 1978; H.B.'s 736 and 1238, Laws 1980; S.B. 6, Laws 1981; H.B. 379, Laws 1982; H.B. 260, Laws 1983; H.B. 379, Laws 1984; H.B. 603, Laws 1988; H.B. 694, Laws 1993, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections [5715.13 or 5715.19] respecting valuations for tax year 1994, 1995, 1996, or 1997 and to complaints filed for tax years 1998 and thereafter; H.B. 390, Laws 2002, effective March 4, 2002.)

§ 134-140

Sec. 5715.20. Certification of action; time for appeal. Tax commissioner may request decisions.—(A) Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. The tax commissioner's time to file an appeal under section 5717.01 of the Revised Code commences with the last mailing to a person required to be mailed notice of the decision as provided in this division.

(B) The tax commissioner may order the county auditor to send to the commissioner the decisions of the board of revision rendered on complaints filed under section 5715.19 of the Revised Code in the manner and for the time period that the commissioner prescribes. Nothing in this division extends the commissioner's time to file an appeal under section 5717.01 of the Revised Code.

(As amended by (H.B. 675), Laws 2002, effective March 14, 2003.)

§ 134-160

Sec. 5715.21. Payment of tax shall not abate complaint or appeal.—Payment of the whole or any part of any real property tax or assessment for any year or any recoupment charge as to which a complaint or appeal is pending shall not abate the complaint or appeal or in any way affect the hearing and determination thereof.

(As amended by S.B. 423, Laws 1974, effective July 26, 1974.)

§ 134-180

Sec. 5715.22. Credit and repayment of overpaid taxes.—If upon consideration of any complaint against the valuation or assessment of real property filed under section 5715.19 of the Revised Code, or any appeal from the determination on such complaint, it is found that the amount of taxes, assessments, or recoupment charges paid for the year to which the complaint relates was in excess of the

amount due, then, whether or not the payment of said taxes, assessments, or charges was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes, assessments, or charges then due from the person having made such overpayment, and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes, assessments, or charges distributable to the county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges previously overpaid, in proportion to the benefits previously received. If after such credit has been made, there remains any balance of such overpayment, or if there are no taxes, assessments, or charges due from such person, upon application of the person overpaying such taxes the auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment for the amount of such balance. The treasurer shall pay such warrant from the general revenue fund of the county. If there is insufficient money in said general revenue fund to make such payment, the treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received, and the amount paid from the undivided tax funds shall be deducted from the money otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, assessments, or charges, the treasurer shall reimburse the general revenue fund of the county for any payment made from such fund by deducting the amount of such payment from the money otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received.

(As amended by S.B. 423, Laws 1974, effective July 26, 1974.)

APPEALS TO BOARD OF TAX APPEALS.

§ 134-200

Sec. 5715.23. Abstract of real property transmitted to tax commissioner.—Annually, immediately after the county board of revision has acted upon the assessments for the current year as required under section 5715.16 of the Revised Code and the county auditor has given notice by advertisement in two newspapers that the valuations have been revised and are open for public inspection as provided in section 5715.17 of the Revised Code, each auditor shall make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of

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## CHAPTER 5717—APPEALS

## § 135-100

Sec. 5717.01. Appeal from county board of revision to board of tax appeals; procedure; hearing.—An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service, as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

(As amended by H.B. 920, Laws 1976; S.B. 6, Laws 1981; H.B. 260, Laws 1983; H.B. 612, Laws 2000; H.B. 675, Laws 2002, effective March 14, 2003.)

## § 135-101

Sec. 5717.011. Appeals from municipal board of appeal.—(A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by

the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

(As added by H.B. 95, Laws 2003, effective January 1, 2004.)

## § 135-120

Sec. 5717.02. Appeals from final determination; procedure; hearing.—Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations,

or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development, if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall

certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

As amended by S.B. 174, Laws 1973; H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 351, Laws 1981; H.B. 260, Laws 1983; S.B. 124, Laws 1985; H.B. 321, Laws 1985; S.B. 19, Laws 1994; H.B. 612, and S.B. 287, Laws 2000; S.B. 208, Laws 2002, effective September 6, 2002.

H 135-1501

Sec. 5717.03. Decisions of the board of tax appeals, certification effect.—(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.01B, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and the board of tax appeals' decision and the date when it was filed with the secretary for journalization shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its

journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redemption thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be certified by the board by certified mail to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year, unless reversed, vacated, or modified, as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in which the municipal corporation in which the dispute arose is primarily situated.

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(As amended by H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 95, Laws 2003; effective January 1, 2004.)

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Sec. 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal; certification.—The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin County.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenues affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required

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to be certified; or by any other person to whom the board certified the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner, or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

(As amended by H.B. 220, Laws 1953; S.B. 174, Laws 1973; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 231, Laws 1987, effective October 5, 1987.)

[§ 135-265]

Sec. 5717.05. Appeal from decision of county board of revision to court of common pleas; notice; transcript; judgment.—As an alternative

to the appeal provided for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code. The county auditor and all parties to the proceeding before the board, other than the appellant, filing the appeal in the court, shall be made appellees, and notice of the appeal shall be served upon them, by certified mail unless waived. The prosecuting attorney shall represent the auditor in the appeal.

When the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.

Within thirty days after notice of appeal to the court has been filed with the county board of revision, the board shall certify to the court a transcript of the record of the proceedings of said board pertaining to the original complaint and all evidence offered in connection with that complaint.

The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of, or if the complaint and appeal is against a discriminatory valuation, shall determine a valuation that shall correct the discrimination, and the court shall determine the liability of the property for assessment for taxation, if that question is in issue, and shall certify its judgment to the auditor, who shall correct the tax list and duplicate as required by the judgment.

In correcting a discriminatory valuation, the court shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a percent or amount that will cause the property to be listed and valued for taxation by an equal and uniform rule.

Any party to the appeal may appeal from the judgment of the court on questions of law as in other cases.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965; H.B. 934, Laws 1988, effective March 17, 1989.)

[§ 135-310]

Sec. 5717.06. Liability for taxes shall relate back.—In case of the institution of an appeal under sections 5717.01 to 5717.04 of the Revised Code,

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## Chapter 5705-3

# Valuation and Assessment of Real Property

Promulgated pursuant to RC 5713.01, 5713.041, 5715.01, and 5715.29

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### 5705-3-01 Definitions

As used in rules 5705-3-01 to 5705-3-13 of the Administrative Code:

(A) "True value in money" or "true value" means one of the following:

(1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.

(2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property.

(B) In compliance with the provisions of sections 5713.01, 5713.03, 5715.01 and 5715.24 of the Revised Code, the "taxable value" of each parcel of real property and the improvements thereon shall be thirty-five per cent of the "true value in money" of said parcel as of tax lien date in the year in which the county's sexennial reappraisal is or was to be effective beginning with the tax year 1978 and thereafter or in the third calendar year following the year in which a sexennial reappraisal is completed beginning with the tax year 1978.

(C) "Computer assisted appraisal systems"—A method in which the value of a property is derived by any or all of the following computerized procedures:

(1) Multiple regression analysis using sales to form the data base for valuation models to be applied to similar properties within the county.

(2) Computerized cost approach using building cost and other factors to value properties by the cost approach as defined in this rule.

(3) Computerized market data approach where a subject property is valued by adjusting comparable sales to subject by adjustments based on regression or other analyses.

(4) Computerized income approach using economic and income factors to estimate value of properties.

(5) Computerized market analysis to provide trend factors used by appraisers as basis of market valuation.

(D) "Cost approach"—A method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated physical depreciation and all forms of obsolescence if any; and then adding the market value of the land. This approach is based upon the assumption that the reproduction cost new, normally sets the upper limit of building value provided that the improvement represents the highest and best use of the land.

(E) "Effective tax rate"—Real property taxes actually paid expressed as a percentage rate in terms of actual true or market value rather than the statutory rate expressed as mills levied on taxable or assessed value. In Ohio four factors must be considered in arriving at the effective tax rate:

(1) The statutory rate in mills;

(2) The composite tax reduction factor as calculated and applied under section 319.301 of the Revised Code;

(3) The percentage rollback prescribed by section 319.302 of the Revised Code;

(4) The prescribed assessment level of thirty-five per cent of true or market value.

(F) "Income approach"—An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

(1) The reasonableness of the estimate of the anticipated net annual incomes;

(2) The duration of the net annual income, usually the economic life of the building;

(3) The capitalization (discount) rate;

(4) The method of conversion (income to capital).

(G) "Market data approach"—An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

(1) The degree of comparability of each property with the property under appraisal;

(2) The time of sale;

(3) The verification of the sale data;

(4) The absence of unusual conditions affecting the sale.

(H) "Replacement cost"

(1) The cost that would be incurred in acquiring an equally desirable substitute property;

(2) The cost of reproduction new, on the basis of current prices, of a property having a utility equivalent to the one

being appraised. It may or may not be the cost of a replica property;

(3) The cost of replacing unit parts of a structure to maintain it in its highest economic operating condition.

HISTORY: Eff. 10-20-81  
11-1-77; prior BTA-5-01

#### CROSS REFERENCES

RC 5713.01, County auditor shall be assessor, assessment, procedure, employment and compensation of employees

RC 5715.01, Tax commissioner to direct and supervise assessment of real property, procedures, county board of revision to hear complaints, rules of commissioner

#### NOTES ON DECISIONS AND OPINIONS

30 Clev St L Rev 137 (1981). After House Bill 920: An Analysis of Needed Real Property Tax Reform, Robert P. Rink.

No. 48257 (8th Dist Ct App, Cuyahoga. 12-6-84). A. G. & G. Co v Cuyahoga County Bd of Revision. In determining the true value or fair market value of real property for tax purposes, the purchase price in a recent, arms-length sale of the property shall be determinative and the value of any leasehold thereon shall not be added to the value of the property.

#### 5705-3-02 Equalization procedures

(A) "True value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in his county on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The assessor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality.

(B) At least once each six-year period the county auditor of each county, in conformity with the provisions of section 5713.01 of the Revised Code, shall view and appraise each parcel of real property and the improvements thereon in the county and this appraisal shall reflect the 100 per cent true value in money of each parcel appraised, and he shall place each parcel of real property on the tax duplicate at its "taxable value" which is thirty-five per cent of its true value in money.

(C) In the update year the county auditor shall determine whether each parcel of real property and the improvements thereon is appraised at its true value in money, as defined in paragraph (A) of rule 5705-3-01 of the Administrative Code, as of tax lien date of said year. If he finds that there has been either an increase or decrease in value, he shall adjust his tax records to show the true value in money of each parcel and the improvements thereon as well as the "taxable value" thereof, which "taxable value" shall be thirty-five per cent of the true value in money thereof as redetermined by the county auditor as of tax lien date.

(D) In making this triennial update of the true value in money and the "taxable value" of each parcel of real property, the county auditor shall be guided by sales of comparable property for a like use; the sales ratio and other

related studies compiled by the commissioner of tax equalization for the three calendar years immediately preceding the update year; by the increase or decrease in current building costs and changes in construction technique both after the proper application of depreciation and obsolescence; by the increase or decrease in the net rental income, expenses, and services for comparable property since the year in which the preceding sexennial reappraisal had been completed; and such other indications of increase or decrease in value as may be pertinent, such as test or sample appraisals on a current basis, where sales of real property are limited or in question.

(E) In implementing any increase or decrease in valuation of real property pursuant to this rule or ordered by the commissioner of tax equalization pursuant to section 5715.24 of the Revised Code, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county. He may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or he may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with section 36, Article II and section 2, Article XII, Ohio Constitution, and section 5713.03 and 5715.01 of the Revised Code, and this rule.

(F) In determining the true value in the year of the sexennial reappraisal or update year of any tract, lot, or parcel of real estate 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 of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(1) The tract, lot, or parcel of real estate loses value due to some casualty;

(2) An improvement is added to the property.

(G) The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January 1 of any year, its valuation shall be based upon its value or percentage of completion as it existed on January 1.

(H) When the county auditor revalues real property, notifications of the change in value shall be made as provided in section 5713.01 of the Revised Code.

HISTORY: Eff. 11-1-77  
Prior BTA-5-02

#### CROSS REFERENCES

RC 5713.01, County auditor shall be assessor, assessment, procedure, employment and compensation of employees

RC 5715.01, Tax commissioner to direct and supervise assessment of real property, procedures, county board of revision to hear complaints, rules of commissioner

## NOTES ON DECISIONS AND OPINIONS

BTA 84-G-983 (3-30-87). Park Place Ltd v Franklin County Bd of Revision. In valuing a HUD-subsidized apartment building for real property tax purposes, the property owner must take into account the requirements of OAC 5705-3-03(D) and OAC 5705-3-02(A).

## 5705-3-03 Appraisals

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the commissioner of tax equalization directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5705-3-07 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5705-3-08 of the Administrative Code.

(D) In arriving at his estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach—The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the market approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach—The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5705-3-01 of the Administrative Code, and adding the result to the basic interest and capitalization rate. Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be

used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3) The cost approach—The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtained by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making his appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the commissioner of tax equalization for his approval on an individual basis.

HISTORY: Eff. 11-1-77

Prior BTA-5-03

## CROSS REFERENCES

RC 5713.01. County auditor shall be assessor, assessment, procedure, employment and compensation of employees

RC 5715.01. Tax commissioner to direct and supervise assessment of real property, procedures, county board of revision to hear complaints, rules of commissioner

## NOTES ON DECISIONS AND OPINIONS

No. 84AP-756 (10th Dist Ct App, Franklin, 3-7-85). Consolidated Aluminum Corp v Monroe County Bd of Revision. An appraiser's characterization of property as "special purpose," where the overwhelming weight of evidence indicates that the property is "general purpose," does not render an appraisal based on the costs approach erroneous provided a market analysis is attempted as a check on the cost approach.

No. 84AP-756 (10th Dist Ct App, Franklin, 3-7-85). Consolidated Aluminum Corp v Monroe County Bd of Revision. A board of revision's reliance on the cost approach alone in determining the value of realty is unreasonable and unlawful where market opinions based on the land's highest and best use indicate a substantially lower worth.

No. 43969 (8th Dist Ct App, Cuyahoga, 4-8-82). Coventry Towers, Inc v Cuyahoga County Bd of Revision. In calculating the fair market value of an apartment complex for tax purposes, according to the "income approach" such calculation may include miscellaneous income from coin-operated washers and dryers.

BTA 85-C-61 and 85-C-62 (11-16-87). Cowgill v Limbach. The amount for which a property would sell on the open market between willing parties is the best evidence of its "true value in money" for tax purposes, but when no such data exists, OAC

- 600 Exempt property owned by United States of America
- 610 Exempt property owned by state of Ohio
- 620 Exempt property owned by counties
- 630 Exempt property owned by townships
- 640 Exempt property owned by municipalities
- 645 Exempt property owned or acquired by metropolitan housing authorities
- 650 Exempt property owned by board of education
- 660 Exempt property owned by park districts (public)
- 670 Exempt property owned by colleges, academies (private)
- 680 Charitable exemptions—hospitals—homes for aged, etc.
- 685 Churches, etc., publ. worship
- 690 Graveyards, monuments, and cemeteries
- 700 Community urban redevelopment corporation tax abatements (R.C. 1728.10)
- 710 Community reinvestment area tax abatements (R.C. 3735.61)
- 720 Municipal improvement tax abatements (R.C. 5709.41)
- 730 Municipal urban redevelopment tax abatements (R.C. 725.02)
- 740 Other tax abatements (R.C. 165.01 and 303.52)
- 800 Agricultural land and improvements owned by a public utility other than a railroad
- 810 Mineral land and improvements owned by a public utility other than a railroad
- 820 Industrial land and improvements owned by a public utility other than a railroad
- 830 Commercial land and improvements (including all residential property) owned by a public utility other than a railroad
- 840 Railroad real property used in operations
- 850 Railroad real property not used in operations
- 860 Railroad personal property used in operations
- 870 Railroad personal property not used in operations
- 880 Public Utility personal property other than railroads

(D) The coding system provided in this rule shall be effective for tax year 1985.

(E) Nothing contained in this rule however, shall cause the valuation of any parcel of real property to be other than its true value in money or be construed as an authorization for any parcel of real property in any class in any county to be valued for tax purposes at any other value than its "taxable value" as set out in rule 5705-3-01 of the Administrative Code.

HISTORY: Eff. 12-11-84 (1984-85 OMR 632)  
1984-85 OMR 334; 10-20-81, 11-1-77

#### CROSS REFERENCES

RC 5703.05, Powers, duties, and functions of tax commissioner  
RC 5713.041, Each parcel classified annually according to use

#### NOTES ON DECISIONS AND OPINIONS

12 OS(3d) 7, 12 OBR 6, 465 NE(2d) 421 (1984), *Roosevelt Properties Co v Kinney*. OAC 5705-3-06(B)(5), which excludes certain rental residential property from the definition of "residential property" entitled to an advantageous tax reduction factor, is consistent with RC 5713.041 and O Const Art XII, § 2a, which authorized the promulgation of the rule, with the equal protection clause, and with the "uniform rule" requirement of O Const Art XII, § 2.

BTA 82-A-217 (1983), *Sharon Land Co/Sharon Club Co v Medina County Bd of Revision*. There are but two classifications for real property in Ohio; O Const Art XII, § 2a provides that "[t]he two classes shall be: (a) residential and agricultural land and improvements; (b) all other land and improvements"; in conformity with O Const Art XII, § 2a, RC 5713.041 and OAC 5705-3-06 reiterate that there are but two classifications of real property and that the classes consist of residential and agricultural land and

improvements, and all other land and improvements; therefore a private country club is properly classified as commercial property with the "sub-use as golf course on a county property record card."

BTA 81-F-666 and 81-A-667 (1983), *Roosevelt Properties Co v Kinney*; affirmed by 12 OS(3d) 7, 12 OBR 6, 465 NE(2d) 421 (1984). OAC 5705-3-06 is a reasonable administrative regulation adopting the statutory directions found in RC 5713.041.

#### 5705-3-07 Valuation of land

(A) General—All land shall be appraised at its true value in money as of tax lien date of the year in which the appraisal or update of values is made. In arriving at the true value in money the county auditor shall consider, along with other factors, not only the present use of the land but also its highest and best probable legal use consistent with existing zoning and building regulations. The requirement that land be classified under rule 5705-3-06 of the Administrative Code according to its principal use shall not affect the requirement of this rule that it be appraised at its highest and best probable legal use. The present improvements to the land, the demand and supply of land, the demand and supply of land for such use, financing method, the length of time until developed and the cost of development are factors that should be considered in determining the highest and best probable legal use of the land.

(B) All relevant facts tending to influence the market value of land should be considered, including, but not limited to, size, shape, topography, soil and subsoil, drainage, utility connections, street or road, land pattern, neighborhood type and trend, amenities, zoning, restrictions, easements, hazards, etc.

(C) Land may be valued by four principal methods:

(1) The preferred method is the market data or comparative process requiring the collection and analysis of actual arms-length sales and other market information on comparable sites made within a reasonable time of the date of the appraisal with adjustments for variations. This method should be used except in unusual circumstances.

(2) The allocation method in which the land value is estimated by subtracting the value of the improvements from a known sale price. This is primarily used in an area where there are very few sales of vacant land and the improvements to land are of a generally uniform type.

(3) The land residual method estimates land value by capitalizing the residual income imputable to land as derived from actual or hypothetical new improvements assuming highest and best use. This method is useful in arriving at land value when there are few or no sales or as a check against the market approach.

(4) The development method can be used in valuing land ready for development by estimating value as fully developed and subtracting the development, administrative and entrepreneurial costs.

(D) The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway as provided in section 5713.04 of the Revised Code.

(E) Agricultural—Agricultural lands shall be classified and valued according to their characteristics and capabilities for use, based primarily on what they will produce under average conditions and typical management in the locality. Assessors should obtain and use information available relating to soil classification, land capabilities, land use and soil maps, production records, price records and other

# THE CONSTITUTION OF THE UNITED STATES

## AMENDMENT XIV

### Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

### Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

### Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# OHIO CONSTITUTION

## (Selected Provisions)

### Article I

### BILL OF RIGHTS

○ Const I § 1	Inalienable rights	may deem it necessary, and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.
○ Const I § 2	Equal protection and benefit	
○ Const I § 3	Rights of assembly and petition	HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851
○ Const I § 4	Right to bear arms	
○ Const I § 5	Right of trial by jury	
○ Const I § 6	Slavery and involuntary servitude	
○ Const I § 7	Religious freedom; encouraging education	
○ Const I § 8	<u>Habeas corpus</u>	
○ Const I § 9	Bail; cruel and unusual punishment	
○ Const I § 10	Rights of criminal defendants	
○ Const I § 11	Freedom of speech	
○ Const I § 12	No transportation or forfeiture for crime	
○ Const I § 13	Quartering troops	
○ Const I § 14	Search and seizure	
○ Const I § 15	No imprisonment for debt	
○ Const I § 16	Redress for injury; due process	
○ Const I § 17	No hereditary privileges	
○ Const I § 18	Only general assembly may suspend laws	
○ Const I § 19	Eminent domain	
○ Const I § 19a	Wrongful death	
○ Const I § 29	Powers not enumerated retained by people	

#### ○ Const I § 1 Inalienable rights

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

#### ○ Const I § 2 Equal protection and benefit

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they

#### ○ Const I § 3 Rights of assembly and petition

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the general assembly for the redress of grievances.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

#### ○ Const I § 4 Right to bear arms

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

#### ○ Const I § 5 Right of trial by jury

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: 1912 constitutional convention, am. eff. 1-1-13  
1851 constitutional convention, adopted eff. 9-1-1851

U Const II § 26 . General laws to have uniform operation; laws other than school laws to take effect only on legislature's authority .

All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

O Const XII § 2 Property taxation by uniform rule; ten-mill limitation; homestead valuation reduction; exemptions

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

- Reproduction cost
- Replacement cost

The market and physical condition of the appraised property usually suggest whether an exact replica of the subject property (reproduction cost) or a substitute property with similar utility (replacement cost) would be a more suitable comparison.

The appraiser estimates the cost to construct the existing structure and site improvements (including direct costs, indirect costs, and an appropriate entrepreneurial profit or incentive) using one of three traditional techniques:

1. Comparative-unit method
2. Unit-in-place method
3. Quantity survey method

The appraiser then deducts all depreciation in the property improvements from the cost of the new structure as of the effective appraisal date. The amount of depreciation present is determined using one or more of the three fundamental methods:

1. Market extraction method
2. Age-life method
3. Breakdown method

When the value of the land is added to the cost of the improvements less depreciation, the result is an indication of the value of the fee simple interest in the real estate component of the property, assuming stabilization.

This chapter provides an outline of the cost approach and explains the fundamental appraisal concepts that support this approach to value. Chapters 15 and 16 discuss the specifics of cost and depreciation estimates—i.e., the essential techniques applied to render a convincing opinion of value using the cost approach.

## Relation to Appraisal Principles

### Substitution

The principle of substitution is basic to the cost approach. This principle affirms that a prudent buyer would pay no more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay. Older properties can be substituted for the property being appraised, and their value is also measured relative to the value of a new, optimal property. In short, the cost of property improvements on the effective date of the appraisal plus the accompanying land value provides a measure against which prices for similar improved properties may be judged.