

IN THE SUPREME COURT OF OHIO

BEDFORD BOARD OF EDUCATION) CASE NO. 2006-1686
)
Appellee)
)
vs.) Appeal from the Ohio Board
) of Tax Appeals
)
CUYAHOGA COUNTY BOARD OF) Board of Tax Appeals Case
REVISION, CUYAHOGA COUNTY) Nos. 2004-V-1310, 2004-V-1311
AUDITOR, [APPELLEES])
INTERSTATE HAWTHORNE,)
LTD. [APPELLANT])
)
Appellees)

BRIEF OF APPELLEE, BEDFORD BOARD OF EDUCATION

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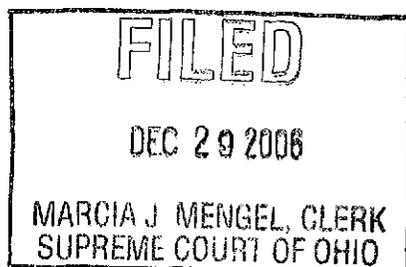
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STATEMENT OF THE FACTS

This appeal concerns the valuation of a parcel of real property for tax year 2003, identified by the Cuyahoga County Auditor as permanent parcel number 795-06-022 and located in Oakwood Village within the taxing district of the Appellee, the Bedford Board of Education ("BOE"). In particular, it concerns the question of whether the Ohio Board of Tax Appeals ("BTA") was required to affirm a decision of the board of revision when it had been established that there was no evidence supporting the same.

First Interstate Hawthorne, Ltd., owns the Hawthorne Valley Shopping Center, which contains nine separate permanent parcel numbers. (Supplement to the Briefs ("S.") pp. 1, 10, 55, 56 (Oversized Appellant's Exhibits B and C)). The center is composed of twelve small, in-line, retail units, fast food units, and three big box stores: a Levin Furniture store, an Office Max Store, and a Sam's Club. The entire center is serviced by a parking lot which sits between Broadway Avenue and the various retail stores. (S. pp. 35-36 (Tr. p. 16-19), 55, 56). The entire shopping center constitutes a single economic unit of property. (S. p. 35 (Tr. p. 14, lines 4-8; Appendix to Appellant's Brief, p. 10).

The property owner selected one of the nine shopping center parcels, parcel number 795-06-022, and sought a decrease in value

on only that extracted parcel. The extracted parcel is a highly irregularly shaped parcel. Located on the parcel is only a portion of the entire shopping center consisting of twelve small, in-line retail units and a portion of the center's parking lot. The property owner did not file a complaint on the remainder of the shopping center including the balance of the center parking lot, the fast food stores, the Office Max, Levin Furniture, and Sam's Club stores. All of these stores are a part of the same strip shopping center. (S. pp. 55, 56).

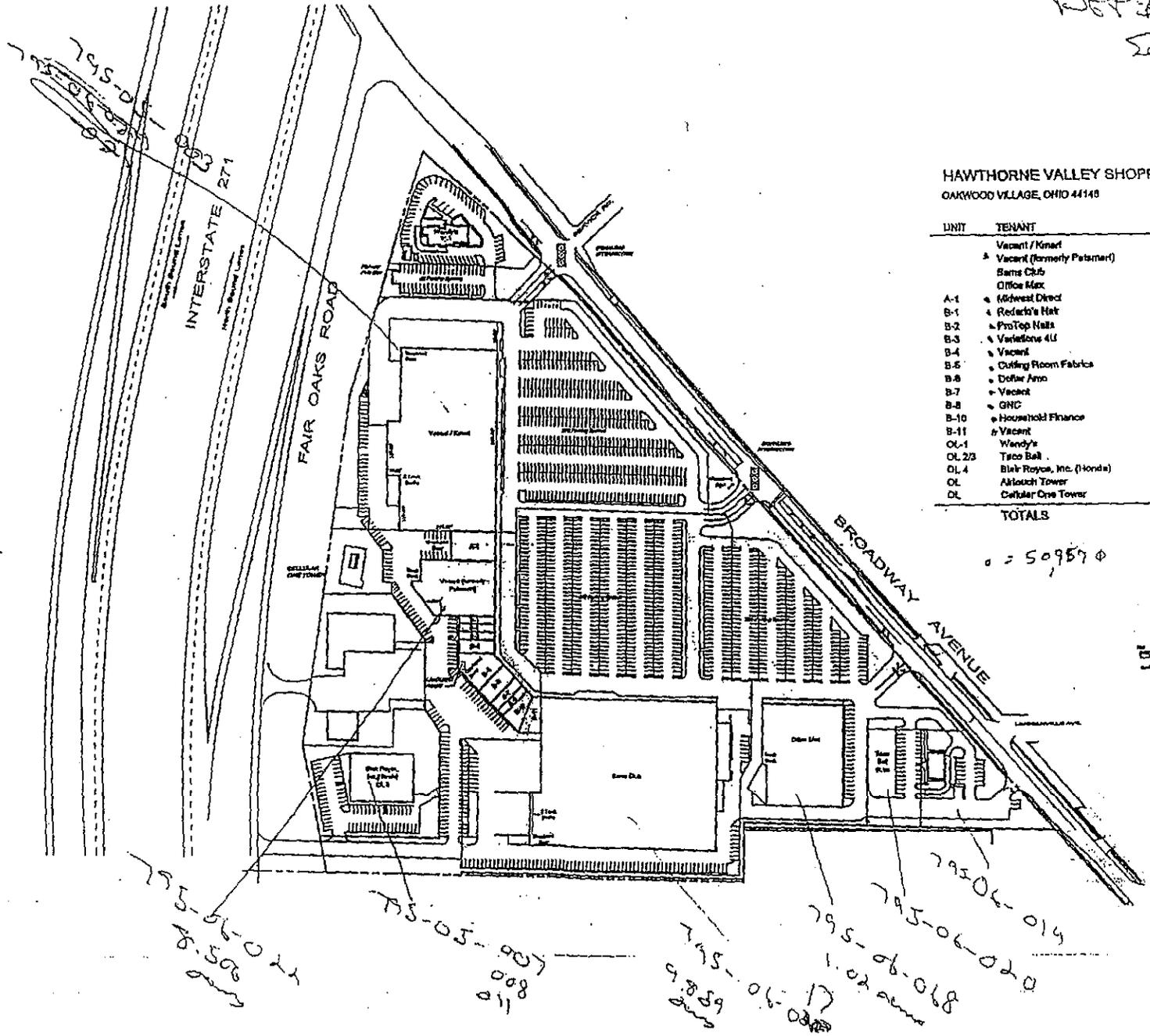
The property owner/Appellant, First Interstate Hawthorne, Ltd. ("First Interstate"), filed a complaint with the Cuyahoga County Board of Revision seeking a value for parcel number 795-06-022 of only \$1,500,000, a decrease of \$2,060,000 from the Auditor's value of \$3,060,000. The reason for the requested decrease as set forth on line 8 of First Interstate's complaint was an "attached Board of Revision decision for tax year 2002."¹ (S. p. 1). The decision of the board of revision for the 2002 tax year was subsequently reversed by the BTA. The BOE filed a counter-complaint requesting the Auditor's value be retained.

¹The decision for tax year 2002 is pending before this Court on an appeal by First Interstate in the matter captioned *Bedford Board of Education v. Cuyahoga County Board of Revision*, Supreme Court Case No. 2005-2311. A copy of the BTA's decision in this earlier matter is included in the Appendix to this Brief. The BTA noted in the instant matter that "[t]he facts of the 2002 appeal are identical to the facts before us today." Appendix to Brief of Appellant, p. 6.

On October 12, 2004 the complaint and counter-complaint came before the board of revision for hearing. At the hearing, First Interstate presented no testimony. It submitted a document titled "Owner's Opinion of Value", as well as the decision of the board of revision for tax year 2002. (S. pp. 4-21). The information contained in the Opinion was not verified by affidavit or testimony at the hearing. The Opinion was neither prepared by an appraiser, nor included any appraisal report. The Opinion included a map of the Hawthorne Valley Shopping Center (S. p. 10), as well as income, expense and vacancy data for only the twelve retail units located on parcel number 795-06-022. (S. pp. 11-20). Absolutely no income, expense, or vacancy information was provided with respect to the balance of the shopping center which included the Sam's Club, Levin Furniture and Office Max stores, and the fast food stores. No witness testified with respect to the information presented. (S. p. 29.) A map of the Hawthorne Valley Shopping Center is contained in the record (S. p. 55), and reproduced on the following page.

As can be seen from the map, the parcel at issue, parcel number 795-06-022, is situated in the middle of the much larger Hawthorne Valley Shopping Center and contains twelve small retail spaces. These appear as entries two, and five through fifteen on the list of tenants.

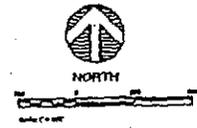
APPENDIX'S
S & B



HAWTHORNE VALLEY SHOPPING CENTER
OAKWOOD VILLAGE, OHIO 44148

UNIT	TENANT	SQUARE FOOTAGE	ST ACR
	Vacant / Kmart	80,119	23100
	Vacant (formerly PetSmart)	20,715	23150
	Barnes Club	136,814	23300
	Office Max	39,788	23350
A-1	Midwest Direct	8,500	23720
B-1	Redeja's Hat	1,200	23200
B-2	ProTop Nails	1,200	23210
B-3	Variations 4U	1,200	23220
B-4	Vacant	5,383	23228
B-5	Cutting Room Fabrics	4,500	23230
B-6	Dollar Amo	3,200	23250
B-7	Vacant	2,000	23260
B-8	GNC	1,200	23270
B-10	Household Finance	2,922	23290
B-11	Vacant	2,937	23292
OL-1	Wendy's	1,021 ACRES	23050
OL 2/3	Taco Bell	2,559 ACRES	23540
OL 4	Blair-Royce, Inc. (Honda)	1,511 ACRES	7300
OL	Alouach Tower	NA	
OL	Cellular One Tower	0.415 ACRES	
TOTALS		317,776	

0 = 50957 φ



On February 17, 2005 the board of revision issued its decision, valuing the property at \$1,500,000 for tax year 2003. The board relied on its previous decision for the 2002 tax year. The board stated on its Oral Hearing Worksheet (S., page 29) that "2003 - same decision for 2002." The BOE appealed to the BTA.

The appeal came before the BTA for hearing on December 6, 2005 at which time appearances were made by First Interstate and the BOE; no appearance was made by the county appellees. At the hearing before the BTA, the BOE called real estate appraiser Timothy Nash as its witness, who described the property as previously set forth in this brief. In addition, First Interstate called real estate appraiser Paul Provencher. (S. p. 40 (Tr. p. 33)). Neither appraiser stated an opinion of value; in fact, Mr. Provencher testified that he was not even asked by First Interstate to value the subject parcel. (S. p. 43 (Tr. p. 47, lines 8-13)).

Turning to the property at issue, county records show that the parcel extracted from the shopping center and filed on by the property owner contains 370,521 square feet of land, or approximately 8.51 acres. (S. p. 22). It has an improved building area of 50,957 square feet.² (S. p. 48).

²This square footage is established by documents supplied by the property owner, First Interstate, as indicated on map of the entire shopping center. (S. p. 10).

The record shows that the property filed on by the property owner is only a small portion of the considerably larger Hawthorne Valley Shopping Center on Broadway Avenue. The entire shopping center is owned by the same entity; the Appellant, First Interstate. (S. pp. 39 (Tr. p. 31, lines 5-10), 55; oversized Appellant's Exhibit B upon which Timothy Nash traced out parcel 795-06-022). The north end of the shopping center is anchored by a large single tenant retail store previously occupied by K-Mart, and now by a Levin Furniture store. Below this is housed the twelve small, in-line retail shops ("in-line space"), with a second large single tenant store occupied by a Sam's Club store anchoring the in-line space on the east. The Levin Furniture store and the Sam's Club store are physically attached and are a part of the same building housing the twelve small in-line retail units. Across an alley-way to the east is yet another larger single tenant retail store occupied by Office Max. All of these stores are serviced by a single open parking lot in front of the stores. (S. p. 36 (Tr. pp. 18-20), 55).

The record shows that the entire Hawthorne Valley Shopping Center (K-Mart/Levin Furniture, in-line space, Sam's Club, and Office Max) encompasses the following square feet:³

Levin Furniture (former K-Mart) 90,119
---------------------------------	------------------

³In addition, there is a fast food restaurant beyond the K-Mart space to the north and beyond the Office Max to the east. (S. p. 55 Appellant's Exhibit B.)

Sam's Club	136,914
Office Max	39,786
In-Line Stores	50,957
Total	317,776

(S. p. 55; Oversized Appellant's Exhibit B.) As can be seen, the in-line stores constitute only 50,957 square feet of the total, or about sixteen percent.

First Interstate did not file its complaint on the entire shopping center which it owned. Instead, its complaint was solely on permanent parcel 795-06-022 (S. p. 1), which consisted of the twelve small retail units situated on the in-line space between Levin Furniture/K-Mart and Sam's Club as well as a portion of the parking lot. The parking lot included in the filing is in front of the Office Max, not the in-line stores. The portion of the shopping center filed on included only sixteen percent of the retail space and did not include any of the three larger anchor stores, two of which are a part of the same building housing the in-line stores. The decrease complaint also did not include the parking area actually in front of and servicing the twelve small in-line stores. (S. p. 49, an enlarged copy of which was introduced and outlined at the BTA hearing as Appellant's Exhibit C). All of this was established to and accepted by the BTA.

Real estate appraiser Timothy Nash testified before the BTA and traced the subject property on the tax map created by the Cuyahoga County Auditor. (S. pp. 35-36 (Tr., pp. 15, line 12 - p. 21, line 5), 56; Oversized Appellant's Exhibit C.) Mr. Nash testified that parcel 795-06-022 was unusually configured, consisting of a strip of land to the north of Levin Furniture, a very narrow strip of land running in a southeast direction along Broadway Avenue, the parking lot in front of Office Max as well as a strip of land surrounding Office Max, a narrow strip of land going behind Sam's Club, and the in-line stores between Levin Furniture/K-Mart and Sam's Club. Oddly enough, it did not include the parking lot in front of the in-line stores. (S. p. 36 (Tr. p. 20, lines 16-23)).

Mr. Nash testified that the entire Hawthorne Valley Shopping Center physically constituted a single economic unit, and, with the exception of the fast food restaurants, would normally be valued and sell as a single unit. He stated in relevant part as follows:

"You know, in theory, it's possible to value any part of a whole, and it's sometimes done for legal purposes. But when you look at this property, it's part of the whole.

It's one - The one economic unit is physical and legal aspects of this and the financial aspects of this.

The in-line space is - pretty much are there and survive due to the anchor tenants, the Office Max, Sam's Club and Levin Furniture, and they wouldn't exit on their own, or probably survive on their own if it wasn't for the in-line space being part of the whole shopping center.

I mean, when you first asked us to go look at it and we drove out there, we said well, we don't think - looking at the entire property here, what you gave us, doesn't look like the entire shopping center; and why would you want us to try to value just the in-line space when it is really part of one economic unit?" (S. p. 37 (Tr. p. 23, line 7 - p. 24, line 1)).

In fact, Mr. Provencher, the appraiser called by First Interstate, was largely in agreement and testified as follows:

Q. [H]ave you seen situations where in-line space in a shopping center has sold independently of the anchors?

A. I have no recollection of that specific instance.

Q. Okay. When you viewed this place, you're on Broadway Avenue, so for example, if you're coming in the middle, there's an access road, I believe, to the center of this?

A. Sure.

Q. In your opinion as an appraiser, when you viewed this, how many shopping centers did you see there?

A. It appears to be one property.

* * *

Q. You've been appraising, I believe you stated, since 1988, correct?

A. Yes.

Q. Have you appraised - Strike that. Can you recall appraising a portion of a strip center such as this, meaning the in-line space with parking associated with another area?

A. No." (S. p. 44 (Tr. p. 50, line 25 - p. 51, line 13))

Both appraisers also testified that the parking on parcel 795-06-022 did not service stores situated on this parcel but instead was used by other stores in the shopping center. (S. pp. 37 Tr. pp. 22-23), 44 (Tr. pp. 49-50)). These other stores were

not part of First Interstate's complaint filed with the board of revision. (S. p. 1, 56).

In summary, the record shows that First Interstate filed a decrease complaint on one small portion of its large shopping center. It did not file on any of the anchor stores. It did not file on the parking lot which actually serviced the area which it believed was over valued. It did file on an area of the parking lot, but this area serviced one of the anchor stores (Office Max) which was not a part of the decrease complaint. First Interstate called no real estate appraiser as a witness before either the board of revision or the BTA who stated any opinion of value. In addition, First Interstate failed to present any evidence showing why one small section of the shopping center should be (or could be) broken out of the larger Hawthorne Valley Shopping Center and valued as a stand-alone facility without any reference to the value of the balance of the center of which this parcel was a part.

The BTA heard the testimony of the two witnesses, reviewed the record, and properly found there to be no basis for the decision of the board of revision. There was simply no valid basis or support for parcel 795-06-022 being valued at \$1,500,000 as was done by the board of revision. The BTA stated as follows in its Decision:

"After considering the foregoing, the BOR decreased the subject's market value to \$1,500,000. The hand-written

notation on the BOR's worksheet indicates: 'BOR hearing for 2002-\$1,500,000 K-Mart (vac), 2003-same decision 2002.'

In our 2002 decision, we held:

' [T]here was no evidence in the record to support the BOR's valuation of the subject. *** There is nothing to which we can point as the basis for its ultimate determination, and without an understanding of the basis for its action, we cannot rely upon its conclusions. Thus based upon the foregoing concerns we will rely upon the county auditor's valuation of the subject, as set forth in the property record cards included in the statutory transcript.' *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, supra, at 10 [internal citations omitted].

Given the BOR's reliance upon its previous decision to determine value for 2003, we necessarily reach the same conclusion today. We find that the evidence before the BOR was insufficient to support the decrease in value assigned to the subject property." (Appendix to Appellant's Brief, pp. 9-10).

The BTA did not find that parcel 795-06-022 could not be valued; instead, it simply found that there was no evidence to justify a change in the value set by the County Auditor. What the BTA had before it with respect to valuing parcel 795-06-022 was (1) the Auditor's original value of \$3,060,000 for the parcel 792-06-022, (2) First Interstate's "Owner's Opinion of Value" not supported by testimony or affidavit claiming a value of \$1,500,000, which was based on income and expenses for a small portion of the shopping center and did not consider how the income and expenses of the remaining portions of the shopping center complex affected this portion of the center, and (3) the \$1,500,000 decision by the board of revision which had no

evidentiary support whatsoever. The BTA decided that it could not rely on either the owner's opinion of value nor the unexplained decision of the board of revision; it therefore ordered the Auditor's value be reinstated. This decision was proper and in accord with Ohio law, and should be affirmed by this Supreme Court.

In its brief filed with this Court, First Interstate notes in its Statement of the Facts that income, expense and vacancy numbers supplied by its representative differed from the income, expense and vacancy numbers utilized by the County Auditor in his income approach to value. It argues that this justifies the decrease in value. In particular, it states on pages 2-3 of its brief the following:

"The Transcript on Appeal contains a copy of the County record card (Exhibit "D"). The record card identifies the same retail area depicted in the diagrams of the property submitted by the Appellant at hearing before the Board of Revision. Supp. at pages 10 and 27. The record card also contains the income and cost approaches to value utilized by the County Auditor in valuing the property. Supp. at pages 25-28. The County Auditor's income approach utilized a 5% vacancy factor versus the subject's actual vacancy of 78% as of December 31, 2002. Supp. at pages 11 and 27. The County Auditor's net operating income (N.O.I.) was \$295,803 versus the actual net operating income for the property of \$135,421.46 for 2001 and \$145,507.27 for 2002, roughly one half of the County Auditor's projection used in assessing the property at \$3,060,000. Supp. at pages 11 and 27. Based on this evidence the Cuyahoga County Board of Revision reduced the assessment of the property from \$3,060,000 to \$1,500,000. Supp. at page 29."

First Interstate has misconstrued the meaning and import of these numbers. The fact is that First Interstate supplied actual

income and vacancy information regarding only one small portion of the Hawthorne Valley Shopping Center, the in-line retail space. It provided nothing with respect to the other areas of the shopping complex of which the in-line retail space was a part, nor anything with respect to the parking which was part of the parcel at issue but actually served the other areas of the complex. It failed to provide actual income and expense figures for these other portions of the shopping center even though both appraisers testified that the retail units and parking space on parcel 795-06-022 contributed to the economic viability of the retail units and parking spaces on the remainder of the center, and the remaining retail units and parking spaces in the center contributed to the economic viability of the retail units and parking space located on parcel number 795-06-022.

It is true, as noted by First Interstate, that the Auditor's income, expense, and vacancy factors differed from those provided by First Interstate. It is also true, however, that the Auditor was valuing a different area than First Interstate. Instead of valuing only the in-line space, without parking, as was done by First Interstate, the County Auditor valued the in-line space as part of the much larger shopping center of which parcel 795-06-022 was part.

In addition to the fact that the Auditor valued parcel 795-06-022 as part of the larger Hawthorne Valley Shopping Center, it

should also be noted that when the Auditor values property for real estate tax purposes he values the property using market values for income, expense and vacancy. R.C. 5713.03; *The Appraisal of Real Estate*, 12th Edition, page 501. Consequently the market values used by the Auditor would vary from the actual income, expense and vacancy figures for the property at a particular point in time. The property owner presented no evidence that the market figures used by the auditor were incorrect. The Auditor measured the market value of the parcel.

There is nothing in the record contradicting the Auditor's overall valuation and the BTA properly declined to reject the same.

For the reasons that follow, the BOE respectfully submits that the decision of the BTA was in accord with Ohio law and should be affirmed.

LAW AND ARGUMENT

PROPOSITION OF LAW NO. 1:

WHEN A SINGLE ECONOMIC UNIT OF REAL ESTATE IS ASSIGNED MULTIPLE PERMANENT PARCEL NUMBERS BY A COUNTY AUDITOR AND A PARTY SEEKS A CHANGE IN THE AUDITOR'S VALUE OF ONLY ONE OF THE PARCELS IN THE LARGER ECONOMIC UNIT BUT NO EVIDENCE IS PRESENTED AT THE BOARD OF REVISION LEVEL OR THE BOARD OF TAX APPEALS LEVEL AS TO HOW THE VALUE OF THE SMALLER EXTRACTED PARCEL OF PROPERTY AFFECTS THE VALUE OF THE ENTIRE ECONOMIC UNIT OR HOW THE VALUE OF THE ENTIRE ECONOMIC UNIT AFFECTS THE VALUE OF THE SMALLER PORTION OF THE ECONOMIC UNIT OF WHICH IT IS A PART, THE BOARD OF TAX APPEALS MAY PROPERLY CONCLUDE THAT THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A CHANGE IN THE AUDITOR'S ASSIGNED VALUE.

A. THE BOARD OF TAX APPEALS MAY NOT AFFIRM A VALUATION BY A BOARD OF REVISION THAT IS DIFFERENT FROM THE AUDITOR'S VALUE WHERE THE RECORD CONTAINS NO EVIDENCE TO SUPPORT THE VALUE SET BY THE BOARD OF REVISION.

The issue before this Court is whether the BTA was required to affirm the decision of the board of revision after finding that there was nothing in the record which supported the same. First Interstate argues in its two propositions of law that the BTA was required to affirm the decision of the board of revision because the BOE failed to establish a particular value different from that set by the board of revision and in the alternative that the BTA could not adopt the Auditor's value but was required to independently value parcel 795-06-022.

The BOE submits both of these arguments to be without merit. The BOE submits that the BTA was required to make its own independent investigation and could not approve the board of revision's determination of value if it was not supported by sufficient probative and credible evidence. The BTA independently investigated and reviewed the evidence and made the factual determination that there was no evidence to support the decision of the board of revision. Absent evidence to support the board of revision decision and absent there being any evidence that the Auditor's value was incorrect, the BTA properly ordered the subject parcel to be valued at \$3,060,000 as originally determined by the Auditor. (Appendix to Brief of Appellant, p. 13).

The BTA heard and accepted the testimony of Timothy C. Nash, real estate appraiser, with respect to how the subject property must be valued or appraised. In light of this testimony, the BTA found that parcel 795-06-022 should be valued in conjunction with the shopping center of which it was an intrinsic part. The BTA reviewed the record before the board of revision and properly concluded that the board of revision erred when it valued parcel number 795-06-022 in isolation from and without any evidence as to the income and expense data for the remaining portions of the shopping center when the entire center formed a single economic unit. Consequently, the BTA was required to vacate the decision of the board of revision. Furthermore, since the record contained no evidence that the Auditor's value was incorrect, the BTA properly issued an order valuing the property at \$3,060,000 as originally determined by the County Auditor. For the reasons that follow, the BOE submits that the decision of the BTA was reasonable and lawful and should be affirmed.

B. THE BTA IS REQUIRED TO FIND TRUE VALUE BASED UPON ITS OWN INDEPENDENT ANALYSIS OF THE EVIDENCE.

As an initial matter, it must be kept in mind that the BTA is not the administrative equivalent of a court of appeals. To the contrary, the BTA is a finder of fact with discretion to independently weigh evidence and determine the credibility of witnesses. *Cleveland Heights/University Heights Board of*

Education v. Cuyahoga County Board of Revision (1995), 72 Ohio St.3d 189, 648 N.E.2d 811; R.C. 5717.01.

As the finder of fact, and in contrast to an appellate court, the BTA must make its own independent review of the record without deference to the decision of the board of revision. In *Alliance Towers, Ltd. v. Stark County Board of Revision* (1988), 37 Ohio St.3d 16, 25, 523 N.E.2d 826, this Court stated as follows with respect to the BTA's review of the record from the board of revision:

"The BTA or the court of common pleas is to hear the case *de novo* and may consider facts additional to those considered by the board of revision. R.C. 5717.01 and 5717.05. Much as in an appeal from the Tax Commissioner, the board of revision is usually designated as a party opponent. While the decision of the board of revision should not be colored with partiality, the General Assembly recognized the possible conflict inherent in the roles of the board members as officials who conduct the affairs of the county, and provided for an appeal to the BTA or the court of common pleas."

Also see; *Amsdell v. Cuyahoga County Board of Revision* (1994), 69 Ohio St.3d 572, 635 N.E.2d 11.

With this duty to make an independent review in mind, the next question is whether the BTA correctly evaluated parcel 795-06-022. In particular, whether the BTA made the correct factual determination that the parcel was part of a larger economic unit and must valued in conjunction with the larger economic unit.⁴

⁴As noted previously, the BTA found that the facts before it were identical to those in the 2002 case. In this previous case, the BTA made the factual finding that parcel 795-06-022 was part

In *Strongsville Board of Education v. Cuyahoga County Board of Revision* (1997), 77 Ohio St.3d 402, 674 N.E.2d 696, this Court addressed at some length the valuation of property by the BTA in conjunction with the question of an economic unit, stating as follows:

"In *Park Ridge Co. v. Franklin Cty. Bd. of Revision* [29 Ohio St.3d. 12, 504 N.E.2d 1116], *supra*, paragraph two of the syllabus, we stated:

'The true value for real property may well depend on its potential use as an economic unit. That unit may include multiple parcels, or it may be a part of a larger parcel, on the auditor's records. The boundaries of that unit may change with time and circumstances. Thus, a separate tract for valuation purposes need not correspond with a numbered parcel. For tax valuation purposes, property with a single owner, for which the highest and best use is a single unit, constitutes a tract, lot or parcel.'

Park Ridge concluded that 'whether the property serves its highest and best use as a single unit or as multiple units is generally a factual issue.' *Id.* at 16, 29 OBR at 234, 504 N.E.2d at 1120. However, we have since clarified the BTA's role as to its findings and our appellate review of such findings. In *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d. 155, 157, 573 N.E.2d 661, 662-663, we stated:

'This court has consistently held that '[t]he BTA need not adopt any expert's valuation. It has wide discretion to determine the weight given to evidence and the credibility of witnesses before it. Its true value decision is a question of fact which will be disturbed by this court only when it affirmatively appears from the record that such decision is unreasonable or unlawful * * *. Moreover, this court 'will not overrule BTA findings of fact that are based upon sufficient probative evidence.'

of the larger economic unit, i.e., the Hawthorne Valley Shopping Center. Page 7 of Appendix to the instant brief.

We will reverse BTA decisions on ultimate factual conclusions because these conclusions are legal in nature.

Consequently, we affirm the BTA's basic factual findings if sufficient, probative evidence of record supports these findings. We also affirm the BTA's rulings on credibility of witnesses and weight attributed to evidence if the BTA has exercised sound discretion in rendering these rulings. Finally, we affirm the BTA's findings on ultimate facts, i.e., factual conclusions derived from given basic facts . . . if the evidence the BTA relies on meets these above conditions, and our analysis of the evidence and reading of the statutes and case law confirm its conclusion. After meeting all these prerequisites, the BTA's decision would, thus, be reasonable and lawful, pursuant to R.C. 5717.04." (Citations omitted, emphasis added.)

With these rules of review in mind, the situation in the case at hand shows the following factual findings made by the BTA.

First, First Interstate only sought a decrease in the value of permanent parcel 795-06-022. (S. p. 1.) Based on the testimony and evidence presented, the BTA found that the evidence established this one parcel was part of the larger Hawthorne Valley Shopping Center, being 50,957 square feet of the larger 317,776 square foot shopping center. (S. p. 55). The parcel upon which First Interstate filed its complaint did not include any of the parking area which served the in-line retail space located on the parcel, nor did it include any of the other retail space encompassed in the same shopping center. (S. p. 56, oversized Appellant's Exhibit C).

Second, the BTA found that the entire Hawthorne Valley Shopping Center with the exception of the outlying fast food

restaurants constituted a single economic unit which had to be valued as a unit.

Both appraisers, Mr. Nash and Mr. Provencher, testified that the entire shopping center functions as a single unit. The retail units and parking spaces on parcel number 795-06-022 contribute to the economic functioning of the retail units on the remainder of the center and the retail units and parking on the remainder of the center were vital to the existence of the in-line retail units on parcel number 795-06-022. (S. pp. 37, 44 (Tr. pp. 44, 49-50)).

Specifically, Mr. Nash testified that the in-line retail units on parcel number 795-06-022 could not exist without the anchor tenants. (S. p. 39 (Tr. p. 29)). Mr. Provencher testified if one sought to value the center without reference to the anchor tenants one would have to "cite an extraordinary assumption and limiting condition in the appraisal." (S. p. 41 (Tr. p. 39, lines 22-23)). Mr. Provencher further testified that the parking servicing the in-line stores is part of the economic unit that must be considered in valuing the in-line stores (S. p. 42 (Tr. p. 44)) but that the parking included in the subject decrease complaint primarily serviced the Office Max store which was not a part of the decrease complaint, and the parking servicing the in-line stores was not included in the decrease

complaint. (S. p. 44 (Tr. pp. 49-50)). Mr. Nash agreed with this parking analysis. (S. p. 37 (Tr. pp. 22-23)).

The BTA heard Mr. Provencher's and Mr. Nash's testimony on direct and cross examination and accepted Mr. Nash's professional opinion that the entire shopping complex (other than the outlying fast-food restaurants) constituted a single economic unit. (Appendix to Brief of Appellant, pp. 10-11). As a result, the BTA made the factual finding that the in-line retail space situated on parcel 795-06-022 must be valued in conjunction with the larger shopping center or complex of which it was an integral part.

Third, it was undisputed that First Interstate provided no information whatsoever regarding the economic unit as a whole to either the board of revision or the BTA despite being given the opportunity to do so. Nothing was presented as to the rents being paid by Sam's Club, Office Max, or Levin Furniture, nor was any expense or vacancy data introduced with respect to the overall economic unit. In fact, nothing was presented to show how the parking area which served the Office Max store should be valued, since clearly this area was not dependent on the activity of the in-line space at issue.

The BTA made the factual finding that parcel 795-06-022 was only one part of the Hawthorne Valley Shopping Center, a larger economic unit. This finding was supported by uncontroverted,

sufficient, probative evidence and should be affirmed by this Court. See, *Strongsville Board of Education, supra*.

With no evidence valuing parcel 795-06-022 as part of the larger economic unit of which it was a part, the BTA then had to look to the record before it to determine whether the decision of the Board of revision had any justification.

In *Columbus Board of Education v. Franklin County Board of Revision* (2001), 90 Ohio St.3d 564, 740 N.E.2d 276, this Court addressed a situation similar to the case at hand. A property owner had filed a decrease complaint with the board of revision challenging the Auditor's value of \$1,401,000. The board of revision valued the property at \$960,000. The BTA affirmed the decision of the board of revision despite finding that there was no support for the same. This Court reversed, stating as follows:

"After reviewing the record and finding that the BOE had not provided the competent and probative evidence needed to meet its burden, the BTA affirmed the BOR's value. If the BOR had retained the auditor's original assessed valuation, the BTA would have been justified in adopting that value. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193, 195, 694 N.E.2d 1324, 1327. However, that was not the case. Here the value set by the BOR was its own value, different from that assessed by the auditor.

When the BTA reviews the evidence in a case in which the statutory transcript is the only evidence, the BTA must review the transcript and 'make its own independent judgment based on its weighing of the evidence contained in the transcript.' *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 665 N.E.2d 1098, 1101. When the BTA reviewed the transcript in this case, it

found that '[t]here is no evidence or other information in the statutory transcript to explain the action taken by the BOR.' By affirming the BOR's valuation, the BTA affirmed a valuation that was not supported by any evidence." *Columbus Board of Education v. Franklin County Board of Revision* (2001), 90 Ohio St.3d at 566-567, 740 N.E.2d at 279 (Emphasis added.)

This holding by the Court was not a new standard of review. To the contrary, this Court has repeatedly held that the BTA is required to independently review the record, with no presumption of validity given to the decision of the board of revision. See, e.g., *Columbus Board of Education v. Franklin County Board of Revision* (1996), 76 Ohio St.3d 13, 665 N.E.2d 1098; *Amsdell v. Cuyahoga County Board of Revision* (1994), 69 Ohio St.3d 572, 635 N.E.2d 11. If there is nothing in the record which supports the decision of the board of revision, then the BTA must reverse the decision of the board of revision. Further, if neither party has presented competent and probative evidence of value then the only lawful value before the BTA is the value determined by the County Auditor and the BTA must reinstate that value.

This is precisely what occurred in the case at hand: the only evidence of value before the BTA was that of the Cuyahoga County Auditor who valued parcel 792-06-022 at \$3,060,000. After its own independent investigation, the BTA found no competent, reliable and probative evidence of a different value and ordered the property returned to the tax list at the Auditor's value. This decision is in accord with Ohio law and should be affirmed.

C. FIRST INTERSTATE FAILED TO ESTABLISH ITS RIGHT TO A VALUE DIFFERENT FROM THE VALUE DETERMINED BY THE COUNTY AUDITOR.

First Interstate argues in its first proposition of law that the board of revision properly valued the subject parcel without considering the value of the remaining portions of the Hawthorne Valley Shopping center of which the subject parcel was only a small part.

Mr. Nash testified and the BTA found that the subject parcel, parcel number 795-06-022, was part of a larger economic unit, the Hawthorne Valley Shopping Center, and could not be valued in isolation from that unit.

First Interstate argues that the BTA erred in accepting this factual conclusion by Mr. Nash.

In *Higbee Co. v. Cuyahoga County Board of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2, 839 N.E.2d 385, at ¶49, this Court stated:

"Strongsville next contends that the BTA abused its discretion in accepting the land value determined by Ramsland, Higbee's appraiser. Basically, Strongsville is contending that Ramsland's valuation should not be accepted by the BTA. In *Wolf v. Cuyahoga Cty. Bd. of Revision* (1984), 11 Ohio St.3d 205, 207, 11 OBR 523, 465 N.E.2d 50, the court stated: 'A great deal of appellants' argument is devoted to the rebuttal of appellees' expert testimony. Ultimately, they conclude that none of his conclusions is credible enough to be relied on by the BTA. However, such a determination is precisely the kind of factual matter to be decided by the BTA.' The BTA's decision on land valuation was reasonable." (Emphasis added.)

Also see, *Fawn Lake Apartments v. Cuyahoga County Board of Revision* (1999), 85 Ohio St.3d. 609, 613, 710 N.E.2d 681; *Strongsville Board of Education v. Cuyahoga County Board of Revision* (1997), 77 Ohio St.3d. 402, 406, 674 N.E.2d 696.

This same rationale applies to First Interstate's argument regarding Mr. Nash. The BTA heard his testimony, weighed credibility, and accepted his opinion. Moreover, First Interstate failed to rebut Mr. Nash's testimony. Its sole witness, Mr. Provencher, agreed that the Hawthorne Valley Shopping Center appeared to be one center, and even admitted that he had never come across a situation where a small portion of a larger shopping center was to be valued or sold. Mr. Provencher was not asked to value the subject parcel, and expressed no opinion of value. (S. p. 44 (Tr. p. 50 line 25 - p. 51, line 13)). Mr. Provencher further testified that to value the in-line stores on parcel 795-06-022 without reference to the economic contribution of the anchor tenants would require "an extraordinary assumption and limiting condition in the appraisal. . ." (S. p. 41 (Tr. p. 39, lines 22-23)). The BOE submits that the BTA acted within its authority when accepting Mr. Nash's expert opinion that parcel number 795-06-022 is part of a larger economic unit and must be valued in relation to that unit.

With respect to the Auditor's value, there was no evidence that the Auditor did not follow the single economic unit

philosophy of Mr. Nash. When determining the value of the Hawthorne Valley Shopping Center the Auditor had the entire single economic unit before him. He arrived at a value for the center and then allocated that value to the nine permanent parcels numbers that comprised the center. There is no evidence in the record and First Interstate presented no evidence that the Auditor valued the nine parcels in isolation from one another and without considering that they were a part of a single economic unit.

Despite the fact that parcel number 795-06-022 is part of a larger single economic unit, at the board of revision hearing First Interstate asked the board to value it in isolation from the larger unit. First Interstate presented information only on this isolated parcel and presented no information on the balance of the shopping center economic unit.

In support of its argument First Interstate cites the case of *Dublin-Sawmill Properties v. Franklin County Board of Revision* (1993), 67 Ohio St.3d. 575, 621 N.E.2d 693. The BOE submits that this reliance is not justified.

In *Dublin-Sawmill Properties* the property owner sought a reduction in value for shopping center land based on actual sales of the land. *Dublin-Sawmill Properties* is inapplicable to the present case because there was no sales of any portion of the

Hawthorne Valley Shopping Center to provide evidence of its value.

Because the evidence presented to the board of revision in regards to parcel number 795-06-022 sought to value it in isolation from the larger economic unit of which it was a part, the board of revision could not properly value the parcel and could not change the Auditor's value.

D. THE BTA WAS NOT REQUIRED TO ISSUE A DECISION VALUING THE PROPERTY AT SOME AMOUNT DIFFERENT FROM THAT DETERMINED BY THE AUDITOR WHERE THERE WAS NO EVIDENCE IN SUPPORT OF SUCH NEW VALUE.

First Interstate argues in its second proposition of law that the BTA was required to independently value parcel 795-06-022, and since the BOE did not present evidence of value, the BTA erred when it refused to affirm the decision of the board of revision.⁵ Brief of Appellant, pages 8, 12. In response, the BOE submits these arguments to be without merit.

It is established law in Ohio that the decision of the board of Revision was not entitled to any presumption of validity, and the BTA is required to make an independent review of the record and base its decision on probative and credible evidence. *Board*

⁵First Interstate also notes that its second proposition of law addresses various constitutional errors. However, since it presents no discussion of any claimed constitutional error the same have been waived. *Board of Education of the Cleveland Municipal School District v. Cuyahoga County Board of Revision*, 107 Ohio St.3d. 250, 2005-Ohio-6434, 838 N.E.2d 647, at ¶¶21, 22; *Litton Sys., Inc. v. Tracy* (2000), 88 Ohio St.3d. 568, 728 N.E.2d 389.

of Education of the Vandalia-Butler City School District v. Montgomery County Board of Revision, 106 Ohio St.3d. 157, 2005-Ohio-4385, 833 N.E.2d 271, at ¶10; *Amsdell v. Cuyahoga County Board of Revision* (1994), 69 Ohio St.3d 572, 635 N.E.2d 11.

It is also not disputed that the burden of proof before the BTA rested on the BOE to show that the board of revision's decision was in error. In *Board of Education of the Vandalia-Butler City School District, supra*, this Court described how an appellant before the BTA may meet its burden of proof, stating as follows:

"Timberlake argues in its appeal here that the BTA should not have ruled in the board of education's favor, given that the board of education was the appellant before the BTA and presented no witnesses or other evidence at the BTA hearing. To be sure, the burden of proof rested on the board of education before the BTA, but '[h]ow a party seeking a change in valuation attempts to meet its burden of proof * * * is a matter for that party's judgment.' *Snively v. Erie Cty. Bd. of Revision* (1997), 78 Ohio St.3d. 500, 503, 678 N.E.2d 1373. The board of education could meet its burden of proof before the BTA by showing – through cross-examination of Timberlake's appraiser and in posthearing brief – that the board of revision had erred when it reduced the value from the amount first determined by the auditor." *Id.* at ¶9 (Emphasis added).

The burden of proof on the appellant to the BTA is to establish that the board of revision erred. It is not necessarily to establish a value different than the value set by the board of revision. If the board of revision changes the Auditor's value, then the burden on the appellant to the BTA is to establish that the change in value is unlawful because it is

either not supported by the law or is not supported by the evidence presented to the board of revision. Once this is established the BTA must reverse the decision of the board of revision. Once this occurs the BTA may then independently set a new value different from the Auditor's value if there is evidence in the record to support a change in the Auditor's value. If, however, there is no evidence to support a change in the Auditor's value the BTA must reverse the decision of the board of revision and reinstate the Auditor's value. The BTA was required to review the evidence and record and independently determine if the board of revision decision was supported by the evidence. With respect to burden, the BOE met its burden of proof by establishing there to be no basis in the record for the decision of the board of revision because First Interstate failed to present any evidence establishing the value of the subject parcel as part of the larger economic unit. The BTA properly reviewed the record in light of the BOE's evidence, i.e., the testimony of Mr. Nash and the various exhibits, and agreed there was no basis for the board of revision's decision to value parcel number 795-06-022 in isolation. Despite being given the opportunity to present its own witnesses and evidence in rebuttal, First Interstate declined to do so.

First Interstate argues that the BOE can not meet its burden of proof without presenting evidence of value even if the record

establishes that the action of the board of revision in changing the Auditor's value is not supported by the record. First Interstate relies on the decision of this Court in *Lakota Local School District Board of Education v. Butler County Board of Revision*, 108 Ohio St.3d. 310, 2006-Ohio-1059, 843 N.E.2d 757. This reliance is misplaced.

In *Lakota Local School District Board of Education* a property owner had filed a decrease complaint with the board of revision and submitted evidence of an arm's length sale in the amount of \$1,134,000. *Id.* at ¶13. The board of revision accepted the sale price as value and the Board of Education appealed. The BTA reversed, finding that the property owner had failed to meet its burden of proof. *Id.* at ¶15. This Court reversed the BTA, finding that the decision of the board of revision accepting the sale price was in fact supported by evidence. The Court further noted that pursuant to *Berea City School District Board of Education v. Cuyahoga County Board of Revision*, 106 Ohio St.3d. 269, 2005-Ohio-4979, 834 N.E.2d 782, a sale price sets value. *Id.* at ¶¶16, 17.

This is not the situation in the case at hand. Unlike the property owner in *Lakota*, First Interstate presented no evidence of a sale of the subject property nor did it present evidence to support the board of revision's decision to change the Auditor's value.

As the complainant before the board of revision, First Interstate had the burden of establishing that the Auditor's value was incorrect. *Freshwater v. Belmont County Board of Revision* (1997), 80 Ohio St.3d 26, 28, 684 N.E.2d 304. It failed to do so. Instead, it submitted income and expenses for only a small portion of a larger parcel, which parcel was in turn only one part of a larger shopping center/economic unit. This larger unit, the Hawthorne Valley Shopping Center, had to be valued as a single economic unit and no evidence was presented which allowed the board of revision or the BTA to do that.

The argument of the Appellant is that because the BOE did not present evidence of value from its appraiser, it failed to meet its burden of proof and the BTA must affirm the decision of the board of revision even if the decision of the board of revision is not supported by the record. This argument distorts the burden of proof placed on the BOE as the appellant before the BTA.

The burden of proof placed on the BOE is to show that the decision of the board of revision is erroneous. The BOE can do this in one of two ways. First, it can show that the value adopted by the board of revision is either too high or too low by presenting evidence of value. This is the situation in a majority of the cases heard by the BTA.

Second, an alternative method of meeting its burden of proof is to show that the decision of the board of revision is in error because it is not supported by reliable, probative and credible evidence. When this occurs, as it occurred in this case, the BTA must vacate the decision of the board of revision because the decision is contrary to law. On this point it must be remembered that the board of revision can only change the Auditor's value if the party seeking a change before the board of revision meets its burden of establishing that the Auditor's value is incorrect by the presentation of reliable, probative and credible evidence.

When the BTA determines that the board of revision's decision to change the Auditor's value is not supported by the evidence, it must vacate the board's decision. Otherwise an illegal action of the board of revision would be permitted to remain in effect.

Once the decision of the board of revision is vacated, the BTA can either set a new value different from that found initially by the Auditor or it can reinstate the value set by the Auditor. If the BTA has evidence before it establishing that the Auditor's value is incorrect, then it can determine a new and correct value that is supported by the evidence. If, however, as occurred in this case, there is no evidence in the record establishing that the Auditor's value was incorrect, then the BTA

must reinstate the Auditor's value because no party has proved an entitlement to a change in the Auditor's value.

This is precisely what occurred in the case of *Board of Education of the Vandalia-Butler City School District v. Montgomery County Board of Revision*, 106 Ohio St.3d. 157, 2005-Ohio-4385, 833 N.E.2d 271. The BTA found the decision of the board of revision to be in error and it then reinstated the Auditor's value because no party presented evidence justifying a change in value. In this regard, the statutory scheme places responsibility to value property in the first instance with the Auditor. R.C. 5713.03. Only if a party proves that this value is incorrect is the party entitled to a change in the Auditor's value.

The BTA found that the board of revision's decision was not supported by the evidence and the BTA correctly ordered the same vacated. Since the record contained no evidence justifying an increase or decrease in the value set by the Auditor, the BTA correctly reinstated the Auditor's value. The decision of the BTA was proper and should be affirmed.

CONCLUSION

The BTA made the factual finding that the property upon which First Interstate had filed a complaint was only a small part of a larger economic unit. The BTA further found that the entire economic unit should be valued together. While the parcel

at issue would certainly have its own value, this value must be determined in light of the economic unit of which it was part. All of these findings are supported by the evidence and testimony presented to the BTA, and its findings should not be reversed on appeal.

The record shows that the Hawthorne Valley Shopping Center is a single retail shopping center consisting of twelve smaller retail outlets and three larger big box tenants; this complex makes a single economic unit. The property owner is seeking to separate out a part of this single economic unit, the twelve small retail outlets and a portion of the parking lot, and value them separately from the larger retail units which are a vital part of the shopping center.

This can be analogized to valuing a residential home where one would not attempt to value the driveway and the entrance to the home without considering the rooms in the rest of the house. The two parts form a single economic unit with each contributing value to the other areas.

The property owner/Appellant is requesting that the BTA value a portion of the shopping center, the twelve small retail units and a portion of the parking lot, without considering the remainder of the center. Just as one can not value a home's driveway and entryway without considering the house itself, the

BTA could not value parcel 795-06-022 without looking to the shopping center of which this parcel is an indivisible part.

The decision of the BTA is supported by probative and credible evidence, is in accord with Ohio law, and should be affirmed by this Supreme Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Brief of Appellee, Bedford Board of Education" has been served upon the following this 28 day of December, 2006 by ordinary U.S. mail delivery:

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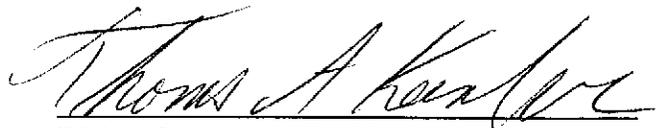
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APPENDIX

OHIO BOARD OF TAX APPEALS

Bedford Board of Education,)
)
 Appellant,)
)
 vs.)
)
 Cuyahoga County Board of Revision,)
 Cuyahoga County Auditor, and First)
 Interstate Hawthorne Ltd,)
)
 Appellees.)
)

CASE NOS. 2004-A-287,
 2004-A-288

 (REAL PROPERTY TAX)

 DECISION AND ORDER

APPEARANCES:

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Entered **NOV 10 2005**

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

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the above-named appellant, from a decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2002.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified to this board by the county board of revision, the evidence and testimony presented at a hearing before this board, and the briefs submitted by counsel to the appellant board of education and counsel to the appellee property owner.

The subject real property is located in the Oakwood taxing district, specifically parcel number 795-06-022, and consists of in-line stores, a portion of a parking lot, and several strips of land that are all part of a larger shopping complex. It is best described in appellant's brief, as follows:

"[T]he north end of the center is anchored by a large single tenant retail store previously occupied by K-Mart, and now by a Levin Furniture store. *** Below this is a strip center consisting of a number of small retail shops ('in-line space'), with a second large single tenant store occupied by a Sam's Club store anchoring the in-line space on the east. Across an alley-way to the east is yet another larger single tenant retail store, this one occupied by Office Max. ***

*** The actual parcel at issue is comprised of the in-line stores situated between Levin Furniture/K-Mart and Sam's Club, the parking lot in front of Office Max, and several strips of land. The parcel upon which the property owner filed its complaint includes none of the three larger retail stores or anchors, and does not include the parking area actually in front of the in-line stores." Appellant's Brief at 3-5.

The value of the parcel, as determined by the auditor and by the board of revision, is as follows:

AUDITOR		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 1,580,100	\$ 553,000
Building	1,419,900	497,000
Total	\$ 3,000,000	\$ 1,050,000

BOARD OF REVISION		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 750,000	\$ 262,500
Building	750,000	262,500
Total	\$1,500,000	\$ 525,000

Appellant contends that the board of revision has undervalued the property in question and claims the property's market value is that which the auditor had determined. It is the property owner's position that the board of revision's value should be retained, based upon the information it submitted to the board of revision.

Initially, this board notes 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. Thus, the burden is upon 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 Dist. v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

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. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value. However, no appraisals were offered to this board and only an "owner's opinion of value" was entered into evidence before the BOR.

In support of its position that the Cuyahoga County Auditor accurately valued the subject property, the appellant argues that the board of revision improperly relied upon the information offered by appellee property owner. In consideration of appellant's position, we must review what transpired at the BOR.

Specifically, before the BOR, the property owner presented an "opinion of value" that suggested the value of the subject, as of January 1, 2002, was \$1,000,000. A representative of the property owner appeared and verified that the information offered had been taken from the owner's records. Provided within the owner's opinion were "the 1998 through 2002 income and expense statements for the property that show the decline in income at the property as vacancy has increased. Also attached is a rent roll as of September 18, 2000 and a summary of the store tenants with the square footage and percentage of center space each tenant occupies. The valuation set forth in the complaint is based on the historic income and expense information for the property, the vacancy at the property, and the prospect for a turnaround at the center." S.T. at Ex. D. In its property description, the opinion stated that "[t]his location has developed as an area of light industrial buildings as opposed to retail. The primary retail location in this area has developed *** in Macedonia. This has had a negative impact on this property. The property under complaint consists of 50,957 square feet of retail shopping center area." Id. at Ex. D.

After considering the foregoing, the BOR decreased the subject's market value to \$1,500,000, but there are no details in the record to indicate how the BOR arrived at its conclusion, i.e., a value less than the auditor's, but more than that requested by the property owner.

We have previously considered the use of an "owner's opinion of value" at the board of revision level in *Olentangy Bd. of Edn. v. Delaware Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1997-M-848, unreported, where we held:

“As complainant, the property owner presented a written ‘Opinion of Value’ (‘Opinion’) at the hearing before the BOR. Such Opinions are regularly presented to boards of revision throughout the state. This Board has been critical of such Opinions when they are presented solely by persons representing property owners without any identification of the author thereof or underlying substantiation. *Grand Development Co. v. Cuyahoga Cty. Bd. of Revision* (June 5, 1998), B.T.A. No. 97-J-312, unreported; *Society Nat’l. Bank v. Montgomery Cty. Bd. of Revision* (Aug. 25, 1995), B.T.A. No. 94-P-875, unreported; *Society Nat’l. Bank v. Carroll Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 97-J-450, unreported; *Parkview Manor Company v. Cuyahoga Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-A-228, unreported.” Id. at 4-5.

See, also, *Kettering–Moraine City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (July 20, 2001), BTA No. 1998-L-1003, unreported. While the author(s) of the subject owner’s opinion of value was identified at the BOR hearing, the author was not present to testify or be cross examined concerning the basis for the conclusions made within the report or to provide insight into the opinion’s preparation, including the underlying support for the positions expressed.

It is the appellant board of education’s position that the BOR improperly relied upon the owner’s opinion of value in making its valuation conclusions regarding the subject property. Specifically, the BOE contends that the subject is only a portion of a larger, single economic unit, a shopping complex, and, as such, it would be improper to value the subject parcel separate from the remaining complex. We agree.

At the hearing before this board, the BOE offered the testimony of Timothy C. Nash, MAI. As an expert real estate appraiser, Mr. Nash testified that he considered the subject property part of a single economic unit made up of the entire

shopping complex. He stated that, "[I]f this is for assessment purposes and you want to know what this parcel is worth, we should be appraising the whole economic unit which is under one ownership, which is one physical property and has one parking area for everybody, an open parking area, and generally sells that way for this size shopping center." H.R. at 25.

While Mr. Nash acknowledged that the subject parcel could be sold independently from the remainder of the shopping complex, he testified that it was his belief, based upon his observance of the market over the years, that it would not be typical. H.R. at 29-30. He testified that the subject parcel alone does not normally constitute a single economic unit based upon how it is configured. H.R. at 17. For example, the parking lot that is part of the subject parcel does not service the subject in-line stores, but the adjacent stores, and the parking lot for the subject in-line stores is part of an adjacent parcel. H.R. at 23. Thus, it is Mr. Nash's opinion that, in conjunction with the remaining shopping complex, the subject "property will serve its highest and best use as a single unit." *Park Ridge Co. v. Franklin Cty. Bd. of Revision* (1987), 29 Ohio St.3d 12. Based upon the configuration of the subject parcel and Mr. Nash's representations on how such a shopping complex is traditionally viewed in the market, we agree that it would logically follow that the highest and best use of the subject property is as a single economic unit.

Further, there is no evidence in the record to support the BOR's valuation of the subject. While it could be assumed that the BOR utilized the information contained in the property owner's opinion of value to some extent, it

obviously did not adopt the property owner's position in its entirety. There is nothing to which we can point as the basis for its ultimate determination, and without an understanding of the basis for its action, we cannot rely upon its conclusions. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564. Thus, based upon the foregoing concerns, we will rely upon the county auditor's valuation of the subject, as set forth in the property record cards included in the statutory transcript.

Accordingly, we find, based upon the preponderance of the evidence before this board, the value of the subject real property for tax year 2002 shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 1,580,100	\$ 553,000
Building	1,419,900	497,000
Total	\$ 3,000,000	\$ 1,050,000

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

Mr. Dunlap dissenting.

I disagree with the foregoing decision and order and, accordingly, dissent.

Appellant BOE challenges the determination of the BOR reducing the value accorded the subject property by the county auditor.

It is axiomatic the burden of persuasion is on the appealing party to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. Assigned the burden of proof, the BOE is required to provide sufficient probative evidence to establish the value sought (\$3,000,000) accurately and reliably represents the true value of the subject.

In support, appellant submits evidence and testimony tending to show the subject parcel to be a portion of a multi-parcel "economic unit." That is, appellant argues because of the parcels' status as an integrated part of an economic unit consisting of a number of parcels, the BOR's specific decrease in its individual value is improper and, therefore, by default, the auditor's value (i.e., \$3,000,000) should be reinstated.

In my view, while the subject parcel may be legitimately characterized as part of an economic unit, appellant has failed to show the auditor's value is anymore indicative of true value than the decision of the BOR. Why the subject was assigned a true value of \$3,000,000 is never explained. Likewise, neither the true value of the entire economic unit nor a breakdown of the values assigned the other related parcels (if, in fact, an allocation was undertaken) is presented.

Moreover, we are cited to no specific authority finding it is unwarranted for a BOR, pursuant to a legitimate complaint, to determine the individual value of a permanent parcel that may be part of an economic unit.

I would find that appellant has failed to meet its assigned burden of proof. In response to appellant's contention that there is insufficient evidence to support the BOR's decision, I note the property owner-appellee provided the BOR with specific evidence in support of the allegations contained in its complaint, verified and explained via testimony from an officer who also responded to extensive questioning by the BOR. In my judgment, the record establishes that the property owner's presentation to the BOR in support of the decrease complaint is adequately probative and correspondingly, the BOR's value determination reasonably reconciles the evidence and testimony presented for its consideration.¹

Accordingly, for the foregoing reasons, I respectfully dissent.

BOARD OF TAX APPEALS			
RESULT OF VOTE	YES	NO	DATE
Ms. Margulies	<i>plm</i>		11/3/05
Mr. Eberhart	<i>R-E</i>		11-9-05
Mr. Dunlap		<i>WED</i>	11-16-05

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
 Julia M. Snow, Board Secretary

CCY
 CX

¹ Additionally, while it is well settled that a decision of a BOR is not entitled to a presumption of correctness, its findings need not be completely disregarded. The BOR's expertise and its proximity to and familiarity with a subject property ought to be acknowledged and recognized. If, as herein, the record demonstrates the BOR received substantial evidence and testimony regarding value, relatively uncontroverted, and the individual members participated significantly in the proceedings, a corresponding decision adjusting the auditor's values should be accorded consideration and weight, at least to the extent it reflects and corroborates the evidence in the record.

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R.C. § 5713.03

C

BALDWIN'S OHIO REVISED CODE ANNOTATED

TITLE LVII. TAXATION

CHAPTER 5713. ASSESSING REAL ESTATE

VALUATION AND CLASSIFICATION

→5713.03 Valuation of real estate

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. He shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price 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:

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

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. He shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be

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R.C. § 5713.03

included as a separate part of the total value of each tract, lot, or parcel of real property.

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apv. by 12/21/06, and filed with the Secretary of State by 12/21/2006.

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R.C. § 5717.01

C
BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE LVII. TAXATION
CHAPTER 5717. APPEALS

→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.

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