

IN THE SUPREME COURT OF OHIO

07 - 0195

Cummins Property Services, LLC :

Appellee, :

v. :

Franklin County Board of Revision, and
Franklin County Auditor, and the Ohio
Tax Commissioner, :

Appellees, :

and :

Worthington City Schools Board of
Education, :

Appellant. :

Case No. _____

Appeal from the Ohio Board of
Tax Appeals
BTA Case No. 2005-R-591

NOTICE OF APPEAL OF THE BOARD OF EDUCATION
OF THE WORTHINGTON CITY SCHOOL DISTRICT

Mark H. Gillis (0066908)
COUNSEL OF RECORD
Jeffrey A. Rich
Rich, Crites & Dittmer, LLC
300 East Broad Street, Suite 300
Columbus, Ohio 43215
(614) 228-5822
Fax (614) 228-2725
mgillis@richcrites.com

Wayne E. Petkovic (0027086)
COUNSEL OF RECORD
840 Brittany Drive
Delaware, Ohio 43015
(740) 362-7729
Fax (740) 362-4136

Attorney for Appellee
Cummins Property Services

Attorneys for Appellant
Board of Education of the Worthington
School District

FILED
FEB 01 2007
BOARD OF TAX APPEALS
COLUMBUS, OHIO

FILED
FEB 01 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Ron O'Brien, Franklin County Prosecuting Attorney
Bill Stehle (0077613)
COUNSEL OF RECORD
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio, 43215

Attorneys for Appellees
Franklin County Auditor and County Board of Revision

Marc Dann
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio, 43215

Attorney for Appellee Tax Commissioner

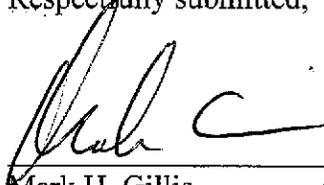
IN THE SUPREME COURT OF OHIO

Cummins Property Services, LLC :
: Case No. _____
Appellee, :
: v. :
Franklin County Board of Revision, and :
Franklin County Auditor, and the Ohio : Appeal from the Ohio Board of
Tax Commissioner, : Tax Appeals
: BTA Case No. 2005-R-591
Appellees, :
and :
Worthington City Schools Board of :
Education, :
Appellant. :

NOTICE OF APPEAL OF THE BOARD OF EDUCATION
OF THE WORTHINGTON CITY SCHOOL DISTRICT

Now comes the Appellant, the Board of Education of the Worthington City School District, and gives notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of Cummins Property Services, LLC, v. Franklin County Board of Revision, Franklin County Auditor, and Worthington City Schools Board of Education, BTA Case No. 2005-R-591, rendered on January 5, 2007, copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,



Mark H. Gillis (0066908)
Rich, Crites & Dittmer, LLC
300 East Broad Street, Suite 300
Columbus, Ohio 43215
(614) 228-5822
Fax (614) 228-2725

Attorneys for Appellee
Board of Education of the Worthington City
School District

EXHIBIT A - STATEMENT OF ERRORS

The errors made by the Ohio Board of Tax Appeals in this matter were the following. The decision of the Board of Tax Appeals (BTA) was unlawful and unreasonable under R.C. 5717.04, in that:

(1) The BTA erred in relying upon the sale price of the property to determine its true value in money for real property tax purposes under R.C. 5713.03 when the property in question was subject to substantial use restrictions and deed restrictions at the time of the sale of the property, and in holding that use and deed restrictions on the property are “akin to a sale-leaseback or special financing” for purposes of determining whether the price paid for the property should be its true value under R.C. 5713.03. The sale of property which is subject to use and deed restrictions cannot be taken to be its true value for real property tax purposes under R.C. 5713.03 or under Article XXI, Section 2 of the Ohio Constitution;

(2) The BTA erred in refusing to require a property owner who is attempting to obtain a reduction in the true value of its property to prove that the price paid for the property was not affected by the use restriction or deed restriction which applied to the property,

(3) The BTA erred in shifting the burden to the Board of Education to prove that use and deed restrictions did not affect the sale price of the property, which is evidence that is solely in the possession of the property owner and which the owner was required to prove under R.C. 5713.03;

(4) The BTA erred in allowing a property owner who is attempting to obtain a decrease in the true value of its property to benefit from presumptions relating to the sale of the property, when the property owner who claims the benefit of R.C. 5713.03 is required to prove that the sale comes within the terms of the statute;

(5) The BTA erred in refusing to require a property owner who is attempting to obtain a reduction in the true value of its property based on the price paid for the property to prove that the property was in the same condition as of the relevant tax lien day as it was at the time of sale, when the property owner testified that substantial improvements had been made to the property after the sale (the property was more valuable on tax lien day than at the time of sale);

(6) The BTA erred in shifting the burden to the Board of Education to prove that the property was in a different condition at the time of the sale than on tax lien day, when the property owner testified that substantial improvements had been made to the property after the sale. A property owner who testifies that significant changes were made to a property after the sale has the duty to prove what condition the property was in on tax lien day;

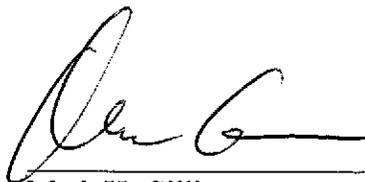
(7) The BTA erred in relying on presumptions relating to the sale of the property when a property owner who claims the benefit of R.C. 5713.03 in order to obtain a reduction in taxes must

prove that the sale falls squarely within the terms of R.C. 5713.03 without benefit of presumptions. The facts relating to the sale of the property, the condition of the property on tax lien day, and whether the price paid for the property was affected by deed and use restrictions, are all facts that are within the possession of the owner and, as such, the owner is required to prove all such facts in order to satisfy the requirements of R.C. 5713.03.

(8) The BTA erred in reducing the true value of the property from \$530,000, as determined by the County Auditor and as affirmed by the Board of Revision, to \$385,000 based upon the price paid for the property when the price paid for the property did not reflect its true value under R.C. 5713.03 and Article XII, Section 2 of the Ohio Constitution.

PROOF OF SERVICE ON BOARD OF TAX APPEALS

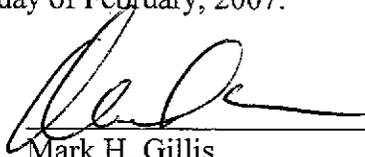
I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.



Mark H. Gillis
Attorney for Appellant

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon Wayne Petkovic, 840 Brittany Drive, Delaware, Ohio, 43015, Bill Stehle, Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, Ohio 43215, and upon Marc Dann, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio, 43215, by certified mail, return receipt requested, with postage prepaid, this 1st day of February, 2007.



Mark H. Gillis
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

Cummins Property Services, LLC :
Appellee, : Case No. _____
v. :

Franklin County Board of Revision, et al, :
Appellees, : Appeal from the Ohio Board of
and : Tax Appeals
: BTA Case No. 2005-R-591

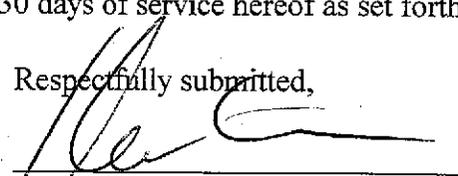
Worthington City Schools Board of :
Education, :
Appellant. :

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

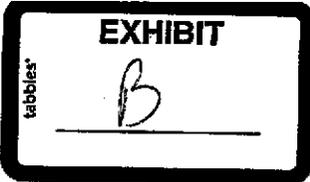
The Appellants, who have filed a notice of appeal with the Supreme Court of Ohio, make this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of Cummins Property Services, LLC v. Franklin County Board of Revision, Franklin County Auditor, and Worthington City Schools Board of Education, BTA Case No. 2005-R-591, rendered on January 5, 2007, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



Mark H. Gillis
Rich, Crites & Dittmer
300 East Broad Street, Suite 300
Columbus, Ohio 43215
(614) 228-5822

Attorneys for Appellant



OHIO BOARD OF TAX APPEALS

Cummins Property Services, LLC,)	CASE NO. 2005-R-591
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Franklin County Board of Revision,)	
Franklin County Auditor, and)	
Worthington City Schools)	
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

- For the Appellant - Wayne E. Petkovic
Attorney at Law
840 Brittany Drive
Delaware, OH 43015

- For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
Bill Stehle
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, OH 43215-6310

- For the Appellee Board of Education - Rich, Crites & Dittmer, LLC
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, OH 43215

Entered **JAN 5 2007**

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Cummins Property Services, LLC. The appellant challenges a decision by the

Franklin County Board of Revision ("BOR"), appellee herein, mailed to appellant on May 13, 2005. The notice of appeal was filed with this board on June 9, 2005.

The Franklin County Auditor and the BOR determined that the true and taxable values for the subject property for 2003 should be as follows:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
610-214526		
Land	\$ 96,220	\$274,900
Building	<u>\$ 89,290</u>	<u>\$255,100</u>
Total	\$185,510	\$530,000

The appellant, however, in its notice of appeal contends that the true and taxable values of the subject property should be reduced to:

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
610-214526		
Land	\$ 35,000	\$100,000
Building	<u>\$ 94,500</u>	<u>\$270,000</u>
Total	\$129,500	\$370,000

The subject property consists of .631 acres of land and is improved with a single-story office building, encompassing 3,073 square feet. It is located at 50 Lazelle Road, Worthington, Franklin County, Ohio.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the BOR, the record of the evidentiary hearing ("H.R.") before this board, including exhibits, and the briefs of counsel. At the hearing before this board, the appellant was represented by counsel and called Robert R. Cummins, Jr., appellant's sole member, to testify on its behalf.

Both the BOR and the Worthington City Schools Board of Education (“BOE”) were represented by counsel. The BOR and the BOE did not call any witnesses, but instead relied upon the existing record and cross-examination.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant’s evidence. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, and *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 3. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers*, supra; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence presented.

Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St.2d 13.

Pursuant to Section 2, Article XII, Ohio Constitution, land and improvements are to be taxed according to "value":

"Land and improvements thereon shall be taxed by uniform rule *according to value* ***." (Emphasis added.)

The interest to be valued is the unencumbered, fee simple interest.

Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St.3d 16; *Muirfield Assn v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710.

R.C. 5713.03 further mandates that each separate tract be valued according to its "true value":

"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 ***. *** In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes." (Emphasis added.)

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court of Ohio addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in *In Re Estate of Sears* [(1961)], 172 Ohio St. 443 (Parallel citation omitted). This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” *Id.* at 412.

See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

There is a rebuttable presumption that the sale price reflects true value. *Tanson Holdings, Inc. v. Darke Cty. Bd. of Revision* (1996), 74 Ohio St.3d 687. The Supreme Court has recognized that a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn.*, *supra*. In fact, the court has reaffirmed this presumption in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. See, also, *Lakota Local School /Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

As previously indicated, the appellant presented the testimony of Robert R. Cummins, Jr. H.R. at 11. Mr. Cummins testified that the subject property had

previously been utilized as a branch bank, and had been advertised on the market for several years with a realtor. H.R. at 12. The appellant purchased the property in August 2002 for \$385,000. H.R. at 14, 15. Based on this arm's-length sale, the appellant contends that the value of the subject property should be reduced.

The BOE, however, contends that the purchase price does not represent the value of the fee-simple interest. First, the appellant only received a limited warranty deed with further restrictions on the property's future use. H.R. at 29. The property could not be used as a bank building or have an ATM on site for a period of fifteen years. H.R. at 31, 33, 35, 36. Second, the BOE also submits that the subject property had changed substantially between the sale date and the tax lien date. The appellant had applied for a building permit in the amount of \$120,000, \$45,000 to \$50,000 of which was used to move a bank vault. H.R. at 39, 40, 48, 49. The building permit was procured in the fall of 2002, following the sale, and the improvements were begun immediately after the building permit was issued. H.R. at 39. The removal of the bank vault was performed either immediately before or after the tax lien date. H.R. at 50. The removal of the bank vault increased the usable square footage of the subject property by twenty to twenty-five percent. H.R. at 50, 51.

A recent, arm's-length sale is presumed to provide evidence of the value of a property under *Berea*, supra. In the present case, the record establishes the August 2002 sale to be recent and arm's length. The sale occurred only four or five months

before the tax lien date, and the property was purchased by an unrelated party after it had been offered on the open market through a realtor.

Once a recent, arm's-length sale has been established, it is the responsibility of the party contesting the sale price to prove that the value of the subject property is something different. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*

First, the BOE argued that the deed restriction prohibiting the property from being used as a bank or having an ATM on the site for a period of fifteen years effectively prevented the fee simple interest from being transferred by sale. However, under *Berea*, supra, such a restriction does not invalidate the sale as indicative of value. This restriction is akin to a sale-leaseback or special financing, which the Supreme Court has determined does not prevent the sale price from being competent and probative of value. Moreover, in *Muirfield*, supra, the Supreme Court found that for real property tax purposes, a fee simple estate is to be valued as if it were unencumbered, subject only to the limitations caused by involuntary governmental actions, such as eminent domain, escheat, police power, and taxation, and not voluntary restrictions. See, also, *Society Bank v. Franklin Cty. Bd of Revision* (Nov. 24, 2000), BTA No. 1999-M-204, unreported.

Second, the BOE argues that the property underwent significant change between the sale date and the tax lien date. The evidence shows that a building permit was taken out by the appellant after the purchase of the property; however, there is no

reliable evidence of the extent of the change to the subject property as of the tax lien date. Mr. Cummins testified that the bank vault was removed from the property, thereby increasing the square footage of the building by twenty to twenty-five percent, either shortly before or after the tax lien date.

There is no reliable evidence in the record to definitively establish when this change took place. There is no evidence in the record as to when any other modifications to the building were accomplished and at what cost. Moreover, the BOE did not demonstrate what the effect of any of these changes would have been on the value of the subject property as of tax lien date.

The BOE suggests that the value of the subject property should be other than the sale value, but it provided no quantification or independent evidence of the increase in value of the subject property because of the removal of the safe and increase in the square footage. Without more, the increase in value is simply speculative.

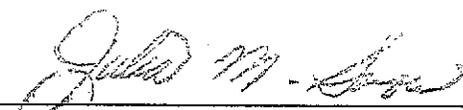
Based upon the foregoing, this board finds that Cummins Property Services, LLC presented evidence of a recent, arm's-length sale, which provides this board with a basis for determining the value of the subject property as of the tax lien date. Further, the board finds that the BOE did not present sufficient competent, probative, and reliable evidence to rebut the presumption to be afforded that sale as an

indicator of value. Accordingly, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows for tax year 2003:¹

<u>PARCEL NUMBER</u>	<u>TAXABLE VALUES</u>	<u>TRUE VALUES</u>
610-214526		
Land	\$ 36,380	\$103,950
Building	<u>\$ 98,370</u>	<u>\$281,050</u>
Total	\$134,750	\$385,000

The Auditor of Franklin County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

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

¹ The values for land and building were allocated in the same percentages as the appellant suggested in its notice of appeal.