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ATTORNEYS FOR APPELLEE  
BOARD OF EDUCATION OF  
COLUMBUS CITY SCHOOLS

**MEMORANDUM OPPOSING THE APPELLEE  
BOARD OF EDUCATION'S MOTION TO DISMISS APPEAL**

The Appellee Board of Education of the Columbus City School District has filed a Motion to Dismiss this appeal. This Memorandum Opposing the Appellee Board of Education's Motion to Dismiss the Appeal responds to the issues and arguments raised by the Appellee in their Motion.

In their Motion the Appellee attempts to convert a defect in their Complaint initiating this action into a defect in the Appellant's appeal of that action to this Court.

**THE APPELLANT NEVER GOT NOTICE OF THE APPELLEE'S INCREASE COMPLAINT, THAT IS WHY IS NO COUNTER COMPLAINT WAS FILED.**

The Appellee in their Motion attempts to diminish the rights of the Appellant in this appeal by referring to the fact that no counter complaint was filed by the Appellant in this case. The reason the Appellant did not file a counter complaint in this action is that they never received notice of the filing of the Appellee's original complaint under Revised Code 5715.19(B). It is not the fault of the Appellant that no counter complaint was filed, it is the fault of the Appellee in not ascertaining that the Appellant was properly served with notice of this action. On this basis alone, the Appellee's Motion to Dismiss should be denied.

**THE "OWNER" OF PROPERTY IS DETERMINED AS OF THE DATE OF THE FILING OF THE COMPLAINT.**

In their Motion to Dismiss, the Appellee cites several sections in the Revised Code which make reference to the "owner". The term "owner" refers to the owner on the date when a valuation complaint was filed. Public Square Tower One v. Cuyahoga Cty. Bd. of Revision (1986) 34 Ohio App.3d 49, 52 ("The most rational interpretation of the statute and the form governing complaints is that 'owner' means the owner when the complaint is filed.") The Appellant owned the property on the date the Appellee's complaint was filed. Supp. at pages

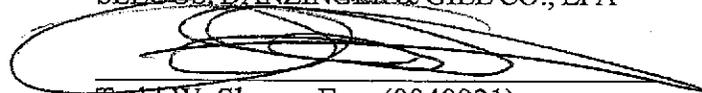
1-5. The Appellee offers no reason why the term "owner" should change during the course of this proceeding and the statutes cited by the Appellee make no such distinction. As noted in the Appellant's previous filings before the Court, the rules before the Ohio Board of Tax Appeals and county boards of revision do not provide for a substitution of parties. See Ohio Administrative Code Rules 5717-1-01 through 5717-1-22. The Rules of Practice and Procedure of the Franklin County Board of Revision are attached. As noted by the Court of Appeals in the case cited above, "the most rational interpretation of the statute and the form governing complaints is that 'owner' means the owner when the complaint is filed." Id. at 52. The Appellee provides no basis for this Court to deviate from this interpretation. For this reason, the Appellee's Motion to Dismiss should be denied.

#### CONCLUSION

For the foregoing reasons, the Appellant, 2100 Maple Canyon Plaza, LLC, respectfully requests that this Court deny the motion of the Appellee, Board of Education, to dismiss this appeal.

Respectfully submitted,

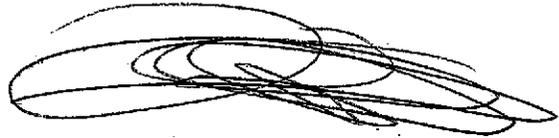
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Appellant's Memorandum Opposing the Appellee Board of Education's Motion to Dismiss the Appeal was mailed via regular U.S. mail postage prepaid, the 7<sup>th</sup> day of March, 2007 to the following: Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for the Appellee Board of Education of Columbus City Schools; Paul M. Stickel, Assistant County Prosecutor, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio 43215, Attorney for the Appellees Franklin County Board of Revision and Franklin County Auditor, and Marc Dann, Ohio Attorney General, State Office Tower, 17<sup>th</sup> Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for the Appellee Tax Commissioner of the State of Ohio.



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Todd W. Sleggs (0040921)

## **Rules of Practice and Procedure Franklin County Board of Revision**

The following rules of practice and procedure before the Franklin County Board of Revision shall apply to all complaints filed by owners of commercial or income producing property. The Board hereby orders a copy of these rules to be included in each notice of hearing.

1. Financial Information – The owner must submit to the Board no later than at the time of the hearing on the complaint the following information:
  - A. Complete income and expense information for the tax year for which the complaint was filed and the two previous years.
  - B. Rent rolls showing tenants and rental rates as of January 1 of the tax year for which the complaint was filed and the two previous years.
  - C. The Board may request additional information prior to the hearing or at the time of the hearing. The owner shall be given sufficient time in which to prepare such information.
2. Verification of Financial Information – All financial information referred to in Rule 1 shall be verified as follows:
  - A. Income and expense information shall be set forth in a statement(s) prepared by an independent accountant, including all notes and other material included in such audited statement(s); or
  - B. The owner or manager of the property, who has personal knowledge of the operations of the property, shall appear as a witness before the Board and be prepared to testify as to the accuracy and completeness of the financial information.
3. Failure to Submit Requested Information – The Board shall dismiss the complaint of any owner who fails to submit any information in accordance with Rules 1 or 2.
4. Request for Narrative Appraisal – The Board may request, either before or at the time of the hearing, that a narrative appraisal be submitted to the Board. The Board shall give the owner sufficient time in which to have the appraisal prepared and shall hold the complaint pending during such time.
5. Hearsay Evidence – The Board will not accept hearsay evidence, in the form of documents or oral testimony, concerning (A) the terms and conditions of a sale or the motives of the parties to the sale; (B) the owner's opinion of the value of the property; (C) financial data; or (D) the conditions or operations of the property. Hearsay evidence is a statement by one person as to what another person said or thought. A person with actual and personal knowledge of these matters must be present to testify before the Board.

6. Appraisal Evidence and Opinions of Value – Appraisal evidence and opinions of value shall not be accepted by the Board, unless Paragraphs (A), (B) and (C) of this Rule are satisfied.
  - A. Appearance at the Board – The person providing such appraisal evidence or opinion shall appear before the Board of Revision to answer questions and submit to cross-examination of other parties to the case.
  - B. Qualified Expert Appraiser – The person providing such appraisal evidence or opinion shall appear before the Board of Revision to answer questions and submit to cross-examination of other parties to the case.
  - C. Independent Expert – No person who has an interest in the case, in the form of a contingent fee or other form of compensation directly based upon the outcome of the case, shall be permitted to give appraisal evidence or an opinion of value to the Board. All agents or their representatives presenting such evidence to the Board shall present a copy of their contract with the owner to the Board at the time of the hearing.

The Board will rule on the appraisal qualifications and independence of any such witness before he or she is permitted to testify or to present appraisal evidence.

7. Letter Appraisals – The Board will not accept letter appraisals or tentative opinions of value from an appraiser without sufficient supporting market data in the form of verified comparable sales, verified rent comparables, or cost data. An appraiser's unsupported opinion of value is of no benefit to the Board.
8. Cross-Examination – All parties will be permitted, under the Board's supervision, to cross-examine witnesses of other parties.
9. Failure of Owner or Knowledgeable Person to Appear – Failure of the owner or other person with actual and personal knowledge of the operations and financial aspects of the property to appear in support of a complaint shall cause dismissal of the complaint.
10. Continuances – A continuance of the hearing will be granted upon request in writing based upon showing of good cause for the continuance.

Revised 2/7/02