

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin  
City Schools :

Appellant, :

v. :

Franklin County Board of Revision,  
Franklin County Auditor, and UA  
Professional Center, LLC, and the Ohio  
Tax Commissioner, :

Appellees, :

and :

Dogwood Enterprises, LLC, (successor in  
title to UA Professional Center, LLC) :

Appellee. :

Case No. **07-0550**

Appeal from the Ohio Board of  
Tax Appeals  
BTA Case No. 2005-B-638

**FILED**  
MAR 27 2007  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF THE BOARD OF EDUCATION  
OF THE DUBLIN CITY SCHOOL DISTRICT**

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CLERK OF TAX APPEALS

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Attorney for Appellee Tax Commissioner

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin  
City Schools :

Appellant, :

v. :

Franklin County Board of Revision,  
Franklin County Auditor, and UA  
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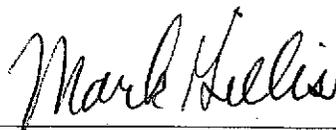
Case No. \_\_\_\_\_

Appeal from the Ohio Board of  
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BTA Case No. 2005-B-638

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

Now comes the Appellant, the Board of Education of the Dublin 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 Board of Education of the Dublin City Schools v. Franklin County Board of Revision, Franklin County Auditor, and UA Professional Center, LLC, BTA Case No. 2005-B-638, rendered on March 9, 2007, copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,



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School District

EXHIBIT A - STATEMENT OF ERRORS

(1) The BTA erred in granting a reduction in the true value of the property based on the sale of the property and in determining that the sale price of \$200,000 provided any relevant evidence of the true value of the property.

(2) The BTA erred in holding that the property which was valued by the County Auditor, which by definition must be the real property and all rights and privileges therein under R.C. 5701.02, was the same property involved in the sale under R.C. 5713.03. In fact, the property which sold was not the same property which was required to be valued by the County Auditor under R.C. 5713.01 and Article XII, Section 2 of the Ohio Constitution, because much of the property and the valuable rights therein had been previously conveyed away in the form of use restrictions on the subject property in order to benefit an adjacent property.

(3) The BTA erred in holding that the sale price definition of true value in R.C. 5713.03 applies to property which sold subject to use and deed restrictions which substantially reduced its

value and the sale price of the property and, consequently, that the sale price of a substantially encumbered fee in the property can be its true value in money for real property tax purposes.

(4) The BTA erred in valuing the real property subject to substantial use restrictions and deed restrictions in violation of the “uniform rule” requirement of Article XII, Section 2 of the Ohio Constitution, R.C. 5715.01, and in violation of this Court’s prior decisions in *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St. 3d 710, 654 N.E.2d 11, and *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St. 3d 16, 523 N.E.2d 826.

(5) The BTA erred in failing to require the property owner to prove that the use restrictions and deed restrictions had no effect or impact on the sale price of the property as required by this Court’s prior decision in *Knowlton Realty Co. v. Darke County Bd. of Revision*, 77 Ohio St. 3d 438, 1997 Ohio 255, 674 N.E.2d 1374.

(6) The BTA erred in relying on this Court’s prior decisions in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005 Ohio 4979, 834 N.E.2d 782, and *Lakota Local Sch. Dist. Bd. of Educ. v. Butler County Bd. of Revision*, 108 Ohio St. 3d 310, 2006 Ohio 1059, 843 N.E.2d 757, which do not apply to the sale of a property which is subject to substantial use restrictions which the property owner acknowledged had an negative effect and impact on the value of the property and the actual sale price of the property. The relevant precedent in this case was *Muirfield Assn., Inc. v Franklin Cty. Bd. of Revision* (1995), 73 Ohio St. 3d 710, 654 N.E.2d 11, which requires the true value of real property to be determined without regard to use restrictions and deed restrictions which impact the value of the property and the actual sale price of the property.

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.



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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 Kerry T. Boyle, Wiles, Boyle, Burkholder & Bringardner, LPA, 300 Spruce Street, Floor One, Columbus, Ohio 43215, and on Bill Stehle, Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, Ohio 43215, and on Dogwood Enterprises, LP, 100 East Wilson Bridge Road, Suite 200, Worthington, Ohio, and on Marc Dann, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio, 43215, by certified mail, return receipt requested, with postage prepaid, this 26th day of March, 2007.



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Mark H. Gillis  
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

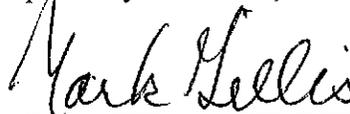
Board of Education of the Dublin :  
City Schools, :  
 : Case No. \_\_\_\_\_  
Appellant, :  
 : Appeal from the Ohio Board of  
v. : Tax Appeals  
 : BTA Case No. 2005-B-638  
Franklin County Board of Revision, et al., :  
 :  
Appellees.

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

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

The Appellant, who has filed a notice of appeal with the Supreme Court of Ohio, makes 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 Board of Education of the Dublin City Schools v. Franklin County Board of Revision, Franklin County Auditor, and UA Professional Center, LLC, BTA Case No. 2005-B-638, rendered on March 9, 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**

Board of Education of the Dublin )  
City Schools, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Franklin County Board of Revision, )  
Franklin County Auditor, and UA )  
Professional Center, LLC, )  
 )  
Appellees. )

CASE NO. 2005-B-638  
(REAL PROPERTY TAX)  
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC  
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For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
Paul M. Stickel  
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For the Appellee Property Owner - UA Professional Center, LLC  
3100 Tremont Road  
Upper Arlington, Ohio 43221

Entered **MAR 9 2007**

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

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

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, and the brief filed by counsel to the appellant BOE. An evidentiary hearing was waived by the BOE and county appellees. The property owner elected not to participate in this matter.

The subject real property is vacant land located in the city of Upper Arlington – Dublin City School District taxing district, Franklin County, Ohio. The value of the parcel, #075-000006, as determined by the auditor and by the board of revision, is as follows:

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	\$631,000	\$220,890
Building	<u>0</u>	<u>0</u>
Total	\$631,000	\$220,890

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	\$200,000	\$ 70,000
Building	<u>0</u>	<u>0</u>
Total	\$200,000	\$ 70,000

Appellant contends that the board of revision has undervalued the parcel in question by relying upon a September 2002 sale of the subject as an indicator of its value. Appellee property owner purchased the parcel in question on or about September 16, 2002 for a reported contract sales price of \$200,000.

Turning to the merits of the instant matter, since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. A review of the statutory transcript indicates this appeal originated at the board of revision with the property owner filing an original complaint against the valuation of the subject property with the Franklin County Board of Revision, seeking to decrease the subject's value to reflect its recent sale price. A counter-complaint was filed by the BOE. The board of revision decreased the valuation of the subject property to \$200,000, reflecting the value of the aforementioned sale.

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

When determining value, it has long been held by the Supreme Court that “the best evidence of ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction.” *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. “An arm’s-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio St.3d 23. R.C. 5713.03 further provides:

“In determining the true value of any tract, lot or parcel of real property 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 tax lien date, the auditor shall consider the sale price of such tract, lot or parcel to be the true value for taxation purposes.”

The court reaffirmed the provisions of R.C. 5713.03, holding that “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at 13. See, also,

*Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's length to meet such presumption. Accordingly, the appealing party must establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of sale of the subject, specifically, the deed and settlement statement, which indicate a sale price of \$200,000<sup>1</sup> associated with the September 2002 transfer. S.T. at Ex. 8. It is the BOE's contention that the recent sale price does not reflect the subject's true value because the sale reflects the value of a substantially encumbered fee interest in the subject property.<sup>2</sup> It is uncontroverted that the sale itself was a recent arms length transaction.

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<sup>1</sup> Apparently, the conveyance fee statement lists \$300,000 as the purchase price. However, Bob Long, the managing partner of the property owner, testified that this was in error. S.T. at audiotape.

<sup>2</sup> Appellant's Brief at 3.

Appellant points out that the subject property was acquired by Continental/Eagle II, LLC in October 1999 for \$700,000 and that the auditor initially valued the property at \$631,100 for tax year 2002. It notes that a drop in value from almost \$700,000 to \$200,000 in such a short time is "extraordinary" and directs this board's attention to the testimony of Bob Long, the managing partner of the property owner, which revealed that a large part of the subject property was subjected to a parking easement granted to an adjacent property owner (Giant Eagle). Therefore, appellant argues, there is no value evidence before this board of the unencumbered fee simple interest in the subject property for January 1, 2002 and the true value should be determined to be the original value set by the auditor.

The record reflects that the subject property was sold to the property owner, UA Professional Center, LLC ("UA"), with an easement previously granted to Giant Eagle, the owner of the adjoining parcel. This easement allows Giant Eagle the right to share UA's parking lot. Mr. Long's testimony explains the situation as follows:

"Basically there was an agreement when the site was originally bought that Continental (the Seller) had to build an office medical building and they got a conditional use on the site for parking which was required for the Giant Eagle. City of Upper Arlington granted the conditional use subject to them building an office medical building. Continental designed the medical building, did some infrastructure on the site and the market, being what it was...Continental did not want to speculate on the building and they were obligated to move forward. So we, in an arm's length

negotiation, went in and bought the site from them and our purchase price included the drawings, the parking lot was already in, the building pad site was done and obviously the ground as well.” S.T. at audiotape.

Mr. Long further testified that he understood that Continental had previously owned both the subject parcel and the adjacent Giant Eagle parcel.

As it is uncontroverted that the parties are unrelated, that the sale was recent, that they acted in their self-interest and without compulsion or duress, we determine, as did the BOR in this case, that the sale was an arm’s length transaction.

As to the BOE’s contention that the sale cannot be relied upon because it included substantial easements, we direct attention to our decision in *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision* (April 28, 2006), BTA No. 2003-T-1532, unreported, appeal pending Sup. Ct. No. 06-884, where we stated as follows:

“The auditor and the BOE argue that the inclusion of the easement resulted in the sale of something other than real property. Thus, they contend, the sale cannot be relied upon. We disagree.

“R.C. 5701.02 (A) defines real property as follows:

““Real property,” “realty,” and “land” include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges

belonging or appertaining thereto. \*\*\*' (Emphasis added.)

"In construing the foregoing, the Ohio Supreme Court has held, 'It is undisputed that an easement constitutes a right and privilege belonging or appertaining to the dominant estate.' *Ross v. Franko* (1942), 139 Ohio St. 395, at 397. Thus, an easement is considered part of the real property. This concept is also recognized in appraisal practice. *The Appraisal of Real Estate* (12<sup>th</sup> Ed. 2001), at 85, states that an 'easement is an interest in real property.' Moreover, easement rights transfer with the dominant estate, and easements themselves are not usually valued. *Id.* at 86. Accordingly, we find the appellees' contention that the inclusion of the easement in the sale before us resulted in the transfer of something in addition to real property to be without merit."

Likewise, we find the BOE's contention to be without merit.

Based upon all of the foregoing, we find that the subject property was sold for \$200,000 in an arm's length transaction in September 2002. We further find, upon review of the record, that the sale is recent for valuation purposes.

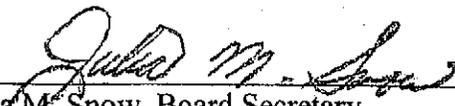
We thus conclude that the record supports a value of the subject property, based on an arm's length sale, of \$200,000. *Berea and Lakota*, supra.

Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property are as follows for tax year 2002:

	TRUE VALUE	TAXABLE VALUE
Land	\$200,000	\$ 70,000
Building	<u>0</u>	<u>0</u>
Total	\$200,000	\$ 70,000

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

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

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