

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

KNICKERBOCKER PROPERTIES, INC.)
XLII,)

Appellant,)

v.)

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

Appellees,)

and)

OLENTANGY LOCAL SCHOOLS)
DISTRICT BOARD OF EDUCATION,)

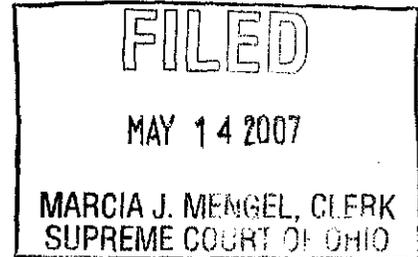
Appellee.)

SUPREME COURT CASE

NUMBER:

07-0896

BOARD OF TAX APPEALS
CASE NUMBER 2005-B-730



NOTICE OF APPEAL

David Yost (0025007)
COUNSEL OF RECORD
Prosecuting Attorney
140 N. Sandusky Street
Delaware, Ohio 43015
(740) 833-2690
(740) 833-2689 - FAX

ATTORNEY FOR APPELLEES
DELAWARE COUNTY BOARD OF
REVISION AND COUNTY
AUDITOR

Todd W. Sleggs, Esq. (0040921)
COUNSEL OF RECORD
SLEGGs, DANZINGER & GILL, CO., LPA
Attorneys at Law
820 W. Superior Avenue - Suite 400
Cleveland, Ohio 44113
(216) 771-8990
(216) 771-8992 - FAX

ATTORNEY FOR APPELLANT
KNICKERBOCKER PROPERTIES, INC. XLII

Marc Dann
Ohio Attorney General
State Office Tower, 17th Floor
30 East Broad Street
Columbus, Ohio 43215-3428
(614) 462-7519
(614) 466-8226 – FAX

ATTORNEY FOR APPELLEE
TAX COMMISSIONER OF THE
STATE OF OHIO

Mark H. Gillis (0066908)
COUNSEL OF RECORD
RICH, CRITES & DITTMER, LLC
300 East Broad Street, Suite 300
Columbus, Ohio 43215
(614) 228-5822
(614) 540-7474 – FAX

ATTORNEY FOR APPELLEE
OLENTANGY LOCAL SCHOOLS
DISTRICT BOARD OF EDUCATION

B" which are incorporated herein by reference.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA

A handwritten signature in black ink, appearing to read "Todd W. Sleggs", written over a horizontal line.

Todd W. Sleggs, Esq. (0040921)

COUNSEL OF RECORD

820 W. Superior Avenue - Suite 400

Cleveland, OH 44113

(216) 771-8990

(216) 771-8992 - FAX

ATTORNEYS FOR APPELLANT

KNICKERBOCKER PROPERTIES, INC. XLII

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OHIO BOARD OF TAX APPEALS

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

APPEARANCES:

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

Entered APR 13 2007

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

This cause and matter come 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 Delaware County Board of Revision ("BOR"). In said decision, the BOR determined the taxable value of the subject property for tax year 2003.

Exhibit "A"

Draka

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, and the briefs filed by counsel for the appellant property owner and appellee BOE in lieu of appearing at a hearing before this board.

The subject real property, a 300-unit apartment complex, is located in the Columbus Corporation/Olentangy Local Schools taxing district, Delaware County, Ohio. On March 30, 2004, the BOE filed a complaint with the BOR for the subject property based on a recent arm's-length sale for \$27,605,000 on December 29, 2003. The value of the subject property, as determined by the auditor and by the board of revision, is as follows:

AUDITOR

Permanent Parcel No. 318-433-01-014-001

	True Value	Taxable Value
Land	\$920,000	\$322,000
Bldg	0	0
Total	\$920,000	\$322,000

Permanent Parcel No. 318-434-01-013-001

	True Value	Taxable Value
Land	\$1,667,500	\$583,630
Bldg	19,044,300	6,665,510
Total	\$20,711,800	\$7,249,140

BOR

Permanent Parcel No. 318-433-01-014-001

	True Value	Taxable Value
Land	\$1,174,000	\$410,900
Bldg	0	0
Total	\$1,174,000	\$410,900

Permanent Parcel No. 318-434-01-013-001

	True Value	Taxable Value
Land	\$1,667,500	\$583,630
Bldg	24,763,500	8,667,230
Total	\$26,431,000	\$9,250,860

On July 12, 2005, appellant timely filed its notice of appeal with this board. In claiming a return to the values originally determined by the auditor for the subject property, appellant lists a specification of error on its notice of appeal which reads as follows:

“The Board of Education’s failure to list the proper address shown on the deed and conveyance fee statement (attached) for the property owner in their complaint constituted a jurisdictional defect and the Board of Revision did not have jurisdiction to increase the assessment of the property.”

On November 14, 2005, appellant filed a motion for remand with this board. Therein, appellant moved for an order to remand the subject appeal to the Delaware County Board of Revision (“BOR”) with instructions to dismiss the complaint filed by the Olentangy Local Schools Board of Education (“BOE”).

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

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

Thereafter, this board determined the matter as follows:

“Based upon the record before this board, we conclude that the BOE’s complaint was sufficient to establish jurisdiction with the BOR pursuant to R.C. 5715.19. The BOE’s complaint correctly named the owner, the parcel number and property location, and the basis for the value sought. The BOE’s complaint form complied with the core jurisdictional requirements set forth in R.C. 5717.19. See *Bd. of Education of the Delaware County Schools v. Delaware Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1997-L-871, unreported. See also: *Bd. of Education of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 30, 2006), BTA No. 2005-A-381, unreported.

“Appellant’s motion to remand is denied.”

Knickerbocker Properties Inc. XLII v. Delaware Cty. Bd. of Revision (Interim Order, July 7, 2006), BTA No. 2005-B-730, unreported.

In addition, as we have previously stated, “the ability to present evidence and cross examine witnesses before this board also mitigates any constitutional due process arguments ***.” *Dayton Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Dec. 17, 2004), BTA No. 2004-M-74, unreported, at 5.

The parties waived an evidentiary hearing before this board and submitted briefs in lieu thereof.

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.

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 re. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress,

it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox County Bd. of Revision* (1988) 47, Ohio St.3d 23.

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

Initially, we have reviewed the evidence of sale of the subject, specifically, the deed and conveyance fee statement, which indicate a sale price of \$27,605,000 on December 29, 2003. S.T. at Ex. 1. In its brief, appellant simply argues the same jurisdictional contention as put forth in its aforementioned motion to remand. However, there has been no representation from the property owner that the sale was anything but arm's length, and there is certainly nothing in the record from which that could be inferred.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale.

Thus, we find that the price paid by the appellee property owner for the subject property on December 29, 2003, is the true value of the property for tax year 2003. *Berea City School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. The property owner has not met its burden of proving that the sale was not arm's length, and, as such, the value of the subject for tax year 2003 is as follows:

Permanent Parcel No. 318-433-01-014-001

	True Value	Taxable Value
Land	\$1,174,000	\$410,900
Bldg	0	0
Total	\$1,174,000	\$410,900

Permanent Parcel No. 318-434-01-013-001

	True Value	Taxable Value
Land	\$1,667,500	\$583,630
Bldg	24,763,500	8,667,230
Total	\$26,431,000	\$9,250,860

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

(7 . 88)

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.

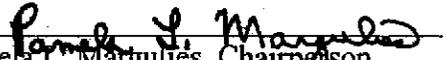

Pamela L. Margulies, Chairperson

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

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

ASSIGNMENT OF ERROR NO. 2

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

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals decision and order upholding the Board of Revision's increase in the assessment of the property where no notice of the Board of Revision hearing was given to the owner of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order denying the Appellant's motion for remand is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

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

ASSIGNMENT OF ERROR NO. 6

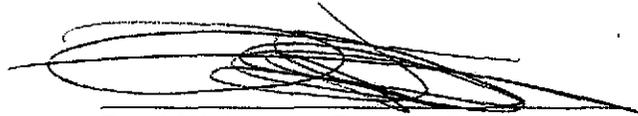
The decision and order of the Board of Tax Appeals is unreasonable and unlawful and is contrary to the laws of Ohio and the Ohio Constitution.

ASSIGNMENT OF ERROR NO. 7

The decision of the Board of Tax Appeals violates the rights of "due process" and "equal protection" under Article I, Section 2, and Article I, Section 16 Ohio Constitution and Amendment XIV, Section 1 United States Constitution in that it treats the Appellant different from other property owners and is therefore unreasonable and unlawful.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to David Yost, Prosecuting Attorney, 140 N. Sandusky Street, Delaware, Ohio 43015, Attorney for Appellees, Delaware County Board of Revision and County Auditor; Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for Appellee Olentangy Local Schools District Board of Education and Marc Dann, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 11th day of May 2007.



Todd W. Sleggs, Esq. (0040921)

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