

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, :

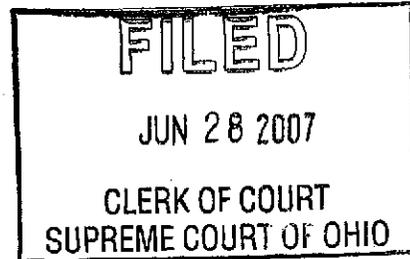
and :

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



**MERIT BRIEF OF APPELLANT BOARD OF EDUCATION
OF THE DUBLIN CITY SCHOOL DISTRICT**

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STATEMENT OF THE CASE AND FACTS

This is an appeal from the Ohio Board of Tax Appeals (BTA) dealing with the determination of the true value in money of certain real property for tax year 2002. The issue is whether the sale price of real property which is subject to voluntary use “restrictions” and “easements” can constitute the true value of the property for real property tax purposes.

1. Continental/Eagle II, LLC, Pays \$700,000 for the Property in October, 1999.

The property in question is a 2.437 acre tract of land located on west side of Sawmill Road, just south of the intersection of Bethel and Sawmill Roads. The property was acquired by Continental/Eagle II, LLC, on October 19, 1999, for the sum of \$700,000 (see property record card, Appellant’s Supp., p. 1 and 2). The Franklin County Auditor valued the property for tax year 2002 at \$631,100, which was slightly less than the purchase price of the property in late 1999.

After acquiring the property in October, 1999, Continental/Eagle then voluntarily placed use “restrictions” and “easements” on the property in favor of an adjacent Giant Eagle grocery store, under which most of Appellee’s 2.4-acre tract is limited to use for parking by Giant Eagle customers. The agreement which created the restrictions and easements on the subject property is not in the record, but it is referred to in the deed by which Appellee took title to the property as the “Restriction and Easement Agreement dated January 19, 2002” (Appellant’s Supp., p. 8). The Board of Revision’s notes of its hearing, at which Bob Long testified about the restrictions and easements, states the following: “Subject site - easements for parking for Giant Eagle” (Appellant’s Supp., p. 5). The notes also state “Parcel on open market - no offers due to easements” (Appellant’s Supp., p. 5). These notes confirm Long’s testimony described below.

2. Continental/Eagle Then Sells the Property to UA Professional Center for \$200,000, Subject to the Parking Restrictions and Easements.

In September, 2002, Continental/Eagle then sold the 2.437 acre tract in question, subject to the existing parking restrictions and easements, to Appellee UA Professional Center LLC, for the sum of only \$200,000 (the conveyance fee form and deed state that the sale price was \$300,000, but the property owner's witness, Bob Long, testified that this figure was incorrect). Bob Long, the witness for UA Professional Center at the Board of Revision's hearing, testified as follows: "So when we [UA Professional Center] bought the parcel there was already easements in place for Giant Eagle to park on our site" (BOR Tape). According to Long, "you weren't really getting the entire site" but rather only a "smaller site" because of the parking easements which were in place at the time of the sale to UA Professional Center (BOR Tape). Long referred several times during the BOR's hearing to the parking easements as "restrictions" on the property.

Indeed, the property was so encumbered that Long testified that no one wanted the property, even though it had been on the market for quite some time. Long testified that the price that anyone was willing to pay for the property was substantially impacted by the use restrictions which required much of the property to be used only for parking (BOR Tape). Apparently there were other restrictions which also went with the site, in addition to the private parking easements. Long also testified that the buyer of the property also had to assume some agreement made by Continental/Eagle with the City of Upper Arlington to construct an medical office building on the small front section of the site on Sawmill Road (BOR Tape).

UA Professional Center then filed a board of revision complaint with the Franklin County Board of Revision seeking to reduce the true value of the 2.437 acre tract to the claimed sale price

of \$200,000. The Board of Revision accepted the sale price as the true value of the property for tax year 2000, and reduced the true value of the property from the Auditor's appraised value of \$631,100 to \$200,000. The Board of Education then appealed to the Board of Tax Appeals. On March 9, 2007, the BTA affirmed the decision of the Board of Revision.

The Board of Education then filed an appeal with this Court on March 27, 2007.

LAW AND ARGUMENT

Proposition of Law No. 1:

Real property must be valued for tax purposes "as a fee simple estate, unencumbered by the voluntarily undertaken restrictions contained in the warranty deed." *Muirfield Assn., Inc. v Franklin Cty. Bd. of Revision* (1995), 73 Ohio St. 3d 710, 654 N.E.2d 110.

The sale price of the property (\$200,000) ceased to be the best evidence of the true value of the property the moment that Bob Long testified that the property involved in the sale was subject to use "restrictions" and "easements" that limited its use to parking by Giant Eagle customers. Under the rules established by *Muirfield Association, Inc. v. Franklin County Bd. of Revision* (1995), 73 Ohio St. 3d 710, 711; 654 N.E.2d 110, and *Knowlton Realty Company v. Darke County Board of Revision* (1997), 77 Ohio St. 3d 438, 1997 Ohio 255; 674 N.E.2d 1374, the property owner then had the burden to prove that the "restrictions" and "easements" had no impact or effect on the sale price of the property. In this instance, Long acknowledged that the "restrictions" and "easements" had a negative impact on the value of the property and impacted the price UA Professional Center was willing to pay for the property. Based on Long's testimony, the sale price was then not even relevant to the determination of the true value of the property for real property tax purposes. Neither

the Board of Revision nor the BTA was permitted to consider the sale price of the property to be the true value of the property for real property tax purposes.

This Court has previously held that use restrictions and easements cannot be taken into account when determining the true value of real property. The first paragraph of the syllabus of *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, 21, 523 N.E.2d 826, reads as follows: “For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered. (*Wynwood Apartments, Inc. v. Bd of Revision* [1979], 59 Ohio St. 2d 34, 13 O.O. 3d 19, 391 N.E. 2d 346, approved and followed.)”

In *Alliance Towers*, supra at page 23, this Court held the following:

“These tax and eminent domain cases demonstrate the decision by this court to view the fair market value of real property as uncomplicated by encumbrances. It is the fair market value of the property in its unrestricted form of title which is to be valued. It is to be valued free of ownerships of lesser estates, such as leasehold interests, deed restrictions, and restrictive contracts with the government. For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered. (emphasis added)

While *Alliance Towers* dealt with contract and deed restrictions entered into by HUD and a property owner, the case of *Muirfield Association, Inc. v. Franklin County Bd. of Revision* (1995), 73 Ohio St. 3d 710, 711; 654 N.E.2d 110, dealt with voluntary restrictions agreed to by private property owners (homeowners and the homeowners’ association), which is subject to the same rule. According to this Court in *Muirfield* (page 712):

“In the instant case, however, the parties imposed the restrictions themselves, and the tax authorities need not search for the value of all voluntary, individual interests in real property. ‘It is not

compatible with public convenience and the prompt collection of revenue for the State to trace out all the sub-divided or qualified interests that may be held in real estate and seek to hold the various owners responsible. Its policy is to assess the fee simple value of the land to the holder of the possession, where its real owner is not apparent or accessible, leaving the parties interested to adjust the proportion of liability between themselves.’ *Hill v. Williams* (1906), 104 Md. 595, 603-604, 65 A. 413, 414.”

True value in Ohio is referred to as a unitary valuation: that is, the entire fee simple interest in real property - the sum total of the value of “all rights and privileges belonging or appertaining thereto” - is valued at once and is taxed to one person or one entity, which is the record owner of the land. The unit of taxation is the parcel of land itself, and the value of the land, the value of all improvements thereon (regardless of ownership), and the value of “all rights and privileges belonging or appertaining thereto” (again, regardless of ownership) is listed with the parcel of land. See R.C. 319.28 and R.C. 323.13. R.C. 5709.01(A) states that “[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom.” R.C. 5701.02(A) defines real property to include “all rights and privileges belonging or appertaining thereto.” In other words, all of the intangible legal attributes of the ownership of real property constitute taxable real property in Ohio. R.C. 5701.02(A) reads as follows:

“As used in Title LVII of the Revised Code:

(A) ‘Real property,’ ‘realty,’ and ‘land’ include land itself, *** all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.”

The right to use Appellee's land is a valuable "right and privilege" that belongs to or appertains to Appellee's land, and this is true, of course, no matter who might own or possess this particular right, whether that is Appellee or an adjacent property owner. The right to use Appellee's land is taxable real property itself as defined in R.C. 5701.02(A) because it constitutes part of the "rights and privileges belonging or appertaining thereto." Consequently, someone has to pay real property taxes on that right. Under the above statutes, the value of any use restriction or easement on real property is disregarded for real property tax purposes and the entire fee simple interest is taxed to the owner of the land. Accordingly, Appellee's real property must be appraised and taxed on the basis of its fee simple interest without regard to any restrictions or easements on the property. As the above quotation from *Muirfield Association*, supra, indicates, the county auditor often has no notice of use restrictions or easements on real property and it makes no sense to require the county auditor "to trace out all the sub-divided or qualified interests that may be held in real estate and seek to hold the various owners responsible" for taxes on the separate interests.

Appellee's representative, Bob Long, testified that the parking "restrictions" and "easements" on Appellee's land for the benefit of Giant Eagle diminished the value of Appellee's 2.437 acre tract of land and negatively affected its marketability. According to Long, when Appellee acquired the land subject to the existing "restrictions, "you weren't really getting the entire site" (in a practical sense) but rather only a "smaller site" because of the parking easements which were in place at the time of the sale to UA Professional Center (BOR Tape). Under Ohio law, Giant Eagle was not assessed the value of this right for tax purposes and it pays no taxes on this right. Consequently, when the BTA based the true value of Appellee's land on its sale price of \$200,000, the BTA actually exempted part of Appellee's land from taxation in violation of R.C. 5709.01(A).

Proposition of Law No. 2:

Under Article XII, Section 2, of the Ohio Constitution, land and improvements thereon must be taxed by uniform rule according to value.

The BTA's decision violated the "uniform rule" provisions of Article XII, Section 2, of the Ohio Constitution. The issue is whether the "uniform rule" of Article XII, Section 2, requires true value to be based on an appraisal which disregards any voluntary use restrictions or easements on the property, or whether it allows true value to be based on the price paid for the property subject to the use restrictions and easements.

Article XII, Section 2, states, in part, as follows: "No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes ***. Land and improvements thereon shall be taxed by uniform rule according to value ***." A "uniform rule" requires that one and the same methodology be used to value all real property for tax purposes. See *Exchange Bank of Columbus v. Hines, Treas.*, 3 Ohio St., 1, 15; and *Kroger Co. v. Schneider* (1967), 9 Ohio St. 2d 80, 38 Ohio Op. 2d 204, 223 N.E.2d 606. For instance, in *Poffenberger v. Board of Revision of Clermont County* (1977), 54 Ohio App. 2d 89, 94; 8 Ohio Op. 3d 137; 375 N.E.2d 65; the Clermont County Court of Appeals, stated the following:

"If the method of determination of the value of one man's property is different than the method used to determine the value of his neighbor's property, as it patently was here, the result must inevitably be just as nonuniform and unequal ***."

A reliance on the sale price to determine the true value in money of real property and a reliance on an appraisal to determine true value are constitutionally equivalent only when both produce the same "ultimate result which is sought to be attained, namely, the [true] value of the

property in question.” In *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412, 25 O.O.2d 432, 195 N.E.2d 908, motion to certify denied, *Perk v. Park Inv. Co.*, 379 U.S. 818, 85 S. Ct. 35, 13 L. Ed. 2d 29 (1964), this Court stated that “ *** the value, or true value in money of property for the purpose of taxation, is that amount which should result from a sale of such property on the open market,” and this Court stated the following:

“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*, 172 Ohio St., 443, 178 N. E.(2d), 240. 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.” (p. 412)

Two different “methods” of determining the true value of Appellee’s property are present in this appeal. First, under R.C. 5713.01(B), the Franklin County Auditor “view[ed] and appraise[d] or cause to be viewed and appraised at its true value in money” Appellee’s 2.47 acre tract of land without regard to any use restrictions or easements applicable thereto, and determined its true value to be \$631,000 for tax year 2002. This approximated the \$700,000 sale price of the unencumbered fee simple in the property in October, 1999. The second method is the BTA’s use of the sale price of \$200,000 to value the property after the parking restrictions and easements had been granted to Giant Eagle. Bob Long’s testimony established the fact that the sale price of \$200,000 took into

account the restrictions and easements granted to Giant Eagle. These two methods do not produce the same “ultimate result which is sought to be attained, namely, the [true] value of the property in question.” One method is, therefore, a violation of “uniform rule” and must be unconstitutional.

The County Auditor’s appraisal of the property which disregards the parking restrictions and easements is the correct approach to determining the “true value” of Appellee’s property, and not the sale price of the property which takes into account the restrictions and easements. The BTA erred in relying on the sale of Appellee’s property which was based on the existence of use restrictions and easements which affected the sale price of the property.

Proposition of Law No. 3:

The sale price of real property which is subject to voluntary use restrictions and easements at the time of sale cannot be deemed to be the true value of the property for real property tax purposes pursuant to R.C. 5713.03.

The BTA relied on the sale price definition of true value set forth in R.C. 5713.03 to determine the value of Appellee’s property. R.C. 5713.03 reads, in part, as follows:

“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.”

This provision had no application to the sale of Appellee’s property and the BTA erred in concluding otherwise. This provision refers to the “true value” of a “tract, lot, or parcel of real estate.” The only sale of a “tract, lot, or parcel” which is relevant under this section is a sale the entire fee interest in the tract, lot, or parcel: that is, a sale of “all rights and privileges belonging or appertaining thereto” as set forth in R.C. 5701.02(A). Appellee’s property did not sell free and clear

of use restrictions and easements. Consequently, the “tract, lot, or parcel of real estate” that the Franklin County Auditor was required to appraise and value for real property tax purposes, and that was actually appraised at \$631,000, was not the same “tract, lot, or parcel of real estate” that was involved in the sale of Appellee’s property or what Appellee purchased for the price of \$200,000.

Because not all of the property which had to be appraised for real property tax purposes was involved in the sale of Appellee’s land, the BTA erred in relying on the sale price as the true value of the property under R.C. 5713.03.

Proposition of Law No. 4:

A property owner who relies on the price paid for real property which is subject to voluntary use restrictions and easements has the burden to show “what the value of the property would have been if it had been sold unencumbered by” such restrictions and easements or “if the property had not been so encumbered.” *Knowlton Realty Co. v. Darke County Bd. Of Revision*, 77 Ohio St. 3d 438; 1997 Ohio 255; 674 N.E.2d 1374.

Appellee had the burden to prove that the sale price of encumbered real property reflected the true value of the property. Appellee claimed the benefit of R.C. 5713.03 before the Board of Revision. Consequently, Appellee had the burden to prove that the sale of its property fell within the scope of the statute. Appellee’s burden of proof is governed by the principles set forth in *Knowlton Realty Company v. Darke County Board of Revision* (1997), 77 Ohio St. 3d 438, 1997 Ohio 255; 674 N.E.2d 1374. In this case, the property owner relied on a sale of the property, but the sale was subject to an existing mortgage. This Court (at page 441) held that the property owner had the burden to prove that the sale price reflected the true value of the property “had it not been so encumbered.” According to the Court:

“There are two independent reasons why the \$ 25,000 cash payment did not represent the true value of this property. Knowlton purchased the property encumbered by a mortgage. However, Knowlton presented no evidence to indicate how the price would have changed if the property had not been so encumbered. *** In this case the value placed on the property by Knowlton clearly was not the unencumbered value. No evidence was produced by Knowlton to attempt to show what the value of the property would have been if it had been sold unencumbered by the mortgage.”

As was the case in *Knowlton Realty*, Appellee UA Professional Center made no “attempt to show what the value of the property would have been if it had been sold unencumbered by the” parking restrictions and easements and “if the property had not been so encumbered.” As in *Knowlton Realty*, Appellee failed to carry its burden to show that the sale price could be used to value the property for tax purposes under R.C. 5713.03, and the BTA erred in not requiring the property owner to carry its burden of proof.

The BTA relied on this Court’s recent decisions in the *Berea City School District* case (*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 School District*, case (*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). In these two cases, this Court held that the use of the sale price of a property under R.C. 5713.03 could not be complicated by an appraisal dispute over whether the contract rents set forth in a lease were market rents or not. According to this Court:

“[P15] Consequently, *Wynwood Apts.* and similar cases addressing whether market rent or actual rent should be used in a property appraisal do not apply to situations in which the property has been recently sold in an arm’s-length transaction.

[P16] Since the property at issue here had been sold in a recent arm's-length transaction, we do not need to determine whether actual rent or market rent should have been used in the property appraisal.”

Knowlton Realty was not referred to in *Berea City School District* or *Lakota Local School District*, both *supra*, and nothing in *Berea* or *Lakota* would suggest that the price paid for real property subject to existing use restrictions and easements must be taken to be its true value in money under R.C. 5713.03. To hold otherwise would create two different systems of determining the true value of real property in violation of the “uniform rule” set forth in Article XII, Section 2, of the Ohio Constitution.

Commercial real property typically and ordinarily sells with leases in place, as was the case in *Berea* or *Lakota*. This includes office buildings, shopping centers, apartment complexes, warehouses, retail stores, and such. The use of the sale price to value property without regard to the opinion of some appraiser that the contract rent did not approximate market rent for the property is sound public policy.

However, commercial real property does not ordinarily sell with use restrictions and voluntary easements in place which substantially affect the value of the property. In a very old case, *State, ex rel. v. Jones* (1894), 51 Ohio St. 493, 512, this Court stated the following: “The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated ***.” A sale that takes place under “peculiar” or “unusual” circumstances does not fall within the sale price definition of true value set forth in R.C. 5713.03. In *In re Estate of Sears* (1961), 172 Ohio St. 443, “market value” was defined as follows: “Market value is the fair and reasonable cash price which can be obtained in the open market, not at a forced sale or under peculiar

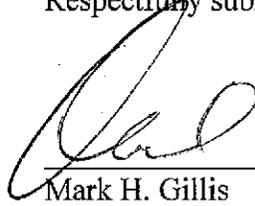
circumstances ***.” Administrative Code Rule 5703-25-05(G) refers to the market approach and states that “[t]he reliability of this technique is dependent upon: *** (4) The absence of unusual conditions affecting the sale.” Reference to the same principle is found in *Cardinal Federal Savings & Loan Assoc. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St. 2d 13, 22, 73 Ohio Op. 2d 83, 336 N.E.2d 433, as “peculiar circumstances” that were involved in a sale.

While the sale price of real property that is subject to an existing lease may fall within the scope of R.C. 5713.03, the sale price of real property that is subject to voluntary use restrictions and easements, at least where the buyer of the property admitted that the restrictions negatively effected the price paid for the property, does not fall within the scope of R.C. 5713.03. The BTA erred in relying on the sale price of Appellee’s property as its true value in money for real property tax purposes.

CONCLUSION

For the reasons set forth herein, Appellant Board of Education respectfully requests this Court to reverse the decision of the Board of Tax Appeals and to hold that the sale price of Appellee’s property cannot be used as evidence of its true value in money for real property tax purposes. This Court is further requested to remand this matter back to the BTA with instructions that the BTA reinstate the County Auditor’s original appraised value of the property for tax year 2002.

Respectfully submitted,

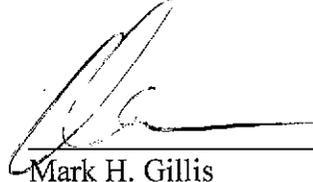


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Attorneys for Appellant
Board of Education of the
Dublin City School District

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing brief was served upon Kerry T. Boyle, Wiles, Boyle, Burkholder & Bringardner, LPA, 300 Spruce Street, Floor One, Columbus, Ohio, 43215, and on Paul M. Stickel, Assistant County Prosecutor, 20th Floor, 373 South High Street, Columbus, Ohio 43215, and upon Marc Dann, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio, 43215 by regular U.S. mail, with postage prepaid, this 28th day of June, 2007.



Mark H. Gillis
Attorney for Appellant

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

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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. _____

Appeal from the Ohio Board of
Tax Appeals
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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Board of Education of the Dublin City
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.



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.



Mark H. Gillis
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

Board of Education of the Dublin
City Schools, :

Appellant, :

v. :

Franklin County Board of Revision, et al., :

Appellees. :

Case No. _____

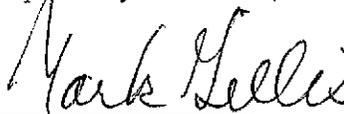
Appeal from the Ohio Board of
Tax Appeals
BTA Case No. 2005-B-638

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
Mark H. Gillis
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Columbus, Ohio 43215

For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
Paul M. Stickel
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio 43215

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 \$200,000¹ 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.² It is uncontroverted that the sale itself was a recent arms length transaction.

¹ 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.

² 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* (12th 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.

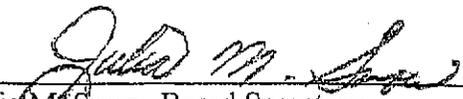
We thus conclude that the record supports a value of the subject property, based on an arm’s length sale, of \$200,000. *Berea and Lakota*, supra.

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

Oh. Const. Art. XII, § 2 (2007)

§ 2. Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

HISTORY:

(Adopted November 6, 1990).

ORC Ann. 319.28 (2007)

§ 319.28. General tax list and general duplicate of real and public utility property; numbering system

On or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, either in tabular form and alphabetical order, or, with the consent of the county treasurer, by listing all parcels in a permanent parcel number sequence to which a separate alphabetical index is keyed, containing the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in his county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, "unknown" shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year.

Once a permanent parcel numbering system has been established in any county as provided by the preceding paragraph, such system shall remain in effect until otherwise agreed upon by the county auditor and county treasurer.

HISTORY:

GC § 2583; 106 v 246(261), § 56; 107 v 29; 114 v 714, § 3; Bureau of Code Revision, 10-1-53; 131 v 213 (Eff 10-30-65); 137 v S 321 (Eff 6-14-78); 140 v H 260. Eff 9-27-83.

ORC Ann. 323.13 (2007)

§ 323.13. Tax bill mailed or delivered; failure to receive bill

Except as provided in section 323.134 [323.13.4] of the Revised Code, immediately upon receipt of any tax duplicate from the county auditor, but not less than twenty days prior to the last date on which the first one-half taxes may be paid without penalty as prescribed in section 323.12 or 323.17 of the Revised Code, the county treasurer shall cause to be prepared and mailed or delivered to each person charged on such duplicate with taxes or to an agent designated by such person, the tax bill prescribed by the commissioner of tax equalization under section 323.131 [323.13.1] of the Revised Code. When taxes are paid by installments, the county treasurer shall mail or deliver to each person charged on such duplicate or the agent designated by such person, a second tax bill showing the amount due at the time of the second tax collection. The second half tax bill shall be mailed or delivered at least twenty days prior to the close of the second half tax collection period.

After delivery of the delinquent land duplicate as prescribed in section 5721.011 [5721.01.1] of the Revised Code, the county treasurer may prepare and mail to each person in whose name property therein is listed an additional tax bill showing the total amount of delinquent taxes appearing on such duplicate against such property. The tax bill shall include a notice that the interest charge prescribed by division (B) of section 323.121 [323.12.1] of the Revised Code has begun to accrue.

A change in the mailing address of any tax bill shall be made in writing to the county treasurer.

Upon certification by the county auditor of the apportionment of taxes following the transfer of a part of a tract or lot of real estate, and upon request by the owner of any transferred or remaining part of such tract or parcel, the treasurer shall cause to be prepared and mailed or delivered to such owner a tax bill for the taxes allocated to the owner's part, together with the penalties, interest, and other charges.

Failure to receive any bill required by this section does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.

HISTORY:

GC § 2651-1; 116 v PtII, 261, § 5; 121 v 184; Bureau of Code Revision, 10-1-53; 127 v 715 (Eff 5-24-57); 133 v S 305 (Eff 11-28-69); 133 v S 519 (Eff 4-12-70); 138 v H 413 (Eff 1-1-84); 139 v H 379. Eff 9-21-82; 150 v H 95, § 1, eff. 6-26-03.

ORC Ann. 5701.02 (2007)

§ 5701.02. Definitions relating to real property

As used in Title LVII [57] of the Revised Code:

(A) "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. "Real property" does not include a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code or a mobile home, travel trailer, or park trailer, each as defined in section 4501.01 of the Revised Code, that is not a manufactured or mobile home building as defined in division (B)(2) of this section.

(B) (1) "Building" means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter. "Building" includes a manufactured or mobile home building as defined in division (B)(2) of this section.

(2) "Manufactured or mobile home building" means a mobile home as defined in division (O) of section 4501.01 of the Revised Code or a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code, if the home meets both of the following conditions:

(a) The home is affixed to a permanent foundation as defined in division (C)(5) of section 3781.06 of the Revised Code and is located on land owned by the owner of the home.

(b) The certificate of title for the home has been inactivated by the clerk of the court of common pleas that issued it pursuant to section 4505.11 of the Revised Code.

(C) "Fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

(D) "Improvement" means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure.

(E) "Structure" means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. "Structure" includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.

HISTORY:

RS § 2730; S&C 1439; 56 v 175, §§ 1, 2; 71 v 96, § 78; 75 v 436; 76 v 28; 95 v 533; GC § 5322; 115 v PtII, 272; Bureau of Code Revision, 10-1-53; 144 v H 431 (Eff 10-11-91); 144 v S 272 (Eff 7-20-92); 147 v S 142 (Eff 3-30-99); 148 v H 672. Eff 4-9-2001.

ORC Ann. 5709.01 (2007)

§ 5709.01. Taxable property entered on general tax list and duplicate

(A) All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.

(B) Except as provided by division (C) of this section or otherwise expressly exempted from taxation:

(1) All personal property located and used in business in this state, and all domestic animals kept in this state and not used in agriculture are subject to taxation, regardless of the residence of the owners thereof.

(2) All ships, vessels, and boats, and all shares and interests therein, defined in section 5701.03 of the Revised Code as personal property and belonging to persons residing in this state, and aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with sections 4561.17 to 4561.21 of the Revised Code, are subject to taxation.

(C) The following property of the kinds mentioned in division (B) of this section shall be exempt from taxation:

(1) Unmanufactured tobacco to the extent of the value, or amounts, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof.

(2) Spirituous liquor, as defined in division (B)(5) of section 4301.01 of the Revised Code, that is stored in warehouses in this state pursuant to an agreement with the division of liquor control.

(3) Except as otherwise provided in section 5711.27 of the Revised Code, all other such property if the aggregate taxable value thereof required to be listed by the taxpayer under Chapter 5711. of the Revised Code does not exceed ten thousand dollars.

(a) If the taxable value of such property exceeds ten thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt.

(b) If such property is located in more than one taxing district as defined in section 5711.01 of the Revised Code, the exemption of ten thousand dollars shall be applied as follows:

(i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized.

(D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property.

HISTORY:

RS § 2731; S&S 757; S&C 1438; 56 v 175; 71 v 96, § 78; GC § 5328; 114 v 714; 124 v 852, § 2; Bureau of Code Revision, 10-1-53; 126 v 166 (Eff 9-20-55); 132 v H 480 (Eff 12-2-67); 140 v H 291 (Eff 7-1-83); 140 v H 379 (Eff 4-3-84); 141 v S 130 (Eff 10-17-85); 141 v H 274 (Eff 3-6-86); 146 v S 162. Eff 7-1-97.

ORC Ann. 5713.01 (2007)

§ 5713.01. County auditor shall be assessor; assessment procedure

(A) Each county shall be the unit for assessing real estate for taxation purposes. The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation, but this section does not affect the power conferred by Chapter 5727. of the Revised Code upon the tax commissioner regarding the valuation and assessment of real property used in railroad operations.

(B) The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code. The commissioner may grant an extension of one year or less if the commissioner finds that good cause exists for the extension. When the auditor so views and appraises, the auditor may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall revalue and assess at any time all or any part of the real estate in such county, including land devoted exclusively to agricultural use, where the auditor finds that the true or taxable values thereof have changed, and when a conservation easement is created under sections 5301.67 to 5301.70 of the Revised Code. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with Section 36, Article II, Section 2, Article XII, Ohio Constitution, this section, and sections 5713.03, 5713.31, and 5715.01 of the Revised Code.

(C) When the auditor determines to reappraise all the real estate in the county or any class thereof, when the tax commissioner orders an increase in the aggregate true or taxable value of the real estate in any taxing subdivision, or when the taxable value of real estate is increased by the application of a uniform taxable value per cent of true value pursuant to the order of the commissioner, the auditor shall advertise the completion of the reappraisal or equalization action in a newspaper of general circulation in the county once a week for the three consecutive weeks next preceding the issuance of the tax bills. When the auditor changes the true or taxable value of any individual parcels of real estate, the auditor shall notify the owner of the real estate, or the person in whose name the same stands charged on the duplicate, by mail or in person, of the changes the auditor has made in the assessments of such property. Such notice shall be given at least thirty days prior to the issuance of the tax bills. Failure to receive notice shall not invalidate any proceeding under this section.

(D) The auditor shall make the necessary abstracts from books of the auditor's office containing descriptions of real estate in such county, together with such platbooks and lists of transfers of title to land as the auditor deems necessary in the performance of the auditor's duties in valuing such property for taxation. Such abstracts, platbooks, and lists shall be in such form and detail as the tax commissioner prescribes.

(E) The auditor, with the approval of the tax commissioner, may appoint and employ such experts, deputies, clerks, or other employees as the auditor deems necessary to the performance of the auditor's duties as assessor, or, with the approval of the tax commissioner, the auditor may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work; the amount to be expended in the payment of the compensation of such employees shall be fixed by the board of county commissioners. If, in the opinion of the auditor, the board of county commissioners fails to provide a sufficient amount for the compensation of such employees, the auditor may apply to the tax commissioner for an additional allowance, and the additional amount of compensation allowed by the commissioner shall be certified to the board of county commissioners, and the same shall be final. The salaries and compensation of such experts, deputies, clerks, and employees shall be paid upon the warrant of the auditor out of the general fund or the real estate assessment fund of the county, or both. If the salaries and compensation are in whole or in part fixed by the commissioner, they shall constitute a charge against the county regardless of the amount of money in the county treasury levied or appropriated for such purposes.

(F) Any contract for goods or services related to the auditor's duties as assessor, including contracts for mapping, computers, and reproduction on any medium of any documents, records, photographs, microfiche,

or magnetic tapes, but not including contracts for the professional services of an appraiser, shall be awarded pursuant to the competitive bidding procedures set forth in sections 307.86 to 307.92 of the Revised Code and shall be paid for, upon the warrant of the auditor, from the real estate assessment fund.

(G) Experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value. The auditor may also summon and examine any person under oath in respect to any matter pertaining to the value of any real property within the county.

ORC Ann. 5713.03 (2007)

§ 5713.03. Taxable valuation of real property

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

OAC Ann. **5703-25-05** (Anderson 2007)**5703-25-05** Definitions.

As used in rules **5703-25-05** to 5703-25-17 of the Administrative Code:

(A) "True value in money" or "true value" means one of the following:

(1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.

(2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property.

(B) In compliance with the provisions of sections 5713.01, 5713.03, 5715.01 and 5715.24 of the Revised Code, the "taxable value" of each parcel of real property and the improvements thereon shall be thirty-five per cent of the "true value in money" of said parcel as of tax lien date in the year in which the county's sexennial reappraisal is or was to be effective beginning with the tax year 1978 and thereafter or in the third calendar year following the year in which a sexennial reappraisal is completed beginning with the tax year 1978.

(C) "Computer assisted appraisal systems" - A method in which the value of a property is derived by any or all of the following computerized procedures:

(1) Multiple regression analysis using sales to form the data base for valuation models to be applied to similar properties within the county.

(2) Computerized cost approach using building cost and other factors to value properties by the cost approach as defined in this rule.

(3) Computerized market data approach where a subject property is valued by adjusting comparable sales to subject by adjustments based on regression or other analyses.

(4) Computerized income approach using economic and income factors to estimate value of properties.

(5) Computerized market analysis to provide trend factors used by appraisers as basis of market valuation.

(D) "Cost approach" - A method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements: deducting therefrom the estimated physical depreciation and all forms of obsolescence if any; and then adding the market value of the land. This approach is based upon the assumption that the reproduction cost new normally sets the upper limit of building value provided that the improvement represents the highest and best use of the land.

(E) "Effective tax rate" - Real property taxes actually paid expressed as a percentage rate in terms of actual true or market value rather than the statutory rate expressed as mills levied on taxable or assessed value. In Ohio four factors must be considered in arriving at the effective tax rate:

(1) The statutory rate in mills;

(2) The composite tax reduction factor as calculated and applied under section 319.301 of the Revised Code;

(3) The percentage rollback prescribed by section 319.302 of the Revised Code;

(4) The prescribed assessment level of thirty-five per cent of true or market value.

(F) "Income approach" - An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

(1) The reasonableness of the estimate of the anticipated net annual incomes;

(2) The duration of the net annual income, usually the economic life of the building;

- (3) The capitalization (discount) rate;
- (4) The method of conversion (income to capital).

(G) "Market data approach" - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

- (1) The degree of comparability of each property with the property under appraisal;
- (2) The time of sale;
- (3) The verification of the sale data;
- (4) The absence of unusual conditions affecting the sale.

(H) "Replacement cost"

- (1) The cost that would be incurred in acquiring an equally desirable substitute property;
- (2) The cost of reproduction new, on the basis of current prices, of a property having a utility equivalent to the one being appraised. It may or may not be the cost of a replica property;
- (3) The cost of replacing unit parts of a structure to maintain it in its highest economic operating condition.